# CITRUS COUNTY

## VALUE ADJUSTMENT BOARD

## MINUTES ● AUGUST 5, 2021

**Organizational Meeting** **Citrus County Courthouse** **9:00 AM**

**Room 100, 110 N. Apopka Avenue, Inverness, FL 34450**

## A. CALL TO ORDER

August 05, 2021 Citrus County Courthouse
The meeting was called to order at 9:01 AM

### *1. Pledge of Allegiance*

### *2. Roll Call*

| Attendee Name | Title | Status | Arrived |
|---|---|---|---|
| Holly L. Davis | Chair, Board of County Commission Member | Present | |
| Sandy Counts | Vice Chair, School Board Member | Present | |
| Ruthie Davis Schlabach | Board of County Commission Member | Present | |
| Tony R. Wahl | Citizen Member | Present | |
| Patrick A. Crippen | Citizen Member | Late | 9:03 AM |
| Richard R Kosan | Value Adjustment Board Attorney | Present | |
| Georgette Tozer | Deputy Clerk | Present | |

### *3. Public Comment*

*There was no public comment.*

## B. VALUE ADJUSTMENT BOARD LEGAL COUNSEL

B.1. Appointment of the Value Adjustment Board Legal Counsel

Ratify Attorney Richard Kosan as private legal counsel for the 2021 Value Adjustment Board. Contract was originally executed on March 29, 2016.

**Motion to approve B1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl |
| **ABSENT:** | Crippen |

## C. VALUE ADJUSTMENT BOARD MEMBERS AND CLERK

C.1. Informational: Value Adjustment Board Members and Clerk

Introduce the members of the board and the clerk (or designee) and provide contact information.

*The Board verified their contact information and Attorney Richard R. Kosan introduced the Board members and Deputy Clerk.*

**Clerk Note: Citizen Member Patrick Crippen joined the meeting and voted yes for Item B1.**

## D. SELECTION OF CHAIR AND VICE-CHAIR OF THE VALUE ADJUSTMENT BOARD

D.1. 2021 Value Adjustment Board Chair

2020 Value Adjustment Board Chairman Holly Davis to open nominations for chairman of the 2021 Value Adjustment Board and ask for a motion to cease nominations.

**Motion to nominate Commissioner Davis as Chair.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Patrick A. Crippen, Citizen Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

D.2. 2021 Value Adjustment Board Vice-Chair

Chair-elect of the 2021 Value Adjustment Board to open nominations for the vice-chair and ask for a motion to cease nominations.

**Motion to nominate School Board Member Sandy Counts as Vice Chair.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Holly L. Davis, Ruthie Davis Schlabach |
| **SECONDER:** | Tony R. Wahl, Citizen Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## E. VALUE ADJUSTMENT BOARD MEETING MINUTES

E.1. Value Adjustment Board - Regular Meeting - May 18, 2021 9:00 AM

**Motion to approve the minutes of May 18, 2021.**

| | |
|---|---|
| **RESULT:** | **ACCEPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## F. VALUE ADJUSTMENT BOARD SPECIAL MAGISTRATES

F.1. Special Magistrate Best Practices

Adopt Special Magistrate Best Practices as recommended guidelines for conducting and achieving productive and efficient hearings.

. Motion

**Motion to approve item F1.**

*Prior to the vote and at the request of Citizen Member Tony Wahl, Deputy Clerk Georgette Tozer provided an overview of the Special Magistrate Best Practices.*

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Sandy Counts, Vice Chair, School Board Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

F.2. Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Transfers

Appoint attorney special magistrate(s) to conduct hearings and make recommendations on petitions filed with the Value Adjustment Board regarding exemptions, classifications, and portability assessment difference transfers.

In the past, the board has selected one primary magistrate and one alternate.

**Motion to appoint Andrea M. Johnson as primary attorney magistrate and Laura L. Waker as alternate attorney magistrate.**

*Prior to the vote, Board discussion was held and Attorney Richard R. Kosan provided clarification that all the applicants had met the statutory requirements. Board discussion continued.*

| | |
|---|---|
| **RESULT:** | **ADOPTED [4 TO 1]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Holly L. Davis, Chair, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Crippen |
| **NAYS:** | Wahl |

F.3. Selection of Special Magistrate(s) for Valuation of Real Estate

Appoint appraiser special magistrate(s) to conduct hearings and make recommendations on petitions filed with the Value Adjustment Board regarding valuation of real estate.

In the past, the Board has selected three primary magistrates and one alternate.

*Board discussion continued regarding the number of special magistrates for valuation of real estate that were previously selected.*

**Motion to appoint Lawrence Golicz, John Robinson and Robert Hicks as primary magistrates and Stephen Jamir as alternate magistrate.**

*Prior to the vote, Attorney Richard R. Kosan read Mr. Robert Sutte's letter addressed to the 2020 Value Adjustment Board into the record. Board discussion continued.*

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Sandy Counts, Vice Chair, School Board Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

F.4. Selection of Special Magistrate(s) for Tangible Personal Property

Appoint appraiser special magistrate(s) to conduct hearings and make recommendations on petitions filed with the Value Adjustment Board regarding tangible personal property valuation.

In the past, the board has selected one primary magistrate.

*Attorney Richard R. Kosan clarified the requested rates and other compensation related to magistrates hearing issues of tangible personal property.*

**Motion to appoint Lawrence Golicz as the primary magistrate.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## G. VALUE ADJUSTMENT BOARD DESIGNEE

G.1. Appointment of Value Adjustment Board Designee

Appoint a designee (legal counsel or special magistrate) to determine whether a petitioner has demonstrated, in writing, good cause justifying consideration of a petition filed past the statutory deadline, and to determine if a request to reschedule a hearing may be made pursuant to Chapter 12D-9 F.A.C.

**Motion to appoint Attorney Richard R. Kosan as the Value Adjustment Board designee.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## H. VALUE ADJUSTMENT BOARD REFERENCE MATERIALS

H.1. Informational: Value Adjustment Board Rules and Guidelines

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. Review the following value adjustment board rules and guidelines and announce that this information is accessible on the Florida Department of Revenue's website, https://floridarevnue.com/property/pages/vab.aspx. A link to the department's website is also available on the Citrus County Clerk of Circuit Court and Comptroller's website, www.citrusclerk.org

- Rule Chapter 12D-9, F.A.C., and associated forms;

- Rule Chapter 12D-10, F.A.C.;
- Rule Chapters 12D-51.001, 51.002, and 51.003, F.A.C.;
- Chapters 192 through 195, F.S.;
- Uniform Policies & Procedures Manual
- Property Tax Oversight Infograph
- Florida's Government in the Sunshine/Open Government Laws

*Attorney Richard R. Kosan addressed the Board of the Value Adjustment Board process.*

*Board discussion followed.*

*Deputy Clerk Georgette Tozer and Attorney Richard R. Kosan responded to questions and concerns from the Board, followed by further Board discussion.*

## I. VALUE ADJUSTMENT BOARD HEARING SCHEDULE

I.1. Informational: Value Adjustment Board Hearing Schedule

Announce the following tentative dates and times set by the Clerk for special magistrate hearings: October 13, 14, 19, 20, 27, 28, November 10, 16, 17, December 1, 7, 8, 9, 15, 21, January 5, 6, 11, 19, 20, 25, 26, February 2, 3 and any other dates deemed necessary based upon the number of petitions filed and rescheduled. Hearings will be held in the Citrus County Courthouse, Room 100, 110 North Apopka Avenue, Inverness, Florida, beginning at 9:00 A.M.

*Chair Davis read the tentative schedule hearing dates into the record.*

## J. VALUE ADJUSTMENT BOARD RESOLUTION

J.1. Value Adjustment Board Resolution

Ratify resolution number 2021-001, imposing a nonrefundable $15 filing fee for petitions filed in 2021.

**Motion to approve J1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## K. INITIAL CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

K.1. Initial Certifications of the Value Adjustment Board

a. Approve and authorize the Chair to execute the Initial Certification of the Value Adjustment Board - Form DR-488P, for real property.

b. Approve and authorize the Chair to execute the Initial Certification of the Value Adjustment Board - Form DR-488P, for tangible personal property.

**Motion to approve K1a and b.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## L. ANY OTHER BUSINESS TO COME BEFORE THE BOARD

L.1. Payment of Services to Value Adjustment Board Legal Counsel

Approve payment to Attorney Richard Kosan in the amount of $1,710.00.

**Motion to approve L1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Sandy Counts, Vice Chair, School Board Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

L.2. Internal Operating Procedures

Ratify internal operating procedures for efficient operation of the value adjustment board process.

**Motion to ratify L2.**

*After the vote, Citizen Patrick Crippen requested clarification that Attorney Richard R. Kosan would be the Value Adjustment Board designee for determining good cause.*

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Sandy Counts, Vice Chair, School Board Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## M. UPCOMING MEETING

M.1. Next Value Adjustment Board Meeting

Set the next meeting of the Value Adjustment Board for Wednesday, March 2, 2022 at 9:00 a.m.

**Motion to approve M1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Tony R. Wahl, Citizen Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## N. ADJOURN

The meeting was adjourned at 10:23 AM

## CONTRACT FOR LEGAL SERVICES

The VALUE ADJUSTMENT BOARD OF CITRUS COUNTY, FLORIDA, hereinafter referred to as "VAB" and attorney Richard R. Rosan, hereinafter referred to as the "SPECIAL COUNSEL," agree as follows:

1. Services to be Performed

SPECIAL COUNSEL hereby agrees to represent the VAB in all matters coming before the VAB during the 2016 term and agrees to attend all regularly scheduled meetings of the VAB.

SPECIAL COUNSEL agrees to consult with and advise the Clerk and Special Magistrates appointed by the VAB on such occasions and as the need should arise during the course of the VAB term.

2. Duration

This contract shall commence on March 29, 2016, until terminated by either party and may be amended by mutual agreement of the parties, in writing. The VAB or SPECIAL COUNSEL may terminate this agreement at any time upon written notice to the other party.

3. Compensation

As compensation for the SPECIAL COUNSEL providing services to the VAB as described herein, the VAB shall pay the SPECIAL COUNSEL an hourly rate of $225 for any and all work performed on behalf of the VAB with a minimum charge of three (3) hours to attend any VAB meeting.

4. Invoices

All sums paid to the SPECIAL COUNSEL shall, in each case, be subject to the receipt by the VAB of a detailed statement of services rendered from the SPECIAL COUNSEL, including sufficient documentation to enable the VAB to properly perform its audit responsibilities for the use of public funds. SPECIAL COUNSEL shall submit such invoices to the VAB on a monthly basis and said invoice billings shall be itemized as to dates, hourly rates and amounts.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 29th day of March, 2016.

VALUE ADJUSTMENT BOARD
OF CITRUS COUNTY

By: Dennis Damato
Chairman

Special Legal Counsel

Attachment: VABLegalCounselContract_3.29.16 (15101 : Ratification of the Value Adjustment Board Legal Counsel)

# 2021 CITRUS COUNTY VALUE ADJUSTMENT BOARD CONTACT LIST

| | |
|---|---|
| VAB County Commission Member: | Holly L. Davis<br>Board of County Commissioners<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-6560<br>holly.davis@citrusbocc.com |
| VAB County Commission Member: | Ruthie Davis Schlabach<br>Board of County Commissioners<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-6560<br>Ruthie.Schlabach@citrusbocc.com |
| VAB County Commission Member: Alternate | Ronald E. Kitchen, Jr.<br>Board of County Commissioners<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-6560<br>Ronald.Kitchen@citrusbocc.com |
| VAB School Board Member: | Sandy Counts<br>Citrus County School Board<br>1007 West Main Street<br>Inverness, FL 34450<br>352-726-1931<br>CountsS@citrusschools.org |
| VAB School Board Member Alternate: | Doug Dodd<br>Citrus County School Board<br>1007 West Main Street<br>Inverness, FL 34450<br>352-726-1931<br>DoddD@citrusschools.org |

Attachment: VABContactList (15102 : Informational: Value Adjustment Board Members and Clerk)

| | |
|---|---|
| VAB Citizen Member - Homestead Property Owner, Appointed by Board of County Commissioners: | Patrick Crippen<br>4125 West Fireside Lane<br>Citrus Springs, FL 34433<br>940-205-3056<br>PatCrippen@me.com |
| VAB Citizen Member - Commercial Business Owner, Appointed by School Board: | Tony R. Wahl<br>Integrity Financial Services Group, Inc.<br>Integrity Tax & Bookkeeping, LLC<br>Integrity Insurance Advisors, LLC<br>4411 East Arlington Street<br>Inverness, FL 34453<br>352-726-4379<br>Tony@CitrusIntegrity.com |
| Clerk: | Angela Vick<br>Citrus County Clerk of the Circuit Court and Comptroller<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-6424<br>avick@citrusclerk.org |
| Chief of Staff : | Traci Phillips<br>Citrus County Clerk of the Circuit Court and Comptroller<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-6461<br>tphillips@citrusclerk.org |
| Chief Deputy of Financial Services | Shelley Sansone<br>Citrus County Clerk of the Circuit Court and Comptroller<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-8849<br>ssansone@citrusclerk.org |

Attachment: VABContactList (15102 : Informational: Value Adjustment Board Members and Clerk)

| | |
|---|---|
| Official Records Director: | Kristi Hugar<br>Citrus County Clerk of the Circuit Court and Comptroller<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-6473<br>khugar@citrusclerk.org |
| Deputy Clerk: | Georgette Tozer<br>Citrus County Clerk of the Circuit Court and Comptroller<br>110 North Apopka Avenue<br>Inverness, FL 34450<br>352-341-7095<br>VAB@citrusclerk.org |

Attachment: VABContactList (15102 : Informational: Value Adjustment Board Members and Clerk)

# CITRUS COUNTY

## VALUE ADJUSTMENT BOARD

## MINUTES ● MAY 18, 2021

**Regular Meeting** | **Citrus County Courthouse** | **9:00 AM**

**Room 100, 110 N. Apopka Avenue, Inverness, FL 34450**

## A. CALL TO ORDER

May 18, 2021 Citrus County Courthouse
The meeting was called to order at 9:00 AM

### *1. Pledge of Allegiance*

### *2. Roll Call*

| Attendee Name | Title | Status | Arrived |
|---|---|---|---|
| Holly L. Davis | Chair, Board of County Commission Member | Present | |
| Sandy Counts | Vice Chair, School Board Member | Present | |
| Ruthie Davis Schlabach | Board of County Commission Member | Present | |
| Tony R. Wahl | Citizen Member | Present | |
| Patrick A. Crippen | Citizen Member | Present | |
| Richard R Kosan | Value Adjustment Board Attorney | Present | |
| Georgette Tozer | Deputy Clerk | Present | |

### *3. Public Comment*

*There was no public comment.*

A.3.1. Accept comments from the public on issues not related to specific petitions which are noted below for approval by the Value Adjustment Board.

## B. MINUTES

B.1. Value Adjustment Board - Organizational Meeting - Jan 6, 2021 9:00 AM

**Motion to approve B1.**

| | |
|---|---|
| **RESULT:** | **ACCEPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## C. SPECIAL MAGISTRATE RECOMMENDED DECISIONS

C.1. VAB Recommended Decisions

Minutes Acceptance: Minutes of May 18, 2021 9:00 AM (Value Adjustment Board Meeting Minutes)

Consider and adopt the recommended decisions signed by the appointed special magistrates for the following petition numbers: 1, 12, 15, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 36, 53, 84, 103, 114, 120, 121, 122, 123, 124, 125, 130, 131, 146, 192.

**Motion to approve C1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## D. VAB FORMS

D.1. 2020 VAB Forms

Approve and authorize the Chair to sign the following forms:

- DR-488 - Certification of the Value Adjustment Board for Real Property;
- DR-488 - Certification of the Value Adjustment Board for Tangible Personal Property; and
- DR-529 - Notice of Tax Impact of the Value Adjustment Board.

**Motion to approve D1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Tony R. Wahl, Citizen Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## E. PAYMENT OF VALUE ADJUSTMENT BOARD SERVICES

E.1. Payment of Services to Special Magistrate Golicz

Approve payment to Special Magistrate Golicz in the amount of $375.00

**Motion to approve E1.**

*Prior the vote, Citizen Member Tony Wahl asked if there were any billing irregularities with the submitted invoices, and Attorney Richard Kosan responded that there were concerns with only item E4.*

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

E.2. Payment of Services to Special Magistrate Haynes Davis

Approve payment to Special Magistrate Haynes Davis in the amount of $331.25.

**Motion to approve E2.**

Minutes Acceptance: Minutes of May 18, 2021 9:00 AM (Value Adjustment Board Meeting Minutes)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

E.3. Payment of Services to Special Magistrate Robinson

Approve payment to Special Magistrate Robinson in the amount of $8,656.25.

**Motion to approve E3.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

E.4. Payment of Services to Special Magistrate Robert Sutte

Approve payment to Special Magistrate Robert Sutte in the amount of $16,743.75.

**Motion to approve E4.**

*Prior the vote, Attorney Richard Kosan provided concerns on the invoice.*

*Attorney Kosan responded to questions from the Board, followed by Board discussion.*

**Motion was amended to pay Mr. Sutte the amount of $13,395.00 in fulfillment of work performed in 2020 tax year, with the option of him returning to the Board detailing item by item the full billing of his amount of invoice presented.**

| | |
|---|---|
| **RESULT:** | **ADOPTED AS AMENDED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

E.5. Payment of Services to Value Adjustment Board Legal Counsel

Approve payment to Attorney Richard Kosan in the amount of $4,050.00.

**Motion to approve E5.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## F. REPORTS AND ANALYSIS

F.1. 2020 Petition Filing Results and Revenue and Expense Report

Review the current Petition Filing Results and Revenue and Expense Report, both of which are current through May 10, 2021.

Minutes Acceptance: Minutes of May 18, 2021 9:00 AM (Value Adjustment Board Meeting Minutes)

*Citizen Member Tony Wahl asked for an understanding of charges on the Revenue & Expense Report as compared to the prior report.*

*Attorney Richard Kosan provided clarification of the report.*

## G. VAB BUSINESS FORMALITIES

G.1. Value Adjustment Board Legal Counsel

Authorize the Board Clerk to (a) extend the contract with Attorney Richard R. Kosan (current legal counsel until terminated by either party) or (b) proceed with a request for legal services to obtain responses from qualified applicants interested in serving as the Citrus County VAB legal counsel for the 2021 Tax Year.

**Motion to approve G1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Sandy Counts, Vice Chair, School Board Member |
| **SECONDER:** | Tony R. Wahl, Citizen Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

G.2. Special Magistrate Rates

In 2020, the rate for the primary attorney special magistrate hearing petitions related to exemption, classification, and portability matters was $125 with the scheduled hearing time at a minimum of four (4) hours. In prior years, there were no minimum hours. The special magistrate rate was $125 per hour for appraiser special magistrates hearing petitions related to real property values (the rate has been in place since 2005). The rate for the appraiser special magistrate hearing petitions related to tangible personal property (TPP) was selected by an open bid process; the selected magistrate was approved at a rate of $125 per hour to include a 4-hour minimum and mileage at the IRS approved rated for 2020.

**Motion to approve attorney special magistrates and appraiser special magistrates rates advertised at $125 per hour with no minimum and no mileage and to approve an open bid process for tangible personal property special magistrates.**

*Prior the vote, Attorney Richard Kosan provided the Clerk's request and clarification.*

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

G.3. 2021 Special Magistrate Services

Authorize the Board Clerk to seek Special Magistrate services for 2021 Tax Year.

**Motion to approve G3.**

Minutes Acceptance: Minutes of May 18, 2021 9:00 AM (Value Adjustment Board Meeting Minutes)

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

G.4. Value Adjustment Board Resolution

Ratify resolution number 2021-001, imposing a nonrefundable $15 filing fee for petitions filed in 2021.

**Motion to approve G4.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **SECONDER:** | Sandy Counts, Vice Chair, School Board Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## H. UPCOMING MEETING

H.1. Next Value Adjustment Board Meeting

Set the Organizational meeting of the 2021 Value Adjustment Board for Thursday, August 5, 2021 at 9:00 a.m. in the Citrus County Courthouse, Room 100, 110 North Apopka Avenue, Inverness Florida, for the purpose of setting the organizational structure, to appoint special magistrates, and for any other business deemed necessary.

**Motion to approve H1.**

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Tony R. Wahl, Citizen Member |
| **SECONDER:** | Ruthie Davis Schlabach, Board of County Commission Member |
| **AYES:** | Davis, Counts, Schlabach, Wahl, Crippen |

## I. ANY OTHER BUSINESS TO COME BEFORE THE BOARD

*Connie Monet Deneuve (Petition 242) addressed the Board regarding the denial of her late filed petition for a hearing.*

*Attorney Kosan provided clarification of the late filing petition process and denial of a hearing.*

*Board discussion ensued.*

*Citizen Member Tony Wahl commended the Board for its due diligence with overseeing the billing on this meeting's agenda.*

## J. ADJOURN

The meeting was adjourned at 10:42 AM

Minutes Acceptance: Minutes of May 18, 2021 9:00 AM (Value Adjustment Board Meeting Minutes)

# Previous Selected Special Magistrates 2017 - 2021 (Appraisers)

| Name | 2021 | 2020 | 2019 | 2018 | 2017 |
|---|---|---|---|---|---|
| EDGAR FLERI | | Com => Alt<br>Res => Alt | Com => Alt<br>Res => Alt | Com => Alt<br>Res => Alt | Com => Alt<br>Res => Alt |
| EDWIN R BARFIELD | | | | Com => Pri<br>Res => Pri | Com => Pri<br>Res => Pri |
| JOHN ROBINSON | | Com => Pri<br>Res => Pri | Com => Pri<br>Res => Pri | Com => Pri<br>Res => Pri<br>TPP => Pri | Com => Pri<br>Res => Pri<br>TPP => Pri |
| LAWRENCE J GOLICZ, PH.D., MAI, ASA | | Com => Pri<br>Res => Pri<br>TPP => Pri | Com => Pri<br>Res => Pri | | |
| ROBERT SUTTE | | Com => Pri<br>Res => Pri | Com => Pri<br>Res => Pri<br>TPP => Pri | Com => Pri<br>Res => Pri | Com => Pri<br>Res => Pri |

Communication: Previously Selected Magistrates (Value Adjustment Board Special Magistrates)

## Previous Selected Special Magistrates 2017 - 2021 (Attorneys)

| Name | 2021 | 2020 | 2019 | 2018 | 2017 |
|---|---|---|---|---|---|
| ANDREA M JOHNSON | | | | Agr => Alt<br>Exm => Alt<br>Ins => Alt<br>Por => Alt | Agr => Alt<br>Exm => Alt<br>Ins => Alt<br>Por => Alt |
| JOSEPH HAYNES DAVIS, ESQUIRE | | Agr => Alt<br>Exm => Alt<br>Ins => Alt<br>Por => Alt | Agr => Alt<br>Exm => Alt<br>Ins => Alt<br>Por => Alt | | |
| THOMAS TUKDARIAN | | Agr => Pri<br>Exm => Pri<br>Ins => Pri<br>Por => Pri | Agr => Pri<br>Exm => Pri<br>Ins => Pri<br>Por => Pri | | |
| TODD M HOEPKER | | | | Agr => Pri<br>Exm => Pri<br>Ins => Pri<br>Por => Pri | Agr => Pri<br>Exm => Pri<br>Ins => Pri<br>Por => Pri |

Communication: Previously Selected Magistrates (Value Adjustment Board Special Magistrates)

# 2021 Value Adjustment Board Special Magistrates

| Name | Type | Date Resume Received | Hearing Types | Additional Compensation | Notes |
|---|---|---|---|---|---|
| JOSEPH HAYNES DAVIS, ESQUIRE | Attorney | 04/26/2021 | Agricultural | N | |
| | | | Exemption | N | |
| | | | Institutional | N | |
| | | | Portability | N | |
| LAWRENCE J GOLICZ, PH.D., MAI, ASA | Appraiser | 04/04/2021 | Commercial | N | |
| | | | Residential | N | |
| | | | Tangible | N | Rate $175/hr |
| ANDREA M JOHNSON | Attorney | 05/03/2021 | Agricultural | N | |
| | | | Exemption | N | |
| | | | Institutional | N | |
| | | | Portability | N | |
| EDWARD WEINERT | Appraiser | 04/14/2021 | Tangible | N | Rate $125/hr with a 4-hr minimum; Mileage $.56/mile, maximum 600 miles; Hotel maximum $120 |
| JOHN ROBINSON | Appraiser | 07/03/2021 | Commercial | N | |
| | | | Residential | N | |
| | | | Tangible | N | $130/per hr plus mileage |
| ROBERT C HICKS | Appraiser | 04/13/2021 | Commercial | N | |
| | | | Residential | N | |
| ROBERT SUTTE | Appraiser | 06/28/2021 | Commercial | N | |
| | | | Residential | N | |
| | | | Tangible | N | $125/hr |
| STEPHEN JAMIR | Appraiser | 04/15/2021 | Commercial | N | |
| | | | Residential | N | |
| TODD M HOEPKER | Attorney | 04/13/2021 | Agricultural | N | |
| | | | Exemption | N | |
| | | | Institutional | N | |
| | | | Portability | N | |
| THOMAS TUKDARIAN | Attorney | 04/15/2021 | Agricultural | N | |
| | | | Exemption | N | |
| | | | Institutional | N | |
| | | | Portability | N | |

Communication: 2021 List of Applicants for Special Magistrates (Value Adjustment Board Special Magistrates)

# 2021 Value Adjustment Board Special Magistrates

| Name | Type | Date Resume Received | Hearing Types | Additional Compensation | Notes |
|---|---|---|---|---|---|
| LAURA L WALKER | Attorney | 04/26/2021 | Agricultural | N | |
| | | | Exemption | N | |
| | | | Institutional | N | |
| | | | Portability | N | |

Communication: 2021 List of Applicants for Special Magistrates (Value Adjustment Board Special Magistrates)

Special Magistrates - Best Practices for Conducting VAB Hearings

Thank you for serving Citrus County VAB 2022.

The purpose of the following is recommended as being most effective for conducting hearings and housekeeping items.

A notebook is provided with copies of the current Department of Revenue Uniform Policies and Procedures, Florida Administrative Code 12D-9, the Local Policies and Procedures for Citrus County, the Florida Government in the Sunshine State Manual, and the Special Magistrate Opening Statement and Overview of Procedures.

- The hearing agenda has been carefully prepared by the VAB Clerk taking into consideration for allotted times and sequence of the hearings.

- Please plan to arrive at the hearing room (currently Room 100, the Chambers) at least 15 minutes before the first scheduled hearing time.

- When you arrive, log in to the VAB program (laptop provided) to insure that access to the program is in use.

- Opening and Other Remarks –
  You shall identify each petition by number and announce the petitioner's name on the record.
  Read the Opening Statement and Overview of Procedures and answer any questions. It is not necessary to read the Opening Statement into the record should the petitioner not request, although the Special Magistrate may certainly give an overview of the process.
  At the end of the hearing, announce that the hearing is concluded.

- State a 'No Show for specific Petition #' on the record, if that is the case (after reasonable time has lapsed)

- After each hearing, fill out the PA and Petitioner cover sheet for each evidence packet to indicate that the evidence is admissible or inadmissible before proceeding on to the next hearing. If no Petitioner evidence has been submitted, indicate that on the cover sheet - 'No Evidence Submitted or Denial of Evidence'.

- Evidence is not allowed to be checked out.

- Notes or work papers to be considered for the purpose of writing the recommended decisions by the Special Magistrate will be copied, and the originals will be considered as part of the evidence maintained by the VAB.

- During intervals between hearings, the Special Magistrate shall refrain from talking with PAO staff and/or petitioners, which may be overheard and misconstrued by arriving petitioners as a conflict of interest or as not relevant to the VAB process.



Attachment: SpecialMagistrate_BestPractices (15155 : Special Magistrate Best Practices)

- Reasons to go “off the record” (pausing of video/audio):
  - Attorney call
  - Length of time between hearings exceeds ½ hour, whereby, the Special Magistrate shall use this time to begin/continue drafting their recommendations
  - Lunch (not billable). Time has been built into the hearing agenda to allow for a lunch period. If the morning hearings run over and lunch is delayed, you may start the afternoon hearings up to 1/2 hour late. A sign will be posted on the hearing room door indicating that fact: "VAB hearings will resume at . . . "
  - If there is free time based on “No Shows”, use this time to catch up with Citrus VAB caseload and complete worksheets.
  - Emergency evacuation

- Ex Parte Communication Prohibition - Pursuant to Rule 12D-9.017, Ex parte communication between a member of the VAB, the petitioner, the Special Magistrate, the Property Appraiser, or the VAB clerk outside of scheduled hearings or VAB meetings, is prohibited. Should any party recognize that they are the recipient of an ex-parte communication of issues in the petition, either verbal or written, they shall immediately terminate their oral communication or review of written material. In the event of a written ex-parte communication, either party or the Special Magistrate shall forward the ex parte document to the VAB Clerk at VAB@citrusclerk.org who will forward it to the VAB Attorney. The VAB Clerk shall maintain a copy of the document or written statement of the conversation and provide a copy to the opposing party or both parties if the communication is from a third party. This will be included in the record of the VAB proceedings.

- Timely Completed Recommended Decisions – At the conclusion of scheduled hearings, recommended decision(s) shall be completed no later than twenty-one business days. "If you are unable to complete the recommended decision(s) within twenty-one (21) days of the conclusion of the hearing, you must notify the Clerk of the delay, the reasons therefore and request an extension of time to complete the recommended decision(s) prior to the expiration of the allotted time. If you do not timely request an extension or the Clerk does not accept the reason(s) provided for the extension request, per your contract, "the VAB may use discretion to impose a penalty of $100 for each day the recommendation is late”.

- Invoice Requirements – Pursuant to your contract, you are required to submit 'complete detailed invoices.' Accordingly, all invoices should include, as applicable, the following information:
  - Attended and conducted hearing(s) . . .
  - Reviewed notes of hearing . . .
  - Analyzed arguments presented by Property Appraiser/Petitioner . . .
  - Researched legal issue regarding . . .
  - Drafted written recommendation(s) . . .

  Upon review of the invoice by VAB Clerk and VAB Legal Counsel, any necessary revisions shall be adjusted prior to submission to the VAB for their approval.



Attachment: SpecialMagistrate_BestPractices (15155 : Special Magistrate Best Practices)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F.S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☑ Attorney Special Magistrate
- ☐ Appraiser Special Magistrate for…
- ☐ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: JOSEPH HAYNES DAVIS, ESQUIRE Email: joseph.davis@jhdlaw.com
Business Name: LAW OFFICES OF JOSEPH HAYNES DAVIS, PA
Home Address: 8421 SHADY GLEN DRIVE ORLANDO, FLORIDA 32819
Business Address: 2750 TAYLOR AVE. #B207 ORLANDO, FLORIDA 32806
Phone: Home/ Business/ 407 839 3725 Cell/ 407 616 6961 Fax: 407 839 4708

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: 0458058 Date of Admission: 1/23/2001
How many years of experience do you have in the area of ad valorem taxation: 19

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: _____ Valid Thru: _____
How many years of experience do you have in the area of real property valuation _____
How many years of experience do you have in the area of tangible property valuation: _____

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to F.S. § 194.035.*

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx.
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org.

## QUALIFICATION/EXPERIENCE

1. Educational Background
ILLINOIS STATE UNIVERSITY, B.S.; UNIVERSITY OF PENNSYLVANIA, MSW; RUTGERS LAW, JD
SEE ATTACHED



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
## VALUE ADJUSTMENT BOARD
(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served
SEE ATTACHED

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.
SEE ATTACHED

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| N/A | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:
N/A

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:
N/A



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | 20 YEARS CLOSINGS AND TITLE |
| COMMERCIAL REAL PROPERTY | 20 YEARS CLOSINGS AND TITLE |
| TANGIBLE PROPERTY | 20 BANKRUPTCY |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

N/A

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

N/A

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

SEE ATTACHED

13. List any additional information which makes you qualified to serve as a special magistrate:

SEE ATTACHED



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

_____ Date: 4/26/2021

Signature of Applicant

_____

Printed Name of Applicant Joseph Haynes Davis, Esq.



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# Joseph Haynes Davis, Esq.

Law Offices of Joseph Haynes Davis, P.A. 2750 Taylor Avenue Suite B207 • Orlando, FL 32806 Phone (407) 839-3725 • Cell (407) 616-6961 • Email joseph.davis@jhdlaw.com
• Website www.jhdlaw.com

## Summary of Qualifications

- Diligent and hard-working attorney in small firm handling all facets of **Real Estate Law and Commercial and Residential Real Property Closings, Mortgage Law, Title Insurance, Probate and Guardianship, Business Formation and Consulting, Creditor Collections, Bankruptcy** and all phases of **Civil and Criminal Litigation.**
- Highly organized, with demonstrated strengths in successfully managing diverse caseload.
- Excellent interpersonal skills with demonstrated ability to motivate lead and interact effectively with diverse groups of people.
- Experienced and skillful negotiator with consistent ability to resolve cases favorably through alternative dispute resolution.
- Results-oriented with strong work ethic, high level of integrity, reliability and commitment to excellence in all matters undertaken.
- **Court appointed in the area of Criminal, Probate, Guardianship and Mental Health for Orange County and the 9th Judicial Circuit since March, 2002, and for Guardianship in Osceola County in 2012.**
- **Court appointed in the area of Criminal, Probate, Guardianship and Mental Health for Sarasota County and the 12th Judicial Circuit March, 2008 and May, 2013.**
- **In 2008, 2009, 2011, 2016 and 2017 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Orange County, Florida.**

  **In 2010, and 2011 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Manatee County, Florida.**
- **In 2011, 2012, 2013, 2014, 2015, 2016 and 2017 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Hillsborough County, Florida.**
- **In 2011, 2012, 2013, 2014 and 2015 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Flagler County, Florida.**
- **In 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Sumter County, Florida**
- **In 2012, and 2016 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Seminole County, Florida.**
- **In 2013, 2014, 2015, 2016, 2017, 2018, and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Brevard County, Florida**
- **In 2013 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Indian River County, Florida.**
- **In 2013, 2014, 2015, 2016, 2017, 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Volusia County, Florida.**
- **In 2013 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Citrus County, Florida**
- **In 2013, 2015, 2017, 2018, 2019 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Marion County, Florida.**
- **In 2014 and 2015 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Bay County, Florida.**



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

- In 2014, 2015, 2016, 2018, and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Lee County, Florida.
- In 2014 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Nassau County, Florida.
- In 2014, 2015, 2016 and 2017 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Leon County, Florida.
- In 2014, 2015, 2016, 2017, 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Leon County, Florida.
- In 2016, 2017, 2018, and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Polk County, Florida.
- In 2017, 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board special magistrate by Osceola County, Florida.
- In 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Pinellas County, Florida.
- In 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Alachua County, Florida.
- Local counsel to Shapiro and Fishman, LLP Tampa, Florida for foreclosure appearances in Orange County Florida and Seminole County Florida, August 2008 to the present.
- Florida counsel to Bass Law Group, LLC Woodstock, Georgia for civil debt collection matters January 2009 to 2010.

## Areas of Expertise

| | | | | | | |
|---|---|---|---|---|---|---|
| Business Transactions | Civil & Criminal | Personal Injury | Real Estate | Estate Planning | Sports & Entertainment | Family Law |

## Legal Experience

**Law Offices of Joseph Haynes Davis, P.A., Orlando, FL** **2001 to Present**

**Small Law Firm,** representing wide range of clients in **Commercial and Residential Real Property Closings, Mortgage Law, Title Insurance, Probate and Guardianship, Business Formation and Consulting, Civil and Criminal Litigation, Real Estate, Personal Injury, Estate Planning, Probate, Bankruptcy, Family and Sports & Entertainment Law.**

- **Business Formation, Transactions and Consulting:** Advise and assist business and corporate clients on wide range of matters including business formation and incorporation. Draft and review articles of incorporation, bylaws, shareholder agreements, buy/sell agreements, compensation agreements, various contracts and represent and advise clients in all phases of business transactions.
- **Civil & Criminal Litigation**: Handle all phases of Civil and Criminal litigation from pre-trial practice through trial. Responsibilities include conducting extensive legal research, drafting pleadings, motions, discovery, trial briefs, taking and defending depositions, witness preparation, conducting voir dire and representing clients at hearings, trials and mediation.
- **Personal Injury**: Routinely handle all aspects of wide range of plaintiff's personal injury cases from client interview through settlement or trial.
- **Family**: Represent clients in all aspects of family law including divorce, paternity, annulment, custody, support, modifications as well as mediation and informal settlement conferences. Regularly negotiate and draft property settlement agreements.



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

- **Estate Planning**: Routinely analyze and draft wills and living trusts, and handle all aspects of **Probate** and **Guardianship** proceedings.
- **Real Estate**: Review residential real estate contracts and closing documents for buyers, issue title insurance for residential and commercial closings and counsel clients on various matters including actions for ejectment, actions for partition and foreclosures.
- **Sports & Entertainment Law:** Negotiate a variety of contract deals for vocal singer-performers, professional basketball athletes and radio broadcast air talents.
- **Title Insurance Agent:** Former title insurance agent for **Attorney's Title Fund (2005-2009) and Land America (2006-2009). Issued title insurance through the Law Offices of Joseph Haynes Davis, PA and owner of Sivad Title Services, Incorporated.**

**PREVIOUS EXPERIENCE** includes highly successful 30-year career as radio broadcaster and broadcast manager for a variety of stations in Florida, Texas, Pennsylvania, Illinois, Missouri, Louisiana and Georgia. Nominated in 1999 and 2000 by the Billboard R&B Monitor radio trade publication as *Assistant Program Director / Music Director of the Year (winner 2000).* Youngest brother to the late trumpeter and music icon, Miles Davis.

## Education and Professional Development

**J.D.** Rutgers Law School, Camden, NJ, 1996
*Dean's List, Spring 1996*

**M.S.W.** University of Pennsylvania, School of Social Work, Philadelphia, PA, 1992

**B.S.** **(Communications/Journalism)** Illinois State University, Normal, IL, 1981
*Recipient, Outstanding Graduate in Communications, 1998*

Regularly attend continuing education (CLE) courses and professional seminars.

## Bar Admissions

- **State of Florida, 2001; U.S. Middle District of Florida 2001; U.S. Southern District of Florida 2012**

## Professional Affiliations

- Orange County Bar Association
- Central Florida Real Estate Investors
- Business Opportunities Group Incorporated (BOGI)
- Rutgers Law School Alumni Association
- Sanford Housing Authority, Board Chairman (04/01 to 02/02)

## Computer Skills

- Westlaw
- Lexis-Nexis
- WordPerfect



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

- Microsoft Word
- Internet
- E-mail
- Axia (Value Adjustment Board, Florida program)



Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

Computer Experience
VAB 2021

- Westlaw 29 years
- Lexis-Nexis 29 years
- WordPerfect 31 years
- Microsoft Word 31 years
- Internet 31 years
- E-mail 26 years
- Axia 13 plus years
- FindLaw 15 plus years

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

ATTORNEY-SPECIAL MAGISTRATE HEARING OFFICER FOR VALUE ADJUSTMENT BOARDS, AROUND THE STATE OF FLORIDA

VAB APPLICATION 2021

- In 2008, 2009, 2011, 2016 and 2017 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Orange County, Florida
- In 2010, and 2011 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Manatee County, Florida
- In 2011, 2012, 2013, 2014, 2015, 2016 and 2017 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Hillsborough County, Florida
- In 2011, 2012, 2013, 2014 and 2015 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Flagler County, Florida
- In 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Sumter County, Florida
- In 2012 and 2016 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Seminole County, Florida
- In 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Brevard County, Florida
- In 2013 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Indian River County, Florida
- In 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Volusia County, Florida
- In 2013, 2019 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Citrus County, Florida
- In 2013, 2015, 2017, 2018, 2019 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Marion County, Florida
- In 2014, 2015 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Bay County, Florida

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

- In 2014, 2015, 2016, 2018, 2019, and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Lee County, Florida
- In 2014 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Nassau County, Florida
- In 2014, 2015, 2016, 2017, 2018 and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Leon County, Florida
- In 2014, 2015, 2016, 2017, 2018, 2019, and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Pasco County, Florida
- In 2016, 2017, 2018, 2019, and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Polk County, Florida
- In 2018, 2019 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Pinellas County, Florida
- In 2018, 2019, and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Alachua County, Florida
- In 2018, 2019 and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Pinellas County, Florida
- In 2019, and 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by St. Johns County, Florida
- In 2017, 2018, and 2019 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Osceola County, Florida
- In 2020 appointed to serve as an exemption/classification Value Adjustment Board Special Magistrate by Santa Rosa County, Florida

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

The Florida Bar

Joseph Haynes Davis

Member Since
[illegible] 2001

0458058

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

PETITION: 2020-00001 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL- 134424P4004020050

PETITION: 2020-00002 – OWNER NAME: BRADFORD ARCADE PARKING LLC - PARCEL - 134424P4004020020

PETITION: 2020-00003 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL- 134424P4004020040

PETITION: 2020-00004- OWNER NAME: Bradford Arcade Properties LLC – PARCEL- 134424P4004020010

ISSUE: Denial of request for exemption - 196.192 Exemptions from ad valorem taxation. Charitable exemption. The issue before the Attorney Special Magistrate is an issue of property ownership which is the basis for the denial by the Property Appraiser which is the basis for the instant hearing. There are no issues of use. (See the "Joint Stipulation of Facts" scanned into Axia in the 69-page packet from the Lee County Property Appraiser.)

STATUTE: FLORIDA STATUTE 196.192.

11/9/2020 1:00:00 PM ALL MATTERS ON THE ABOVE PETITIONS WERE HEARD TOGETHER AT 1:00PM. BOTH PARTIES AGREED TO HEAR ALL PETITIONS AT THE SAME TIME. ALL PETITIONS HAD COMMON ISSUES.

NOTICE NAME: WALDORF DOUGLAS L, ESQ

WALDORF DOUGLAS L, ESQ

PO BOX 2483

FORT MYERS FL,33902

MAGISTRATE: Joseph Haynes Davis

PROPERTY VALUES WERE READ INTO THE RECORD BY THE PROPERTY APPRAISER

PETITIONER: BRADFORD ARCADE PARKING LLC represented by Douglas L. Waldorf, Esquire; Greg Longenhagen; John Martin.

PROPERTY APPRAISER: Nanci Erp; James Sherron; Susan Priess; John Renner, Esq. appeared telephonically.

ALL PARTIES WERE SWORN

CASE LAW: ACCARDO v. BROWN, 139 So. 3d 848 (2014); LEON CO. EDUC. AUTH. v. Hartsfield 698 So. 2d 526 (1997)

APPLICABLE STATUTE: 196.192 Exemptions from ad valorem taxation.—Subject to the provisions of this chapter:

(1) All property owned by an exempt entity, including educational institutions, and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

(2) All property owned by an exempt entity, including educational institutions, and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

(3) All tangible personal property loaned or leased by a natural person, by a trust holding property for a natural person, or by an exempt entity to an exempt entity for public display or exhibition on a recurrent schedule is exempt from ad valorem taxation if the property is loaned or leased for no consideration or for nominal consideration.

For purposes of this section, each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use. For purposes of this section, property owned by a limited liability company, the sole member of which is an exempt entity, shall be treated as if the property were owned directly by the exempt entity. This section does not apply in determining the exemption for property owned by governmental units pursuant to s. 196.199.

FINDINGS OF FACT:

ISSUE OF VALUES: Susan Priess from the Lee County Property Appraiser's office read into the record the revised values for the related parcels during the hearing. Testified that these values are not what you see on the Axia screen in the before action category. Testified that the reason is that the petitions at issue were the first petitions to be filed this year. Testified further that before every "VAB" season there is a data transfer that takes place with the property values and numbers from the Property Appraiser's Office to the "VAB" Office. Testified that in the instant matters before this Attorney Special Magistrate, that transfer did not take place until after the first few petitions already filed. Testified that the values/numbers in the "BEFORE" category presently in Axia actually represent the2019 values rather than the 2020 values with are currently reflected in the category and column for the "TRIM VALUES." And testified that the aforementioned distinction is applicable to all four (4) petitions before this Attorney Special Magistrate.

VALUES- PETITION: 2020-00001 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL- 134424P4004020050. MARKET, ASSESSED AND TAXABLE: 898,770.

PETITION: 2020-00002 – OWNER NAME: BRADFORD ARCADE PARKING LLC - PARCEL - 134424P4004020020. MARKET, ASSESSED AND TAXABLE: 1,944,872.

PETITION: 2020-00003 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL- 134424P4004020040. MARKET, ASSESSED AND TAXABLE: 392,040.

PETITION: 2020-00004- OWNER NAME: Bradford Arcade Properties LLC – PARCEL- 134424P4004020010. MARKET, ASSESSED AND TAXABLE: 10,427,381.

12D-9.027. Process of Administrative Review of Denial Notice.

1. Denial Notice: Form DR- 490 Signed on 6/30/2020. Denial was valid. Total denial which set forth said denial as contrary to the import of Florida Statute 196.192 and the "property owned by a limited liability company, the sole member of which is an exempt entity, shall be treated as if the property were owned directly by the exempt entity" clause was sufficient thus meeting the tests of Florida Revenue

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Code 12D-9.027 Process of Administrative Review of Denial Notice and the applicable statutory tests of Section 196.193(5), Florida Statutes 196.193 Exemption applications; review by property appraiser.

2. Applicable statutory criteria: Section 196.193(5), Florida Statutes. 196.193 Exemption applications; review by property appraiser.—

(5)(a) 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. In the instant matter and in the instant Petition(s) 2020-00001, 2020-00002, 2020-00003 and 2020-00004 as per Section 196.193(5), Florida Statutes, the Lee County Property Appraiser signed the Denial Notice: Form DR- 490 Signed on 6/30/2020, and thereby satisfying the "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" clause of Section 196.193(5), Florida Statutes as the notice was addressed to BRADFORD ARCADE PARKING LLC, Box 2483 Ft. Myers, Florida 33902, with 2020-00004 addressed to Bradford Arcade Properties LLC Box 2483 Ft. Myers, Florida 33902.

PROPERTY APPRAISER PRESENTED FIRST: John Renner, Esq. appeared telephonically and presented for the Property Appraiser. Stipulated to the "Joint Stipulation of Facts" on page 66 of the Property Appraiser's evidence packet in Axia. Stipulated that the instant matter is charitable and not educational. Stipulated that all of the four (4) parcels before the Special Magistrate all had common issues. Testified that there was no issue of use. Testified that the matter before the Special Magistrate was one of how the property is owned, and how that ownership is applied to the statute at issue Florida Statute 196.192. Testified that the property at issue is used for a charitable purpose and is owned and used for exempt purposes. Issue is that property is owned by Florida Reparatory Company, Inc. Testified that the issue is whether or not a grant can be made via Florida Statute 196.192 as per the statute on a limited liability company. Testified that the relevant language was added by the Florida Legislature as to the specifics of "limited liability company" and there is not researchable history as to why the relevant language was added by the Florida Legislature. Testified that in the instant matter that ownership of the LLC is 99% Florida Reparatory and 1% is a separate legal entity and as a result, ownership is not 100% by an LLC which is contrary to the import of Florida Statute 196.192. Testified that the property is not owned by a "sole member LLC" as the express language of the Florida Statute 196.192. Testified that the Property Appraiser's Office looked at the language of the statute and could not "get around" the plain language of the statute and that the statute is clear. Testified that the statute may have a possible "unintended consequence" but testified that the plain language of the statute cannot be ignored. Testified that the Property Appraiser cannot grant an exemption when the statute says that the property must be owned by a sole member limited liability company. Testified that in the instant matter before the Special Magistrate that two (2) members own the LLC. Testified that the LLC must be owned by the sole member exempt entity as per Florida Statute 196.192 and thus, that is the basis of the instant denial. Testified that there is no dispute as the use. Testified that the issue here is that unlike the case law cited by Petitioner's counsel, none of those cases dealt with Florida Statute 196.192 subsection which has express language as to the sole member limited liability company language.

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Testified that a grant would be violating statutory language with the application of Petitioner's argument of equitable ownership and beneficial ownership.

Property Appraiser's evidence was relevant, admissible and credible.

PETITITONER – Douglas L. Waldorf, Esquire presented for the Petitioner: Testified that the LLC is 99% Florida Reparatory Theatre and 1% Florida LLC but is owned 100% by Florida Reparatory Theatre. Testified to the ownership on page 61 of 61 of the evidence packets and cited the Petitioner's evidence packet of 4 pages in Axia showing the diagram of the ownership. Testified that the language at issue was added in 2007 by the legislature but the history of why the language was added was not clear. Testified that the position of the Petitioner in this matter is an issue of equitable ownership and beneficial ownership and that the Florida Supreme Court has used this doctrine and that the doctrine is applicable to the instant matter. Testified that while there is a two member LLC that the entity is owned 100% in the Florida Reparatory Company, Inc and cited page 4 of 4 in Petitioner's evidence and the associated diagram. Testified that if you read the statutory language that the language does not say that there is a "carve out" of only one ownership to the exclusion of other types of ownership. Testified that there should be a broad interpretation of the statutory construction of Florida Statute 196.192. Testified that the Florida Supreme Court has settled this issue with "equitable and beneficial" ownership looks past "bare legal title" and looks to the question of "who uses this property." Testified to and cited LEON CO. EDUC. AUTH. v. Hartsfield 698 So. 2d 526 (1997) case law for the issue of the doctrine of equitable ownership and beneficial ownership and the principle issue of "use and ownership" is the issue of Florida Statute 196.192 and that the instant matter is like the caselaw cited in LEON CO. EDUC. AUTH. v. Hartsfield 698 So. 2d 526 (1997). Testified that the doctrine of equitable ownership and beneficial ownership has been used by the Property Appraiser around the state to assess and to exempt property. Testified that the form used in the instant matter to notify the Petitioner of the denial (form DR- 490) even gives the option of the check box for equitable ownership and beneficial ownership as an option for a denial and as a result the form itself anticipates equitable ownership and beneficial ownership as an option and therefore should not be excluded for consideration as an acceptable doctrine to be applied in the instant matter despite what the language says in Florida Statute 196.192. Testified that factually that it is Florida Reparatory Theatre that has the sole ownership. Testified that granting the exemption is consistent because Florida Reparatory Theatre has 100% ownership. Testified that ACCARDO v. BROWN, 139 So. 3d 848 (2014) stood for the proposition that the equitable ownership and beneficial ownership doctrine is applicable if the facts show that the doctrine can be applicable.

Petitioner's evidence was relevant, admissible and credible.

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CONCLUSIONS OF LAW:

The undersigned Special Magistrate finds that the following below is controlling and or persuasive in the recommendation:

APPLICABLE STATUTE: 196.192 Exemptions from ad valorem taxation.—Subject to the provisions of this chapter:

(1) All property owned by an exempt entity, including educational institutions, and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

(2) All property owned by an exempt entity, including educational institutions, and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

(3) All tangible personal property loaned or leased by a natural person, by a trust holding property for a natural person, or by an exempt entity to an exempt entity for public display or exhibition on a recurrent schedule is exempt from ad valorem taxation if the property is loaned or leased for no consideration or for nominal consideration.

For purposes of this section, each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use. For purposes of this section, property owned by a limited liability company, the sole member of which is an exempt entity, shall be treated as if the property were owned directly by the exempt entity. This section does not apply in determining the exemption for property owned by governmental units pursuant to s. 196.199.

THE FOLLOWING PETITION (S) RECOMMENDED TO BE DENIED:

PETITION: 2020-00001 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL-134424P4004020050

PETITION: 2020-00002 – OWNER NAME: BRADFORD ARCADE PARKING LLC - PARCEL - 134424P4004020020

PETITION: 2020-00003 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL-134424P4004020040

PETITION: 2020-00004- OWNER NAME: Bradford Arcade Properties LLC – PARCEL- 134424P4004020010

ANALYSIS

A preponderance of the evidence shows that the Petitioner in the instant matter has not submitted evidence to overcome the Property Appraiser's evidence that the instant matter that the parcel at issue should be denied that exemption that the Petitioner is seeking.

The undersigned Attorney Special Magistrate finds that 196.192 persuasive in the instant recommended denial which reads Exemptions from ad valorem taxation.—Subject to the provisions of this chapter:

(1) All property owned by an exempt entity, including educational institutions, and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

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(2) All property owned by an exempt entity, including educational institutions, and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

(3) All tangible personal property loaned or leased by a natural person, by a trust holding property for a natural person, or by an exempt entity to an exempt entity for public display or exhibition on a recurrent schedule is exempt from ad valorem taxation if the property is loaned or leased for no consideration or for nominal consideration.

For purposes of this section, each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use. For purposes of this section, property owned by a limited liability company, the sole member of which is an exempt entity, shall be treated as if the property were owned directly by the exempt entity. This section does not apply in determining the exemption for property owned by governmental units pursuant to s. 196.199.

In the matter before the undersigned Special Magistrate, a preponderance of the evidence shows that the relevant language applicable to the instant matter from Florida Statute 196.192 is "For purposes of this section, property owned by a limited liability company, the sole member of which is an exempt entity, shall be treated as if the property were owned directly by the exempt entity." A preponderance of the evidence shows that the matter before this Special Magistrate in all four (4) petitions heard do not have the requisite "property owned by a limited liability company, the sole member of which is an exempt entity" which comports with the express language of Florida Statute 196.192 and which is needed for the Petitioner in all four (4) petitions to get the granting of the exemption which the Petitioner seeks.

In the instant matter, a preponderance of the evidence shows that the parcel (s) at issue do not meet what is necessary for the exemption that Petitioner is seeking for the reasons below:

1. When looking at Petitioner's evidence page four (4) of four (4) the diagram apparently shows that Bradford Arcade Parking LLC is owned by Bradford Arcade Holding, LLC with 1% and Florida Reparatory Inc. with 99%, culminating in Florida Reparatory Company Inc. owning 100%. A preponderance of the evidence, however, shows that the relevant language of Florida Statute 196.192 is the requisite "property owned by a limited liability company, the sole member of which is an exempt entity" language and the Petitioner's evidence page four (4) of four (4) the diagram apparently shows that Bradford Arcade Parking LLC is owned by Bradford Arcade Holding, LLC with 1% and Florida Reparatory Inc. with 99%, culminating in Florida Reparatory Company Inc. owning 100% which is contrary to the express language of the statute. Indeed, a preponderance of the evidence from the diagram shows not only that ownership is not 100% by an LLC which is contrary to the import of Florida Statute 196.192 because there are two (2) member LLC's on the diagram, but Florida Reparatory Company Inc. is not an LLC but an incorporated entity which a preponderance of the evidence and a plain reading of the statute is contrary to the express reading of the statute.

2. That while the Petitioner cites LEON CO. EDUC. AUTH. v. Hartsfield 698 So. 2d 526 (1997) case law for the issue of the doctrine of equitable ownership and beneficial ownership, the court said the following at 529 of that case: "Appellant rests its thesis on a literal interpretation of the quoted statute defining exemptions, but this court is not limited to that. It is authorized to look through form to fact

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and substance to answer the question of tax exemption or tax liability. 5 Am.Jur. Sec. 409. If the positive law (constitution or statute) does not give a direct answer to the question, the court is at liberty on the factual basis to indulge the rule of reason to reach a result consonant with law and justice." However, in the instant matter, the "positive law (constitution or statute)" in this instance does give a "direct answer to the question" because the statute itself sets forth, by a preponderance of the evidence, the following language relevant to this matter: "property owned by a limited liability company, the sole member of which is an exempt entity shall be treated as if the property were owned directly by the exempt entity." In the petitions before the Special Magistrate in this matter, that is not the case.

3. That a preponderance of the evidence shows that the "doctrine of equitable ownership and beneficial ownership" is not applicable to the instant matter for the reasons cited above.

For the aforementioned reasons the recommendation for this matter for Petitions:

PETITION: 2020-00001 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL- 134424P4004020050

PETITION: 2020-00002 – OWNER NAME: BRADFORD ARCADE PARKING LLC - PARCEL - 134424P4004020020

PETITION: 2020-00003 - OWNER NAME: BRADFORD ARCADE PARKING LLC – PARCEL- 134424P4004020040

PETITION: 2020-00004- OWNER NAME: Bradford Arcade Properties LLC – PARCEL- 134424P4004020010

should be NOT BE GRANTED for the exemptions that the Petitioner is seeking.

12D-9.027. Process of Administrative Review

(4) In administrative reviews of exemptions, classifications, and portability assessment transfers, the board or special magistrate shall follow this sequence of general procedural steps:

(a) In the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid and shall:

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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.,

4. If the denial is found to be valid, proceed with steps in paragraphs (b) through (g), below.

(b) Consider the admitted evidence presented by the parties.

(c) Identify the particular exemption, property classification, or portability assessment transfer issue that is the subject of the petition.

(d) Identify the statutory criteria that apply to the particular exemption, property classification, or portability assessment difference transfer that was identified as the issue under administrative review.

(e) 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.

(f) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption, classification, or portability assessment transfer should be granted because all of the applicable statutory criteria are satisfied. Where necessary and where the context will permit in these rules, the term "statutory criteria" includes any constitutional criteria that do not require implementation by legislation.

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196.193 Exemption applications; review by property appraiser.—

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(5)(a) 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.

(b) 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. 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. The notice must also include the specific facts the property appraiser used to determine that the applicant failed to meet the statutory requirements. If a property appraiser fails to provide a notice that complies with this subsection, any denial of an exemption or an attempted denial of an exemption is invalid.

(c) All notifications must specify the right to appeal to the value adjustment board and the procedures to follow in obtaining such an appeal. Thereafter, the person or organization filing such application, or a duly designated representative, may appeal that determination by the property appraiser to the board at the time of its regular hearing. In the event of an appeal, the property appraiser or the property appraiser's representative shall appear at the board hearing and present his or her findings of fact. If the applicant is not present or represented at the hearing, the board may make a determination on the basis of information supplied by the property appraiser or such other information on file with the board.

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FLORIDA DEPARTMENT OF REVENUE

# DECISION OF THE VALUE ADJUSTMENT BOARD
# EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE TRANSFER, CHANGE OF OWNERSHIP OR CONTROL, OR QUALIFYING IMPROVEMENT PETITION

DR-485XC
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

The actions below were taken on your petition in Pinellas County.

☑ These actions are a recommendation only, not final ☐ These actions are a final decision of the VAB

If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, Florida Statutes.)

| | |
|---|---|
| Petition # 2019-0001 | Parcel ID 28-29-15-38988-033-0050 |
| Petitioner name MORAN, NEIL J<br>The petitioner is: ☑ taxpayer of record ☐ taxpayer's agent ☐ other, explain: | Property address 1117 BEVERLY AVE<br>LARGO, FL 33770- |

**Decision Summary** ☑ Denied your petition ☐ Granted your petition ☐ Granted your petition in part

| Lines 1 and 4 must be completed | Value from TRIM Notice | Value before Board Action<br>Value presented by property appraiser Rule 12D-9.025(10), F.A.C. | Value after Board Action |
|---|---|---|---|
| 1. Just value, required | 111,081.00 | 111,081.00 | 111,081.00 |
| 2. Assessed or classified use value,* if applicable | 54,827.00 | 54,827.00 | 54,827.00 |
| 3. Exempt value,* enter "0" if none | 29,827.00 | 29,827.00 | 29,827.00 |
| 4. Taxable value,* required | 25,000.00 | 25,000.00 | 25,000.00 |

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition

☐ Homestead ☐ Widow/er ☐ Blind ☐ Totally and permanently disabled veteran
☐ Low-income senior ☐ Disabled ☐ Disabled veteran ☑ Use classification, specify Agriculture
☐ Parent/grandparent assessment reduction ☐ Deployed military ☐ Use exemption, specify
☐ Transfer of homestead assessment difference ☐ Qualifying improvement
☐ Change of ownership or control ☐ Other, specify

**Reasons for Decision** Fill-in fields will expand or add pages, as needed.

Findings of Fact
(See Attached)

Conclusions of Law
(See Attached)

☑ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

| | | |
|---|---|---|
| Joseph Davis<br>Signature, special magistrate | Joseph Davis<br>Print name | 05/11/2020<br>Date |
| Ken Burke<br>Signature, VAB clerk or special representative | Ken Burke<br>Print name | Date |

If this is a recommended decision, the board will consider the recommended decision on Address at ☐ AM ☐ PM.

If the line above is blank, please call (727) 464-3458 or visit our web site at https://vabpetitions.pinellasclerk.org/2019

☐ **Final Decision of the Value Adjustment Board**

| | | |
|---|---|---|
| Signature, chair, value adjustment board | Print name | Date of decision |
| Signature, VAB clerk or representative | Print name | Date mailed to parties |

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

**Findings of Fact:**
HEARING TIME: 2:05 PM 5/6/2020
PETITION: 2019-0001
PARCEL: 28-29-15-38988-033-0050
Denial of Agriculture Classification

STATUTE 193.461
PETITIONER: MORAN, NEIL J (NOT PRESENT)
PARCEL ADDRESS: 1117 BEVERLY AVE LARGO FL, 33770-1046
ATTORNEY SPECIAL MAGISTRATE: Joseph Haynes Davis, Esq.
RELEVANT STATUTE: 193.461

CASE LAW: McLendon v. Nikolits 211 So.3d 92 (Fla. 4th DCA 2017); The Florida 6th Circuit Cour
Moran v. City of Largo 18- 000061-AP-88a

ISSUE BEFORE THE SPECIAL MAGISTRATE: Whether the use of the subject parcel comports with the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as per Florida Statute 193.461 (3) (b) 1.
All parties were sworn.
All values were read into the record by the Pinellas County Property Appraiser.
For the Petitioner: Lynne Andrews, Petitioner representative; Mike Warren, Esq.; Todd McClendon, witness.
For the Property Appraiser: Kevin McKeon; Alex Luca, Esq.
City of Largo: Tracey Schofield, witness for the Property Appraiser.

Property Appraiser evidence packet #1 (admitted without objection).
Petitioner's evidence #1 was (admitted into evidence without objection.) Petitioner's evidence included recording of the prior hearing from October 2019 on this matter without objection.

PRIOR HEARING FROM OCTOBER, 2019: In the prior hearing, the Attorney Special Magistrate made the following findings:
1. The subject property is .131 acres in size in a neighborhood zoned residential and commercial use, with a single-family home which is homesteaded. 66% of the property is homestead and .044 of the property has the birds.
2. That the application denial was based upon: Whether the use of the subject parcel comports with the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as per Florida Statute 193.461 (3) (b) 1 and that the zoning does not permit agricultural use.
3. That the size for the specific use is small within the industry standards.
4. That the agricultural use was brief.
5. That based upon case law of McLendon v. Nikolits 211 So.3d 92 (Fla. 4th DCA 2017) that aviculture ( the breeding and rearing of birds) is a "farm product" that is eligible for the agricultural classification.
6. That zoning can be a factor under Florida Law for entitlement to the agricultural classification.
7. That zoning cannot be the sole basis for denial.
8. That through testimony by the Property Appraiser's counsel, Petitioner did not have a business license from the City of Largo and acknowledged the on-going litigation concerning nuisance violations and code violations.
9. That the denial addressed the specific attributes of the business run by Ms. Andrews.
10. That according to testimony from Petitioner's witness Mr. McLendon, Petitioner's property and

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the size area for the bird operation which has small birds was appropriate.
11. That the Attorney Special Magistrate found that the Petitioner's witness Mr. McLendon, is an expert in his field based upon the "many years of experience in his field" and involvement in other professional organizations.
12. That the Attorney Special Magistrate relied on Mr. McLendon's expert testimony that the size of the Petitioner's operation meets the industry standard for the type of birds that are being bred.
13. That while the bird breeding area is small, that Ms. Andrews has 86 birds on the property and tha Ms. Andrews generated a profit of approximately $7,000.00 for 2018.
14. That the special magistrate found that the length of time that Ms. Andrews has operated the business on the property was sufficient and not a basis for a denial.
15. That the Special Magistrate made no findings on the necessity of a business license or any other matter which is subject to the on-going litigation with the City of Largo.
16. That the Attorney Special Magistrate recommended that a grant of the petition based upon a preponderance of the evidence that a bona fide agricultural operation was in place on the subject property as of January 1, 2019.

Mike Warren, Esq.: Made a statement about the "procedural posture" of the instant hearing. That the instant hearing was a "sort of rehearing" and that there was a "recommended order" from a Special Magistrate, and that Ms. Andrews, the Petitioner's representative, and the Petitioner, was successful in the agriculture assessment recommendation. Argued that the instant Special Magistrate should consider the substance of the prior hearing from October, 2019 as evidence. Counsel further stated that the instant hearing was "illegal, and unlawful, and unconstitutional, and a violation of res judicata, and that my client has already won."

FINDINGS OF FACT:

THE PROPERTY APPRAISER PRESENTED
Pinellas County Property Appraiser legal counsel Alex Luca, Esq. presented.
Testified that this is a residential property in Largo Florida with the Petitioner's representative Ms. Andrews raising exotic birds on the property. The property is owned by the Petitioner and not the Petitioner's representative who resides with the Petitioner at the residence. The denial was based upo the Pinellas County Property Appraiser concluding that the use of the subject parcel does not compor with the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as per Florida Statute 193.461 (3) (b).

Alex Luca, Esq. testified that Ms. Andrews raises the breeder birds and runs the operation without a lease to the Petitioner. Alex Luca, Esq. testified that there is no profit-sharing agreement between the Petitioner's representative and the Petitioner. Alex Luca, Esq. testified that the aggregate of the events relative to the instant issue before the Special Magistrate does not comport with the meaning of Florida Statute 193.461 (3) (b) and the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use."

Alex Luca, Esq. testified that the facts and events surrounding the instant matter show that the primary use of the parcel at issue is for residential and not as an agricultural use. Alex Luca, Esq. testified that the parcel itself is homesteaded and receives the homestead exemption as per Florida Statute 196.031 and that the parcel is zoned as residential.

For the Property Appraiser: Kevin McKeon testified that the parcel is zoned not as agricultural but is zoned as "Largo Community Development District" which permits a mixture of residential neighborhood commercial offices and other commercial purposes. It does not, however, authorize

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agricultural use.

Pinellas County Property Appraiser legal counsel Alex Luca, Esq. testified that zoning does not exclude any possible agricultural use; however, the zoning is a factor that is taken into account in this matter. Case law says that zoning alone cannot disqualify a property from agricultural use. It can, however, be taken into account as is applicable to the instant matter.

Alex Luca, Esq. testified that the property is a fee simple only owned by the Petitioner and the business at issue is only operated by the Petitioner's representative Ms. Andrews.

Alex Luca, Esq. testified that the animals bred by Ms. Andrews are sold at a local flea market.

Alex Luca, Esq. testified that there is no form of payment for the use of the land between the Petitioner and the Petitioner's representative Ms. Andrews.

Alex Luca, Esq. cited Florida Administrative Code: 12D-5.001 Agricultural Classification, Definitions and in particular, the relevancy of subsection (2). 1) For the purposes of Section 193.461, F.S., agricultural purposes does not include the wholesaling, retailing or processing of farm products, such as by a canning factory.
(2) Good faith commercial agricultural use of property is defined as the pursuit of an agricultural activity for a reasonable profit or at least upon a reasonable expectation of meeting investment cost and realizing a reasonable profit. The profit or reasonable expectation thereof must be viewed from the standpoint of the fee owner and measured in light of his investment.

Alex Luca, Esq. testified that there is no lease and no profit going to the owner Petitioner from the business owned by Ms. Andrews.

Alex Luca, Esq. testified that Ms. Andrews is precluded from operating a commercial enterprise on the property because the City of Largo code requires that all home businesses to acquire a business license which Ms. Andrews has not acquired.

Alex Luca, Esq. testified that The Florida 6th Circuit Court has ruled that the City of Largo can regulate the businesses and business on property in the City of Largo in the case in Moran v. City of Largo 18- 000061-AP-88a

Alex Luca, Esq. testified that the Size of the property: .131 acres total and that there is 1900 Square feet of the bird operation. And the property is primarily used for residential.

Alex Luca, Esq. testified that the agricultural classification should not be used to circumvent other land uses like the City of Largo land use restrictions.

For the Property Appraiser: Kevin McKeon testified that 193.461 (3) (b) means "only lands that are used primarily for bona fide agricultural purposes." In this matter, the parcel is primarily used for residential. 11.87% is what the agricultural exemption amounts to what the Petitioner is asking for.

Florida Statute 193.461 (3) (b) in relevant part cited by Pinellas County Property Appraiser:
193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program; natural disasters.—
(b) Subject to the restrictions specified in this section, only lands that are used primarily for bona fide agricultural purposes shall be classified agricultural. The term "bona fide agricultural purposes"

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means good faith commercial agricultural use of the land.
1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:
a. The length of time the land has been so used.
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.
g. Such other factors as may become applicable.

The Property Appraiser's evidence is relevant, credible and admissible.

FOR THE PETITIONER: For the Petitioner Mike Warren, Esq. testified. Asked the question to Pinellas County Property Appraiser counsel Alex Luca as to whether or not the Pinellas County Property Appraiser took into account that Ms. Andrews and the Petitioner were in a "domestic relationship" and resided at the same residence? The answer was no. The Pinellas County Property Appraiser counsel Alex Luca, Esq. testified that he only looked into the plain language of the 12D-5.001 Agricultural Classification, Definitions revenue rule subsection (2).

Mike Warren, Esq. asked the question to Pinellas County Property Appraiser counsel Alex Luca as to whether or not the Pinellas County Property Appraiser makes phone calls to the applicant to "ask these sort of questions to the applicant" or just reviewed what they wrote on the application? Answer Pinellas County Property Appraiser generally visits the property to take measurements of the propert and to see the operation itself.

Mike Warren, Esq. asked the question to Pinellas County Property Appraiser counsel Alex Luca as to whether or not the Pinellas County Property Appraiser spoke to the Petitioner himself? The answer was no but Alex Luca, Esq. testified he only spoke with Ms. Andrews.

Mike Warren, Esq. asked the question to Pinellas County Property Appraiser counsel Alex Luca as to whether or not the Pinellas County Property Appraiser asked Ms. Andrews "do you contribute to any living expenses around here?" Answer by Alex Luca was that all of those questions are on the application for the agricultural classification.

For the Petitioner Mike Warren, Esq. asked Alex Luca the question about the business license and tha the Petitioner did not have one for this business. Alex Luca, Esq.: the answer was yes. That was one of the factors that was taken into account. And that would be in subsection (g) of the relevant part of the statute.

For the Petitioner Mike Warren, Esq. asked Alex Luca, Esq. "Is it possible for the Petitioner to get the business license?" Answer by Alex Luca, Esq.: "That is a determination that the City of Largo would have to make."

Question by Mike Warren, Esq.: "Is it not something that you are holding against someone that they can't help?" Answer by Alex Luca, Esq.: "That is why we have a witness here from the City of Largo to testify to help to make that issue clear and to discuss the home office issue process."

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Question by Mike Warren, Esq. as to the size of the property to Alex Luca, Esq.: "You only looked at one other bird farm as to the size?" Answer by Alex Luca, Esq.: "Yes. There are not that many in Florida that have been granted agriculture classification."

Question by Mike Warren, Esq. to Alex Luca, Esq.: "How big was the parcel?" Answer by Alex Luca Esq.: "5 acres and that was owned by Todd McClendon, your witness."

Question by Mike Warren, Esq. to Alex Luca, Esq.: "How big was his birds?" Answer by Alex Luca, Esq.: "He has several McCaws. Several larger birds."

Question by Mike Warren, Esq. to Alex Luca, Esq.: What kind of birds does my client have? Answer by Alex Luca, Esq.: "She has smaller birds. We said in our opening statement that your expert witnes will testify to that. Smaller birds means smaller operation."

Question by Mike Warren, Esq. to Alex Luca, Esq.: "You said that this property should not be grantec the agricultural classification because it is not being used as "bona fide agricultural purposes" is that correct?" Answer by Alex Luca, Esq.: "Yes."

Question by Mike Warren, Esq. to Alex Luca, Esq.: "But we are not here to say that the whole property is for agricultural use, only a portion of the property is being used for agricultural use? Only the back yard?" Answer by Alex Luca, Esq.: "Yes. But in instances where you have the agricultural classification with a homestead, the agricultural classification is significantly larger than the homestead portion."

Question by Mike Warren, Esq. to Alex Luca, Esq.: " But you do agree that the enumeration of the 193.461 Florida Statute (d) "Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment" may be applicable?" Alex Luca, Esq answer: "Yes. We cannot set any limits or hard boundaries as to size."

Mike Warren, Esq. for the Petitioner presented: Ms. Andrews is a domestic partner of Mr. Moran the Petitioner who is the fee simple owner. They live in the same residence. As a result, the fee simple owner does benefit financially from the birds. Ms. Andrews turned over documentation of six to sever thousand dollars of profit with her application in this matter. Zoning in and of itself cannot be determinative of this matter. It, the parcel, is not in an agricultural zone. It is in a commercial zone. Mike Warren, Esq. for the Petitioner then applied the Florida Statute 193.461 (3) (b) 1 (a) through (g) prongs to his advocacy for the Petitioner and Ms. Andrews

a. The length of time the land has been so used. "This is not an issue and is in my client's favor."
b. Whether the use has been continuous. "In our favor. As soon as Ms. Andrews moved to the location, she started the business."
c. The purchase price paid. "Not relevant."
d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment. "Our witness will testify that specific to this case that there is plenty of space for these kinds of birds that Ms. Andrews breeds."
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. "In our favor. The property appraiser has not made this claim that there was no caring to the land with which the birds occupy."
f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease. "Not applicable."

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g. Such other factors as may become applicable. "My clients have a bona fide interest as per the statute and use the back yard as an agricultural enterprise."

Mike Warren, Esq.: "I understand that this magistrate cannot consider the prior hearing."

Mike Warren, Esq. then called Ms. Andrews to testify: Ms. Andrews testified that she moved to the property in November of 2013 and that her birds were at another place. Ms. Andrews testified that sh sold the other place in 2017 and that she is a Class 3 exotic bird license holder for nearly 40 years. Ms. Andrews testified that Article 4 Florida Constitution section 9 give FWC the sole authority over captive wildlife. Ms. Andrews testified that the birds came to the present parcel in February 2017 and when she first came to the parcel, she had about 50 birds. They are primarily small birds. Cockatiel cockatoo family endemic to Australia an 8 inch bird. Pyrrhura birds in the 8 inch range. Pyrrhura is a genus of parrots in the Arini tribe. Ms. Andrews testified that the birds occur in tropical and subtropical South America and southern Central America and some are Monk parakeets. It originates from the temperate to subtropical areas of Argentina and the surrounding countries in South America. Birds weigh between 100 and 120 grams. Ms. Andrews testified that the first year the birds were at the parcel, they did not breed much because of the move to a new location. These are breeder birds. They are raised to be wild. They are fierce they are not handled by humans. Ms. Andrews testified that what is purchased commercially is a hatched offspring. Each bird should be kept in each cage singularly. The breeder birds are together in cages in pairs. FWC has certain statute specifications for the species of birds for cage sizes. Ms. Andrews testified most of the bird cages are 2x2x4 and now there are about 35 cages. Ms. Andrews testified that the whole back yard is surrounded by a 6 ft privacy fence around the perimeter. "There are roofs on top of the cages. The cages are about 3 ½ fee off the ground on four legs each. Each cage is species specific sizes. The largest bird is caged in a 3x3x5 foot cage. The cages are set up in a "u" shaped configuration around the perimeter of the privacy fence. Dirt is on the ground, not concrete. It has to be permeable ground."

Ms. Andrews testified that "the back yard is divided by a fence so that before you get to the birds, you have to walk through a divider fence made of wire and you can see through the wire called the "bird gate."
Special Magistrate asks Ms. Andrews: "How do you care for the area, or the ground, where the birds are situated?" Answer: "Parrot fecal matter is dry and now wet like some birds. As a result, the fecal matter drops through the cage and onto the dirt. And then it biodegrades into the dirt. And I rake it all the time. All most every day."

Ms. Andrews testified that the birds are fed once a day. "The different species have different feeds and they all have a different prescribed amount of foods. That they consume within two hours. The breeding by the birds are seasonal. The hatching takes place at different times for the different species of birds. Generally, there is continuous breeding by the birds approximately 9 months out of the year. There are 86 birds total on the property right now. Approximately 28 to 30 of each class of birds on the property. African species, South American species, and Australian species. There are 15 different species on the property. There are nozzles for water not open water on the property."

Property Appraiser: property is zoned residential and commercial but not agricultural. There are commercial exceptions.

Ms. Andrews: "The City of Largo does not offer a business tax receipt for the breeding of any animals. Just the class 3 bird breeding license."

Ms. Andrews cites for the proposition that she does not need a business license to breed:

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205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.—
(1) A local business tax receipt is not required of any person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such person in the state.
(2) A wholesale farmers' produce market may pay a tax of not more than $200 for a receipt that will entitle the market's stall tenants to engage in the selling of agricultural and horticultural products therein, in lieu of such tenants being required to obtain individual local business tax receipts to so engage.

Property Appraiser: FWC Authority is allowed to be regulated by local ordinances as to possible public nuisances like poor sanitation and noise. Moran v. City of Largo 18- 000061-AP-88a an appeal, upheld in the Circuit Court 6th Judicial Circuit. The ordinance will not be seen as in conflict with the FWC authority.

City of Largo Community Standards Manager: Tracey Schofield, witness for the Property Appraiser: Queried by Property Appraiser Counsel- Explained the Home Office and Convenience Standards process.
"City of Largo Community Standards does not regulate. Planning Division authorizes the Home Office of Convenience also known as code enforcement, the City Planning Division and the Building Division regulates and issues the business tax receipts and authorizes the Home Office and Convenience ("HOC") or code enforcement. Home Office and Convenience ("HOC") issues the business tax receipt. The City of Largo Community Standards regulates the Home Office of Convenience also known as code enforcement. In the instant matter, the Petitioner is running a business without an "HOC" and the business tax receipt. If there is a violation of the HOC then the City of Largo Community Standards office regulates the violation. The Petitioner's representative Ms Andrews applied for an HOC and the business tax receipt. The Petitioner's representative Ms. Andrews application was not approved. Part of the Home Office of Convenience requirement is that you cannot see the business outside. The business must be contained within the structure of the parcel/residence within the City of Largo. The Petitioner's representative Ms. Andrews testified that she has 30 cages of birds outside whereby they can be seen and can be seen from surrounding properties which is a violation of the HOC requirements. Mr. Moran, the Petitioner has an HOC with the City of Largo. He has a business tax receipt with the City of Largo. The Petitioner is doing everything perfectly with his business. The Petitioner, Mr. Moran, runs another type of business out o the house. The Petitioner, Mr. Moran is running that type of business out of the house the way that the City of Largo Code specifies that residential businesses are supposed to be run. The Petitioner's representative Ms. Andrews' business, however, is being run outside in the back yard where everyone can see it and hear it and smell it and unfortunately that violates the HOC requirements. That is why she cannot get an HOC. The code enforcement case started in June of 2018. The Petitioner's representative Ms. Andrews was found in violation of code enforcement in August of 2018. What is left is the HOC violations and the nuisance violations."

OBJECTION BY PETITIONER COUNSEL SUSTAINED: Only to the issue of not letting the instan hearing become a hearing on the code enforcement issues prior to the instant hearing the agricultural assessment and application of Florida Statute 193.461. Said objection should not be considered an objection limiting the Special Magistrate's understanding of what is relevant in determining the full spectrum of the issues, however, which are relevant in making a determination for a coherent recommendation for the Pinellas County Value Adjustment Board in this instant matter, which may include, and not be limited to, an understanding of the City of Largo Community Standards, an

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understanding of the City of Largo Home Office of Convenience also known as code enforcement, ar understanding of business tax receipts and their process and an understanding of the City of Largo Community Standards Office and function.

City of Largo Community Standards Manager being queried by Property Appraiser counsel: Tracey Schofield, witness for the Property Appraiser: "Clearwater Largo Road is where the parcel is located and is part of the Community Land Redevelopment area and the ClearwaterLargo Road Community Redevelopment District. The instant parcel is considered neighborhood-residential. There are not businesses up and down this block. The main road, however, does have businesses and small businesses. The instant parcel is strictly residential. There is not a gas station, then a house, then a cigar store contiguous to each other. This is all residential on the street where the instant parcel is located. The use of the land in this area is specifically designated that way because the City of Largo wants to keep the parcels small, and an "historic" type of property. For instance, the City of Largo does not allow a gas station next door to the Petitioner's property resulting in a decrease in their property values. This land use does not include agricultural use in this area."

For the Property Appraiser: Kevin McKeon queried Tracey Schofield, witness for the Property Appraiser: All of the area is residential. Question concerning Florida Statute 193.461 (3) (b) (1) subsection (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." "Ms. Andrews testified that she regularly if not daily rakes the area under where the birds defecate and rakes the feces of the birds to keep the land clean, have you Mr. Schofield, had any complaints from the neighbors adjacent to the parcel at issue as to the issue of seepage onto their land of bird droppings onto their properties?"
ANSWER: "Yes sir, we do have three (3) complaints who have complained about either the runoff from what they believe was fecal matter from the birds, and noise, etc. And while Ms. Andrews may be out there raking every day, because of the Florida weather, it can rain at a minutes' notice, and Ms Andrews, based upon her testimony, has 60 to 70 birds out in the backyard defecating on the property on a fairly regular basis. Ms. Andrews is not capturing all of that. Neighbors have said that they have had to put sandbags up on their side of the property to try to control that situation and to stop the seepage."

OBJECTION BY PETITIONER'S COUNSEL ON THE BASIS OF HEARSAY TESTIMONY BY Tracey Schofield: Overruled. Ms. Andrews had already testified in this instant hearing that there is constant fecal droppings by the birds onto the dirt in the area occupied by the birds and that Ms. Andrews also testified to the act of sweeping and raking the fecal matter area regularly and or daily.

For the Petitioner Mike Warren, Esq. cross examined Tracey Schofield, witness for the Property Appraiser: "While the parcel and area is zoned residential, it is also zoned to have some commercial activity?" Answer: "The redevelopment area which is a huge area has commercial. Ms. Andrews area where she resides is considered neighborhood residential."

Question Mike Warren, Esq.: "But you can have a home office in a neighborhood residential?"
Answer Tracey Schofield: "Yes absolutely."

Question Mike Warren, Esq.: "But it is your testimony that Ms. Andrews cannot get a business licens because she has birds outside of the house?"

Answer Tracey Schofield: "That application has to go through the planning commission, but since we

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have known, she has had the birds outside. That in and of itself would probably not allow Ms. Andrews to have the HOC."

Question Mike Warren, Esq.: "Can she get the HOC?"
Answer Tracey Schofield: "Probably not because the birds are outside. The birds are outside and as a result, it prohibits the Home Office Convenience. There is a nuisance section of the HOC that she would not meet. "

Largo, Florida - Comprehensive Development Code Chapter 16 - ACCESSORY USES Section 16.5 - Home Office of Convenience (HOC) .
16.5.2 - Applicability
All residential dwelling units may choose to incorporate an HOC. Residential dwelling units located within mixed use designations may also, as an alternative to HOC, undergo site plan review to add an allowable non-residential use to the property where live/work units are allowed.
16.5.3 - Required Permits - A business tax receipt is required.
16.5.4 - Standards
A HOC is allowed as an accessory use in a bona fide residential dwelling unit when it complies fully with the following conditions:

A.
Maximum floor area - The establishment of a HOC must be clearly incidental to the use of the dwelling as a residence. The maximum floor area devoted to a HOC shall not exceed twenty-five (25) percent of the gross floor area of the dwelling unit. (That includes the inside of the residence and the garage area. Tracey Schofield, witness for the Property Appraiser.)
B.
No visible evidence - There shall be no visible evidence that the residence contains a HOC. All HOC activities must take place within the private areas of the residence and shall not be visible from adjacent streets or properties.
(1)
No Signage and Exterior Changes - There shall be no signs or exterior changes to the building such as converting a garage or enclosing a carport.
(2)
No Inventory Display - No display of inventory shall be allowed. (The birds are inventory and therefore because they are outside, then, they are on display. Tracey Schofield, witness for the Property Appraiser.)
C.
Persons employed - No persons shall be employed on the site other than the residents of the dwelling unit. This restriction shall not preclude activities allowed under the HOC, such as tutoring, to take place at the client's residence.
D.
Nuisance generation - A HOC use shall not generate nuisances such as on-street parking, noise, electrical interference, fumes, excessive trash, vibration, glare, or electrical interference detectable to the normal senses off the lot.
E.
Automobile trips - Automobile trips to the HOC shall be strictly limited to one (1) per appointment at the residence and a maximum of two (2) client visits per day.
F.
Traffic generation - Traffic generation shall not exceed the normal type and volume generated by a residential dwelling unit.
G.

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Commercial trucks - The HOC shall not have commercial trucks on site.
H.
Additional CDC provisions - The HOC shall not violate any provisions of the City Code of Ordinances including, but not limited to, the outside storage provisions of Chapter 11 or the adult use provisions of Chapter 7.
I.
Business types not considered a HOC - The following shall not be permitted home occupations: beauty shops, barbershops, group band instrument or dance instruction, group swimming instruction, a studio for any type of group instructions, public dining facility or tearoom, antique or gift shop, photographic studio, fortune telling or similar activity, outdoor repair, food processing (with the exception of cottage food product production contained in Section 500.8(5) F.S.), on premises retail sales, day care/nursery providing care for more than six children, kindergarten, the giving of group instruction of any type, providing personal services on the premises such as massage therapy, personal fitness or providing daycare, boarding, grooming or breeding of animals.

For the Petitioner Mike Warren, Esq. queried Petitioner's witness Todd McClendon. Todd McClendo testified that he has been raising birds for approximately 30 years. "Been raising birds on a commercial scale for approximately 20 years. I was asked to come here as a witness to testify as to the size of the agricultural operation. I also was asked to testify as to the differences of my farm and her operation. My operation is on five (5) acres. My birds occupy ½ acre of those five acres. I have approximately 600 birds. Probably 80% of my birds are probably 3 times the size of the birds at issue in Largo. My birds take up a lot more space. You can easily have a commercial operation in the amount of land that is at issue here in this matter. Similar to sugar cane as an example. If you had 20 acres of sugar cane, people and U.S. Sugar would laugh at you because you only have 20 acres of sugar cane. You're wasting your time. On the other hand, if you had 20 acres of cannabis, as opposed to sugar cane, that would be a huge operation because it would be cannabis. So that is why it is a nee to specify the types of birds that I have and the amount of land that I have in a ½ acre and the birds that Ms. Andrews has and the drastic amount of smaller acreage that she is breeding her birds. It's a big difference in Florida Statute 193.461 when it talks about size as it relates to specific agricultural use. My property is located in Palm Beach County Florida. Loxahatchee Groves. (population of 3,18 2010 census.) I several different five-acre properties directly abutting my property and they are residential. No subdivision. Just five-acre parcels. Not all have farms. But the farms have the agricultural classification as does my property. Where the birds are on my five acres is ½ acres. I have ½ acres agriculture for birds and I have four (4) acres for cattle. I have ½ acre for the residence which is homesteaded. There is some room between the parcels and the residential quarters." Argued that the Florida Statutes exempts farms from needing business tax receipts.

Kevin McKeon queried and cross-examined Petitioner's witness Todd McClendon: You have 600 birds. Are your birds breeder birds? Answer: Some are and some are retired. Question: You sell a large amount of birds? Answer: A good amount. Question: What are your revenues? Answer: Probably close to $75,000.00 a year. I probably send about $30,000.00 to $40,000.00 a year on food for the birds. And I own the land.
Petitioner's evidence #1 was (admitted into evidence without objection.) Petitioner's evidence included recording of the prior hearing from October 2019 on this matter without objection.

The Petitioner's evidence is relevant, credible and admissible.

**Conclusions of Law:**
CONCLUSIONS OF LAW



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The undersigned Special Magistrate finds that the following below is controlling and or persuasive in the recommendation:
STATUTE: 193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.

As to petition 2019-0001 said petition is DENIED. Petitioner has not demonstrated by a preponderance of the evidence that the property at issue in the instant matter is entitled to the classification that the Petitioner is seeking and has not demonstrated by a preponderance of the evidence that the parcel at issue survives the statutory tests of Agricultural lands, classification and assessment, pursuant to sections 193.461 3 (b) 1 and the below enumerated subsections;
a. The length of time the land has been so used.
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.
g. Such other factors as may become applicable.

The admitted evidence has shown that Petitioner has not shown by a preponderance of the evidence to overcome the instant denial as set forth by the Property Appraiser and which is at issue in this instant petition.
The undersigned Special Magistrate finds controlling and or persuasive in the recommendation that the admitted evidence of the Florida 6th Circuit Court in Moran v. City of Largo 18- 000061-AP-88a held that the City of Largo can regulate the businesses and business on property in the City of Largo.
The undersigned Special Magistrate by a preponderance of the evidence, finds controlling and or persuasive in the recommendation that the property is a fee simple only owned by the Petitioner. And, by a preponderance of the evidence admitted, the business at issue is only operated by the Petitioner's representative Ms. Andrews and not the Petitioner/fee simple owner.

The undersigned Special Magistrate finds controlling and or persuasive, by a preponderance of the evidence in this recommendation, that there is no lease or that there is no profit-sharing agreement between the Petitioner/fee simple owner and the Petitioner's representative Ms. Andrews despite the evidence that the Petitioner/fee simple owner and the Petitioner's representative Ms. Andrews are in a "domestic partnership."

The undersigned Special Magistrate finds controlling and or persuasive, by a preponderance of the evidence in this recommendation, that the parcel at issue before this Special Magistrate is zoned as residential and that the parcel is zoned not as agricultural but is zoned as "Largo Community Development District" which permits a mixture of residential neighborhood commercial offices and other commercial purposes. It does not, however, authorize agricultural use.

The undersigned Special Magistrate finds controlling and or persuasive, by a preponderance of the evidence in this recommendation, that the City of Largo code requires that all home businesses to acquire a business license which Ms. Andrews has not acquired and Ms. Andrews is precluded from operating a commercial enterprise on the property because of the lack of having a business license.

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ANALYSIS

This matter before the Special Magistrate is whether the use of the subject parcel comports with the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as per Florida Statute 193.461 (3) (b) 1 (a) through (g). While the matter is limited to the application of Florida Statute 193.461 (3) (b) 1 (a) through (g) and is not a matter dealing with the litigation of, or outcome of, any code enforcement issues presently pending before the city of Largo Florida, the substance of those matters as testified to, under oath, by both the Petitioner's representative and Petitioner's counsel, and witnesses, and the Pinellas County Property Appraiser's office and counsel, and witnesses, will be taken in consideration as per subsection "g" and the "Such other factors as ma become applicable" enumeration prong of the Florida Statute 193.461, along with the relevant analysis of the other (a) through (g) areas. The sole issue before the undersigned Attorney Special Magistrate is whether the use of the subject parcel comports with the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as per Florida Statute 193.461 (3) (b) 1 (a) through (g).

Both parties agree and have testified to the fact that this matter has to do with a residential property ir Largo Florida with the Petitioner's representative Ms. Andrews raising exotic birds on the property in order to breed the offspring for commercial sale, and for sale at a local flea market. The product-birds are "breeder birds."

APPLICATION OF THE STATUTE ENUMERATION "a" prong and the "length of time the land ha been so used." Ms. Andrews testified that the birds came to the present parcel in February 2017 and when she first came to the parcel, she had about 50 birds. From the time Ms. Andrews arrived at the parcel, up to the present is approximately three (3) years and three months of use. While the "length of time" based upon the testimony from Ms. Andrews alone and by itself may be sufficient and not a basis for a denial, the "Such other factors as may become applicable" as noted below show a preponderance of the evidence as to why this Special Magistrate recommends the instant denial.

APPLICATION OF THE STATUTE ENUMERATION "b" prong and the "Whether the use has been continuous." The parcel at issue was purchased by the Petitioner Mr. Moran on August 30, 2013 in fee simple as a single man (see page 35 of 124 of the Property Appraiser's evidence packet.) Ms. Andrews testified that the birds came to the present parcel in February 2017 and when she first came to the parcel, she had about 50 birds. A preponderance of the evidence shows that there was no "continuous use" on the parcel from August 30, 2013 to February 2017. However, beginning in February of 2017 to the present, a preponderance of the evidence by and through the testimony of Ms Andrews, the use has been for that period for the bird operation. This Attorney Special Magistrate finds that by a preponderance of the evidence, that the "use" of the parcel for the bird operation has not been "continuous" since purchased by the Petitioner Mr. Moran on August 30, 2013 in fee simple and serves as part of the basis for the instant denial.

APPLICATION OF THE STATUTE ENUMERATION "c" prong and "The purchase price paid." A preponderance of the evidence shows that the "purchase price paid" prong is not relevant to the instant matter. No evidence was introduced as to the amount paid by the Petitioner Mr. Moran on August 30, 2013 in fee simple as a single man.

APPLICATION OF THE STATUTE ENUMERATION "d" and the "Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment" section of Florida Statute 193.461 (3) (b) 1 (a) through (g).
Petitioner's witness Todd McClendon testified that Mr. McClendon has been raising birds for

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approximately 30 years and has been raising birds on a commercial scale for approximately 20 years and was asked to come and testify as a witness to testify as to the size of the agricultural operation. Mr. McClendon was asked to testify as to the differences of his farm and Ms. Andrews operation. Mr. McClendon's operation is on five (5) acres and his birds occupy ½ acre of those five acres. Mr. McClendon has approximately 600 birds. Mr. McClendon testified that probably 80% of his birds are probably 3 times the size of the birds at issue in Largo. Mr. McClendon testified that his birds take up a lot more space than what is at issue with Ms. Andrews and the Petitioner. Mr. McClendon testified that you can easily have a commercial operation in the amount of land that is at issue here in this matter. Mr. McClendon testified that as an example, the business similar to sugar cane as an example Mr. McClendon testified that, as an example, that if you had 20 acres of sugar cane, people and U.S. Sugar would laugh at you because you only have 20 acres of sugar cane. You're wasting your time. Mr. McClendon testified further that on the other hand, if you had 20 acres of cannabis, as opposed to sugar cane, that would be a huge operation because it would be cannabis. So that is why it is a need to specify the types of birds that I have and the amount of land that I have in a ½ acre where my birds are and the birds that Ms. Andrews has and the drastic amount of smaller acreage that she is breeding her birds. Mr. McClendon testified that further that it's a big difference in the Florida Statute 193.46 when it talks about size as it relates to specific agricultural use. Mr. McClendon testified that his property is located in Palm Beach County Florida. Loxahatchee Groves. Mr. McClendon testified that several different five-acre properties directly abutting my property and they are residential. No subdivision. Just five-acre parcels. Not all have farms. But the farms have the agricultural classification as does my property. Where the birds are on my five acres is ½ acres. I have ½ acres agriculture for birds and I have four (4) acres for cattle. I have ½ acre for the residence which is homesteaded. There is some room between the parcels and the residential quarters. Argued that the Florida Statutes exempts farms from needing business tax receipts.

However, in the instant matter, a preponderance of the evidence shows that the Petitioner and Ms. Andrews have approximately only 1900 square feet where the birds are and the subject property is .131 acres in size in a neighborhood zoned residential and commercial use, with a single-family home which is homesteaded. 66% of the property is homestead and .044 of the property has the birds, with "86 birds total on the property right now" according to the testimony of Ms. Andrews. Moreover, Ms. Andrews testified that there are "approximately 28 to 30 of each class of birds on the property. African species, South American species, and Australian species" according to her testimony. Ms. Andrews testified further that "about 35 cages" of birds are on the property. And a preponderance of the evidence shows that unlike Mr. McClendon's operation which is on five (5) acres and his birds occupy ½ acre of those five acres, Ms. Andrews has her operation on property that is a residential property, property that is zoned residential and commercial but not agricultural, and on a much smaller parcel in a more densely configurated setting with a preponderance of the evidence showing that the total land of the parcel at issue is .131 acres (according to the Pinellas County Property Appraiser) and 66% of the property is homestead and .044 of the property has the birds. Ms. Andrews does not have five acre lots surrounding and adjacent to the fee simple parcel owned by the Petitioner like Mr. McClendon's operation in Palm Beach county, which a preponderance of the evidence demonstrates the creation of space for the neighboring residents. On the other hand, Petitioner and Ms. Andrews have a commercial breeding bird operation on the parcel with, according to Ms. Andrews' testimony, "86 birds total on the property right now. Approximately 28 to 30 of each class of birds on the property. African species, South American species, and Australian species" and "about 35 cages" of birds are on the property. A preponderance of the evidence shows that, no matter what size of the birds who are part of the commercial bird breeding business, more space helps to limit noise and other nuisance issues (more on that below), and as a result, a preponderance of the evidence shows that the operation run by Ms. Andrews and the "Size, as it relates to specific agricultural use" test is not been met even though a "minimum acreage may not be required for agricultural

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assessment" is part of the test, but is not applicable to the instant matter. The issue is not a "minimum acreage" issue as a basis for the denial. A preponderance of the evidence shows that it is an "86 birds total on the property right now" and a "about 35 cages" of birds are on the property issue which is creating a noise and sanitation issue for the parcel and for the neighboring residents which is also applicable to the "Such other factors as may become applicable" prong of "g." Indeed a "Size, as it relates to specific agricultural use" is the issue which the Petitioner and Ms. Andrews has failed to satisfy given the closely configured neighborhood of the fee simple parcel in the City of Largo. It is also a "g" and the "Such other factors as may become applicable" prong along with the aforementioned distinctions with the same articulated issues for the denial.

APPLICATION OF THE STATUTE ENUMERATION "e" and the "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" prong of Florida Statute 193.461 (3) (b) 1 (a) through (g): Petitioner's representative's testimony was that when Ms. Andrews first came to the parcel, she had about 50 birds. They are primarily small birds. Cockatiel cockatoo family endemic to Australia is an 8 inch bird. Pyrrhura birds are in the 8 inch range. Pyrrhura is a genus of parrots in the Arini tribe. Petitioner's representative's testimony was that these are breeder birds. They are raised to be wild. They are fierce they are not handled by humans. Petitioner's representative's testimony was that what is purchased by the public commercially is a hatched offspring. Each bird should be kept in each cage singularly. The breeder birds are together in cages in pairs. FWC has certain statute specifications for the species of birds for cage sizes. Most of my cages are 2x2x4. There are about 35 cages. The whole back yard is surrounded by a 6 ft privacy fence around the perimeter. There are roofs on top of the cages. The cages are about 3 ½ feet off the ground on four legs each. Each cage is species specific sizes. The largest bird is caged in a 3x3x5 foot cage. The cages are set up in a "u" shaped configuration around the perimeter of the privacy fence. Dirt is on the ground, not concrete. It has to be permeable ground. The back yard is divided by a fence so that before you get to the birds, you have to walk through a divider fence made of wire and you can see through the wire called the "bird gate."

Petitioner's representative's testimony was that Parrot fecal matter is dry and not wet like some birds. As a result, the fecal matter drops through the cage and onto the dirt. And then it biodegrades into the dirt.
Petitioner's representative's testimony was that as to the fecal matter in the dirt; "I rake it all the time. All most every day." The breeding by the birds are seasonal. The hatching takes place at different times for the different species of birds. Generally, there is continuous breeding by the birds approximately 9 months out of the year.

Petitioner's representative's testimony was that "There are 86 birds total on the property right now. Approximately 28 to 30 of each class of birds on the property. African species, South American species, and Australian species. There are 15 different species on the property."

However, in the Moran v. City of Largo 18- 000061-AP-88a case in the Florida Circuit Court 6th Judicial Circuit which was part of the Property Appraiser's evidence packet which was admitted into evidence without objection, and is found at page 12 of 124, is persuasive as to this issue of the "e" enumeration prong of the "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" section Florida Statute 193.461 (3) (b) 1. A preponderance of the evidence, with the cited City of Largo Code of Ordinances Chapter 11 – ENVIRONMENT, ARTICLE II. – NUISANCES,

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Sec. 11-19. - Public health nuisances, is persuasive in this instant denial by this Special Magistrate. The relevant part and subsection reads: "(a) Creation. No person shall create, maintain or contribute to a nuisance or condition which is prejudicial to public health. A nuisances which is prejudicial to public health is a nuisance which tends to annoy the community, impair the health of the citizens thereof or which tends to corrupt the public morals. Such nuisances are hereby declared to be unlawful."

In the instant matter, according to the text of the Moran v. City of Largo 18- 000061-AP-88a case, the Code Enforcement Officer testified under oath that there were multiple complaints from multiple about the dozens of caged birds creating a nuisance with the noise of the birds and causing odor and a smell which permeated into the neighbor's house and other health concerns which included other wild animals including rats coming onto the property because of the bird seed on the ground and that when it rained the fecal matter seeped onto the neighbor's yard. Thus, by a preponderance of the evidence, the Petitioner and the Petitioner's representative Ms. Andrews have not overcome the requisite diligence needed to satisfy the "e" and the "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" section of Florida Statute 193.461 (3) (b) 1 (a) through (g) and therefore by a preponderance of the evidence Petitioner and Petitioner's representative Ms. Andrews fail this test as to the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as per Florida Statute 193.461 (3) (b) 1 (a) through (g).
Ms. Andrews testified that "There are 86 birds total on the property right now. Approximately 28 to 30 of each class of birds on the property." However as to the issue of the fecal matter from the birds and the ancillary health concerns, a preponderance of the evidence shows that the "I rake it all the time. All most every day" testimony by Ms. Andrews of the bird dropping fecal matter area maintenance is not sufficient to stop the fecal matter seeping onto the neighbor's yard, or the other ancillary health concerns articulated above. A preponderance of the evidence admitted above is also applicable to and is taken in consideration as per subsection "g" and the "Such other factors as may become applicable" enumeration prong of the Florida Statute 193.461 to the Petitioner and Petitioner's representative Ms. Andrews failing this test as to the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" in this instant matter. As a result, this "e" prong has not been met, and is also a basis for the denial of petition 2019-0001.

APPLICATION OF THE STATUTE ENUMERATION "f" of the Florida Statute 193.461 (3) (b) 1 (a) through (g): The property is owned by the Petitioner (Mr. Moran) and not the Petitioner's representative Ms. Andrews who resides with the Petitioner at the residence in a "domestic partnership." Ms. Andrews raises the breeder birds and runs the operation without a lease to the Petitioner owner of the fee simple parcel. A preponderance of the evidence shows that as per section "f" of the relevant statute and the "Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease" section of the statute is relevant to this matter but has not been met by the Petitioner and the Petitioner's representative Ms. Andrews. A preponderance of the evidence shows that Ms. Andrews, while, albeit, is a "domestic partner" to the Petitioner/property owner in fee simple, Ms. Andrews is not the fee simple owner. A preponderance of the evidence shows that Ms. Andrews is not an owner as tenants in common, nor tenants in common with the right of survivorship (See page 35 of 124 and the warranty deed for the parcel at issue.) Counsel for the Petitioner and Ms. Andrews argues that section "f" of the relevant statute and the "Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease" is not applicable to the instant matter because the Petitioner and Ms. Andrews are "domestic partners." However, this Special Magistrate finds that the section "f" of the relevant statute and the "Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease" is still applicable and relevant given the fact that

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the property is owned in fee simple by the Petitioner Mr. Moran, and not owned by Ms. Andrews at all with no interest in the property whatsoever. Moreover, a preponderance of the evidence shows that the "Agricultural Income and Expense" document from February 15 of 2018 filed by Ms. Andrews to the Pinellas County Property Appraiser's Office says that the name of the business is "Lynn Andrews and is signed by "Lynn Andrews." (Page 43 0f 124 Property Appraiser's Evidence Packet) The 2018 "Profit and Loss From Farming" form says for the proprietor the name "Lynn Andrews" (Page 44 of 124 Property Appraiser's Evidence Packet.) Both documents were filed with the Pinellas County Property Appraiser by Ms. Andrews in an effort to get an agricultural assessment approval, and those documents were specific to Ms. Andrews and her bird breeding business only.

Given the preponderance of the evidence showing that Ms. Andrews is not the fee simple owner, as per the section "f" of the relevant statute and the "Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease", and the name and business distinctions of the 2018 "Profit and Loss From Farming" form along with the "Agricultural Income and Expense" document from February 15 of 2018 filed by Ms. Andrews to the Pinellas County Property Appraiser's Office showing only Ms. Andrews in name, a lease should have been considered between Mr. Moran and Ms. Andrews and should have been not only considered, but also executed and completed and then included to the Pinellas County Property Appraiser in the application for the agricultural assessment that the Petitioner and the Petitioner's representative seeks. As a result, this "f" prong has not been met, and is also a basis for the denial of petition 2019-0001.

APPLICATION OF THE STATUTE ENUMERATION "g" of the Florida Statute 193.461 (3) (b) 1 (a) through (g) and the "Such other factors as may become applicable" prong: City of Largo Tracey Schofield, witness for the Property Appraiser testified that Petitioner and Ms. Andrews cannot get the HOC because the breeding birds are outside. Mr. Schofield testified that the birds are outside and as a result, it prohibits the Home Office Convenience and that there is a nuisance section of the HOC that Ms. Andrews would not meet because she has had the birds outside.

City of Largo Tracey Schofield, witness for the Property Appraiser referred to the Largo, Florida - Comprehensive Development Code Chapter 16 - ACCESSORY USES Section 16.5 - Home Office of Convenience (HOC). Upon review, a preponderance of the evidence specific to the instant matter, shows that, according to section 16.5.3 - Required Permits - A business tax receipt is required.
Also relevant is: B.
No visible evidence - There shall be no visible evidence that the residence contains a HOC. All HOC activities must take place within the private areas of the residence and shall not be visible from adjacent streets or properties. In the instant matter, for Ms. Andrews and the Petitioner, because a preponderance of the evidence shows that the breeding birds are outside, the Petitioners cannot get the HOC.
Also relevant is B (2)
No Inventory Display - No display of inventory shall be allowed. (A preponderance of the evidence shows that the birds are inventory and therefore because they are outside, then, they are on display.)
Also relevant is D.
Nuisance generation - A HOC use shall not generate nuisances such as on-street parking, noise, electrical interference, fumes, excessive trash, vibration, glare, or electrical interference detectable to the normal senses off the lot. (In the instant matter, Petitioner and Ms. Andrews operation fails this test with the preponderance of the evidence of noise by the birds and odor.)
Also relevant is I.
Business types not considered a HOC - The following shall not be permitted home occupations: beauty shops, barbershops, group band instrument or dance instruction, group swimming instruction, a studio for any type of group instructions, public dining facility or tearoom, antique or gift shop,

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photographic studio, fortune telling or similar activity, outdoor repair, food processing (with the exception of cottage food product production contained in Section 500.8(5) F.S.), on premises retail sales, day care/nursery providing care for more than six children, kindergarten, the giving of group instruction of any type, providing personal services on the premises such as massage therapy, personal fitness or providing daycare, boarding, grooming or breeding of animals. (A preponderance of the evidence shows that Petitioner and Ms. Andrews are breeding animals, and as a result fail this test.)

Prong "g" and the "Such other factors as may become applicable" of the Florida Statute 193.461 (3) (b) 1 (a) through (g) is applicable in this matter as a basis for the denial of petition 2019-001 for failing this test as to the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" in this instant matter because under the "Business types not considered an HOC" includes the "breeding of animals."

The full section of the Largo, Florida - Comprehensive Development Code Chapter 16 - ACCESSORY USES Section 16.5 - Home Office of Convenience (HOC) is below.
16.5.4 – Standards; An HOC is allowed as an accessory use in a bona fide residential dwelling unit when it complies fully with the following conditions is below:
16.5.2 - Applicability
All residential dwelling units may choose to incorporate an HOC. Residential dwelling units located within mixed use designations may also, as an alternative to HOC, undergo site plan review to add an allowable non-residential use to the property where live/work units are allowed.
16.5.3 - Required Permits - A business tax receipt is required.
16.5.4 - Standards
A HOC is allowed as an accessory use in a bona fide residential dwelling unit when it complies fully with the following conditions:
A.
Maximum floor area - The establishment of a HOC must be clearly incidental to the use of the dwelling as a residence. The maximum floor area devoted to a HOC shall not exceed twenty-five (25) percent of the gross floor area of the dwelling unit. (That includes the inside of the residence and the garage area. Tracey Schofield, witness for the Property Appraiser.)
B.
No visible evidence - There shall be no visible evidence that the residence contains a HOC. All HOC activities must take place within the private areas of the residence and shall not be visible from adjacent streets or properties.
(1)
No Signage and Exterior Changes - There shall be no signs or exterior changes to the building such as converting a garage or enclosing a carport.
(2)
No Inventory Display - No display of inventory shall be allowed. (The birds are inventory and therefore because they are outside, then, they are on display. Tracey Schofield, witness for the Property Appraiser.)
C.
Persons employed - No persons shall be employed on the site other than the residents of the dwelling unit. This restriction shall not preclude activities allowed under the HOC, such as tutoring, to take place at the client's residence.
D.
Nuisance generation - A HOC use shall not generate nuisances such as on-street parking, noise, electrical interference, fumes, excessive trash, vibration, glare, or electrical interference detectable to the normal senses off the lot.

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E.
Automobile trips - Automobile trips to the HOC shall be strictly limited to one (1) per appointment a the residence and a maximum of two (2) client visits per day.
F.
Traffic generation - Traffic generation shall not exceed the normal type and volume generated by a residential dwelling unit.
G.
Commercial trucks - The HOC shall not have commercial trucks on site.
H.
Additional CDC provisions - The HOC shall not violate any provisions of the City Code of Ordinances including, but not limited to, the outside storage provisions of Chapter 11 or the adult use provisions of Chapter 7.
I.
Business types not considered a HOC - The following shall not be permitted home occupations: beauty shops, barbershops, group band instrument or dance instruction, group swimming instruction, a studio for any type of group instructions, public dining facility or tearoom, antique or gift shop, photographic studio, fortune telling or similar activity, outdoor repair, food processing (with the exception of cottage food product production contained in Section 500.8(5) F.S.), on premises retail sales, day care/nursery providing care for more than six children, kindergarten, the giving of group instruction of any type, providing personal services on the premises such as massage therapy, personal fitness or providing daycare, boarding, grooming or breeding of animals.

While Counsel to the Petitioner and Ms. Andrews cite Florida Statute 205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions for the proposition that Ms. Andrews does not need a business tax receipt for the instant matter, the other elements of Florida Statute 193.461 (3) (b) 1 (a) through (g) and the above analysis and the preponderance of the evidence set forth above in their totality, are applicable in this matter as a basis for the denial of petition 2019-001 for failing the test as to the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" in this instant matter. As to the issue of the proposition of the application and consideration of Florida Statute 205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products, that issue of the business tax receipt probably should be litigated with the City of Largo in another forum.

The Petitioner and Petitioner's representative have failed to present a preponderance of the evidence to fully overcome the Property Appraiser's evidence submitted and to fully overcome the denial by the Property Appraiser's Office of the agricultural classification that Petitioner and Petitioner's representative seek.

This Special Magistrate, for the above articulated analysis, rejects the recommendation set forth in the hearing conducted on October, 2019.

Thus, by a preponderance of the evidence, the Petitioner and Petitioner's representative have not demonstrated that the instant agricultural classification that the Petitioner and Petitioner's representative seeks should be granted and as a result, a preponderance of the evidence proves as articulated in the above analysis, that the use of the subject parcel does not comport with the meaning of "bona fide agricultural purposes" and "good faith commercial agricultural use" as of January 1, 2019.

This Special Magistrate recommends this instant petition should not be granted and the classification

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and relief sought by Petitioner and Petitioner's representative should not be granted.

As to petition 2019-0001 said petition is DENIED.

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FLORIDA DEPARTMENT OF REVENUE

# DECISION OF THE VALUE ADJUSTMENT BOARD

EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE
TRANSFER, CHANGE OF OWNERSHIP OR CONTROL,
OR QUALIFYING IMPROVEMENT PETITION

DR-485XC
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

The actions below were taken on your petition in PASCO County.

☒ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.

If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, Florida Statutes.)

| | |
|---|---|
| Petition # AG-001 | Parcel ID 16 25 210000 01300 0010 |
| Petitioner name JAMES S. STALNAKER JR., BARBARA STALNAKER c/o MATT<br>The petitioner is: ☐ taxpayer of record ☐ representative<br>☐ other, explain: | Property address PO BOX 8833 SAN ANTONIO FL |

**Decision Summary** ☐ Denied your petition ☒ Granted your petition ☐ Granted your petition in part

| Lines 1 and 4 must be completed | Value from TRIM Notice | Value before Board Action<br>Value presented by property appraiser<br>Rule 12D-9.025(10), F.A.C. | Value after Board Action |
|---|---|---|---|
| 1. Just value, required | $285,878 | $285,878 | $229,514 |
| 2. Assessed or classified use value,* if applicable | $229,514 | $229,514 | $229,514 |
| 3. Exempt value,* enter "0" if none | $56,364 | $56,364 | $56,364 |
| 4. Taxable value,* required | $229,514 | $229,514 | $229,514 |

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition

☐ Homestead ☐ Widow/er ☐ Blind ☐ Totally and permanently disabled veteran
☐ Low-income senior ☐ Disabled ☐ Disabled veteran ☒ Use classification, specify AGRICULTURE
☐ Parent/grandparent assessment reduction ☐ Deployed military ☐ Use exemption, specify
☐ Transfer of homestead assessment difference ☐ Qualifying improvement
☐ Change of ownership or control ☐ Other, specify

**Reasons for Decision** Fill-in fields will expand, or add pages as needed.

Findings of Fact
PETITION: AG-001
November 1, 2018
JAMES S. STALNAKER JR., BARBARA STALNAKER c/o MATTHEW MAGGARD
PARCEL ID: 16 25 210000 01300 0010
APPLICABLE STATUTE: Florida Statute 193.461
RELEVANT CASE LAW: Turner v. Lusk 819 So.2d 258 (2002)
ALL PROPERTY VALUES WERE READ INTO THE RECORD
ATTORNEY SPECIAL MAGISTRATE: Joseph Haynes Davis, Esq.
ISSUE BEFORE THE SPECIAL MAGISTRATE:
All parties were sworn.
PROPERTY APPRAISER: Norman James; Julie Gordon;
PETITIONER: JAMES S. STALNAKER JR., BARBARA STALNAKER; MATTHEW MAGGARD, ESQ.
Property Appraiser's Evidence Packet #1 admitted into evidence without objection.
FINDINGS OF FACT
PROPERTY APPRAISER PRESENTED FIRST:
Norman James testified for the Property Appraiser. Petitioner purchased parcel in 2016. Parcel is 20.17 acres. Application was granted in 2017. Property appraiser testified that the Petitioner constructed a facility on the property in 2017 and used the facility and a portion of the acreage for weddings and various events. The agricultural classification was denied on three (3) acres but was allowed on the rest of the acreage. The Property Appraiser testified that the alleged non-agricultural usage of the three (3) acres is what is at issue before the Special Magistrate and that the decision by the Property Appraiser to deny the three (3) acres in

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question is supported by case law. Property Appraiser argues that the facility and the acreage at issue and the primary use was a wedding venue and event center and was not an agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e) and that once the completion of the facility and once weddings were conducted within the facility the agricultural use of the three (3) acres were abandoned in the fall of 2017. The issue is the "primary use". Hausman case law supports "when the land supports diverse activities" the issue of the question of the "primary use" of the property portion is at issue. Testified to the advertisements that have been published advertising the "primary use" of the property which are not an agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e). Advertisements were taken off the Petitioner's website.
The statute does not say anything about completion of the structure.
Julie Gordon testified – inspected about three times. Every time I have inspected the parcel at issue has been manicured, etc. That means it was not for an agricultural purposes.

Case law submitted by the Property Appraiser:
Markham v. June Rose, 495 So. 2d 865 - 1986 - Fla: Dist. Court of Appeals
St. Joe Paper Co. v. Adkinson, 400 So. 2d 983 - 1981 - Fla: Dist. Court of Appeals
Hausman v. Rudkin, 268 So. 2d 407 - 1972 - Fla: Dist. Court of Appeals
The Property Appraiser's evidence is relevant, credible, and admissible.
PETITIONER PRESENTED
Petitioner's Counsel Maggard presented.
Petitioner's exhibit #1 was admitted without objection. Petitioner's exhibit #2 was admitted without objection. Photos of hay are stored under the barn. Spoke to the photos of agriculture activity on the parcel. Petitioners business is the business of race horses to breed and house and then sell offspring. Counsel presented photos of horses and bill of sale of horse to facilitate horse breeding which is the primary purpose for the property including the structure at issue. Testified that the horses are housed on the property that is at dispute. The John Deere tractor is also stored in the barn on the parcel which is at dispute which does not run afoul of agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e). As a result, the use of the facility at issue and the acreage at issue and the primary use of both comports with the statute. Although there may have been other activities within the structure, those activities do not extinguish the primary use of the area at issue. People purchase hay from the backside of the barn. Hay is being stored in the barn. The tractor is stored in the barn. Some of the events are charity events in the barn. But the barn is still a barn which is used primarily for agricultural purposes. Petitioners needed to build a nice facility given the fact that getting high end purchasers who buy high end race horses to come to Dade City was somewhat of a challenge. That is why the Petitioners build the structure at issue. Petitioners are in the race horse business. Petitioners need to "wine and dine and house" these potential buyers who are business people. This is part of the race horse business and is therefore and agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e). Petitioners decided to "dress up the barn" because it takes seven (7) years to get a producing a race horse. Hosting events from time to time does not extinguish the "primary use" of the part of the parcel at issue.
Case law submitted by Petitioner:
Markham v. PPI, INC., 843 So. 2d 922 - 2003 - Fla: Dist. Court of Appeals – land used for the boarding and training of horses constitutes a "bona fide agricultural purpose" within the meaning of section Florida Statute 193.461.
Aitken v. Markham, 595 So.2d 159 (Fla. 4th DCA 1992) -primary use of land is breeding horses for profit the landowner qualified for an agricultural classification under section 193.461.
Robbins v. Racetrack Training Center, Inc., 833 So.2d 306 (Fla. 3d DCA 2003) property owner that boarded and trained thoroughbred racing horses adjacent to Calder Race Course. The property owner obtained an agricultural classification of its property to receive favorable tax treatment. The third district affirmed the trial court's grant of summary judgment to the property owner, holding that the boarding and training of racing horses was for a bona fide agricultural purpose within the meaning of section 193.461(3)(b).
The Agrotourism statutes (below) Florida Statutes 570.85, 570.86, and 570.87 allows for the Petitioners to supplement the race horse and hay operations to use their barn for weddings, etc. Petitioners are using the facility for a "secondary stream of revenue activity" for their primary and bona fide operations as per Florida Statute 193.461 (3)(b)(1)(e).

570.85 Agritourism.—
(1) It is the intent of the Legislature to promote agritourism as a way to support bona fide agricultural production by providing a secondary stream of revenue and by educating the general public about the agricultural industry. It is also the intent of the Legislature to eliminate duplication of regulatory authority over

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agritourism as expressed in this section. Except as otherwise provided for in this section, and notwithstanding any other provision of law, a local government may not adopt or enforce a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461. This subsection does not limit the powers and duties of a local government to address substantial offsite impacts of agritourism activities or an emergency as provided in chapter 252.
570.86 Definitions.—As used in ss. 570.85-570.89, the term:
(1) "Agritourism activity" means any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity.
(2) "Agritourism operator" means a person who is engaged in the business of providing one or more agritourism activities, whether for compensation or not for compensation.
(3) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products, including land used to display plants, animals, farm products, or farm equipment to the public.
(4) "Farm operation" has the same meaning as in s. 823.14.
(5) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to follow the instructions given by the agritourism operator or failing to exercise reasonable caution while engaging in the agritourism activity.

570.87 Agritourism participation impact on land classification.—
(1) In order to promote and perpetuate agriculture throughout the state, farm operations are encouraged to engage in agritourism. The conduct of agritourism activity on a bona fide farm or on agricultural lands classified as such pursuant to s. 193.461 does not limit, restrict, or divest the land of that classification as long as such lands classified as agricultural remain used primarily for bona fide agricultural purposes.
(2) Local governments and agricultural representatives shall meet for the purpose of discussing the benefits of agritourism to local economies and opportunities for cooperation, conflict resolution, regulatory streamlining, and incentives.
James Stalnaker testififed – the barn was constructed for a showcase for buyers to come to Dade City to check out our horse offspring for purchase within the racing industry. The structure is a showpiece to bring in customers. That is why we are able to house horses and store hay, etc. Got into hosting events when my nephew wanted to get married in 2017. Property appraiser's #6 and #7 shows the wedding of our nephew. Wanted the barn to look nice. Charity events, politician fund raisers. Did not charge for events.
Barbara Stalnaker testified- Folks found out about the barn on the Facebook page with a sketch of the barn before it was built. Did not put sketch on Facebooks for weddings, but to try to find things to buy to decorate.

The Petitioner's evidence is relevant, credible, and admissible.

Conclusions of Law
CONCLUSION OF LAW
The undersigned Special Magistrate finds that the following below is controlling and or persuasive in the recommendation:
STATUTE: 193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program and in particular the "extenuating circumstances" test concerning the late filed matter as per Florida Statute 193.461 (3)(b)(1)(e).
The Agrotourism statutes Florida Statutes 570.85, 570.86, and 570.87.

As to petition 2018- AG 001, said petition is GRANTED.

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

Petitioner has demonstrated by a preponderance of the evidence that the property at issue in the instant matter is entitled to the classification that the Petitioner is seeking.
While the Property Appraiser argues that the facility and the acreage at issue and the primary use was a wedding venue and event center and was not an agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e) and that once the completion of the facility and once weddings were conducted within the facility the agricultural use of the three (3) acres were abandoned in the fall of 2017, Petitioner has demonstrated by a preponderance of the evidence that the property at issue in the instant matter is entitled to the classification that the Petitioner is seeking. A preponderance of the evidence shows that the "primary use" of the property at issue is raising race horses to breed and house and sell offspring for the Petitioner.
The Petitioner, by a preponderance of the evidence, presented evidence that the horses are housed on the property that is at dispute. The Petitioner, by a preponderance of the evidence, presented evidence that the John Deere tractor is also stored in the barn on the parcel which is at dispute which does not run afoul of agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e). The issue is the "primary use".
The Petitioner, by a preponderance of the evidence, presented evidence that the tractor is stored in the barn.
The Petitioner, by a preponderance of the evidence, presented evidence that the some of the events are charity events in the barn. But, by a preponderance of the evidence, the barn is still a barn which is used primarily for agricultural purposes. By a preponderance of the evidence Petitioners needed to build a nice facility given the fact that getting high end purchasers who buy high end race horses to come to Dade City was somewhat of a challenge. That is why the Petitioners build the structure at issue. Petitioners are in the race horse business. Petitioners need to "wine and dine and house" these potential buyers who are business people. This is part of the race horse business and is therefore and agricultural purpose as per Florida Statute 193.461 (3)(b)(1)(e). By a preponderance of the evidence, hosting events from time to time does not extinguish the "primary use" of the part of the parcel at issue.
Additionally, a preponderance of the evidence shows that the Agrotourism statutes, Florida Statutes 570.85, 570.86, and 570.87, allows for the Petitioners to supplement the race horse and hay operations to use their barn for weddings, etc. Petitioners are using the facility for a "secondary stream of revenue activity" for their primary and bona fide operations as per Florida Statute 193.461 (3)(b)(1)(e).
What was also persuasive for this Special Magistrate was the following:
570.86 Definitions.—As used in ss. 570.85-570.89, the term:
(1) "Agritourism activity" means any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity.
In the instant matter, a preponderance of the evidence satisfies the recommendation for granting the Petitioner's Petition in this matter.

As a result, this Special Magistrate recommends the GRANT on the instant petition.

☒ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

| | JOSEPH HAYNES DAVIS, ESQUIRE | 12/19/18 |
|---|---|---|
| Signature, special magistrate | Print name | Date |
| Signature, VAB clerk or special representative | Print name | Date |

If this is a recommended decision, the board will consider the recommended decision on _____ at _____ ☐ AM ☐ PM.
Address _____
If the line above is blank, please call _____ or visit our website at _____.

☐ **Final Decision of the Value Adjustment Board**

| | | |
|---|---|---|
| Signature, chair, value adjustment board | Print name | Date of decision |

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

| Signature, VAB clerk or representative | Print name | Date mailed to parties |
|---|---|---|

Attachment: DavisAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☑ Attorney Special Magistrate
- ☐ Appraiser Special Magistrate for…
- ☐ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: Todd M. Hoepker Email: toddhoepker@hoepkerlaw.com
Business Name: Todd M. Hoepker, P.A.
Home Address:
Business Address: 55 E. Pine Street, Orlando, FL 32801
Phone: Home/ Business/ 407-426-2060 Cell/ 407-538-2700 Fax: 407-426-2066

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: 507611 Date of Admission: 10/21/1985
How many years of experience do you have in the area of ad valorem taxation:

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: _____ Valid Thru: _____
How many years of experience do you have in the area of real property valuation:
How many years of experience do you have in the area of tangible property valuation: 25 years

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* **F.S. § 194.035.**

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

Washington University School of Law, J.D., 1985
University of Illinois, B.S., Accounting, with high honors, 1982



Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Orange - November 2016 – December 2020

Lake County - October 2016 - March 2020

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

I have been a commercial business and real estate lawyer for over 35 years in the Orlando area. I have handled a variety of taxation cases. I have an accounting degree and obtained my CPA in 1982 in Illinois. I also clerked for the Internal Revenue Service.

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

N/A

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:



Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | |
| COMMERCIAL REAL PROPERTY | |
| TANGIBLE PROPERTY | |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None.

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None.

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

I have basic computer skills and I know Axia.

13. List any additional information which makes you qualified to serve as a special magistrate:

I have experience as a special magistrate and as a real estate lawyer who has handled a wide variety of taxation issues and I have an accounting and tax background.



Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

_____ Date: 4/13/21

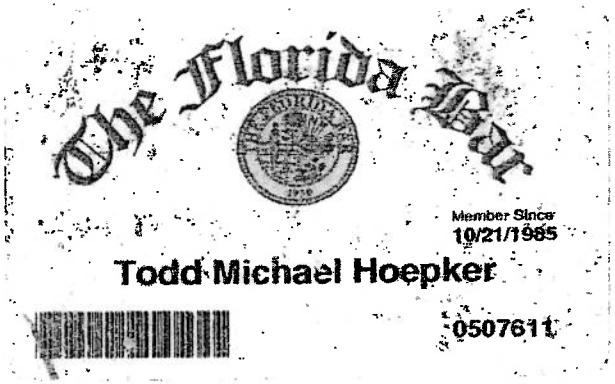
Signature of Applicant

Todd M. Hoepker

Printed Name of Applicant



Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)


The Florida Bar
Member Since
10/21/1985
Todd Michael Hoepker
0507611

# CURRICULUM VITAE
# AND
# SUMMARY OF QUALIFICATIONS

## TODD M. HOEPKER

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**Legal Experience (AV Preeminent Rating by Martindale-Hubbell)**

- Todd M. Hoepker, P.A.: 1996 – present
- Baker & Hostetler, P.A.:1993-1996
- Graham Clark Pohl & Jones, P.A.: 1990-1993
- Dempsey & Goldsmith, P.A: 1985-1990
- Law Clerk to the Honorable James H. Meredith, United States District Judge, Eastern District of Missouri: 1984
- Law Clerk, Internal Revenue Service, Appeals Division: 1982-1983

- I practice in all Florida County, Circuit, and District Courts of Appeal, Florida Supreme Court, United States District Courts in Florida, United States Bankruptcy Courts in Florida, United States Eleventh Circuit Court of Appeals, and United States Tax Court

- I am a complex commercial and real estate litigator who appears regularly in the Ninth Circuit Business Court. I have litigated hundreds of cases involving business separations, corporate, shareholder, LLC and PA disputes, business valuation issues, and non-competition and trade secret matters.

- I have litigated hundreds of cases involving mortgage priority, mortgage foreclosure (both commercial and residential), title insurance claims, survey and boundary disputes, covenant enforcement, lease disputes, appraisal claims, deficiency judgments, development and land use issues, code enforcement issues, commercial and residential evictions, homeowner and condominium association disputes, and other real estate matters

- I have handled and/or been involved in hundreds of real estate closings and have prepared and reviewed hundreds of title commitments and title policies

- I have handled ad valorem tax and valuation disputes and acted as a special magistrate for the Orange County, Osceola County, Lake County, and Citrus County Value Adjustment Boards.

**Mediation Certifications**

- Certified Mediator – Florida Circuit and County Courts
- Certified Mediator – Fifth District Court of Appeal
- Certified Mediator – United States District Court, Middle District of Florida

- I have been involved in hundreds of mediations (both as a mediator and attorney for litigants)

Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

## Other Experience

- Member, Orlando Board of Realtors: 1988-1992
- Certified Public Accountant, Illinois: 1982

## Bar Memberships

- The Florida Bar
- Orange County Bar Association
- American Bar Association

## Education

- Washington University, J.D., 1985
- University of Illinois, B.S., Accounting, with high honors, 1982

## Expert Testimony

I have been qualified as an expert on attorney fee matters in circuit courts across Central Florida (including Orange, Osceola, Seminole, Brevard, Volusia, Lake, Polk, Marion, St. Johns, Hillsborough, Pinellas, and Pasco counties) and have testified on matters before circuit judges in trials and evidentiary hearings over 75 times, including claims in mortgage foreclosure matters and homeowners and condominium association matters. I have also submitted expert testimony as a real estate/title expert.

Re: Bettina Dinsmore Tuttle– Petition #124

Introduction and Background:

The hearing on this petition was held on January 16, 2019. The hearing concerned whether Petitioner, Bettina Dinsmore Tuttle, was entitled to an agricultural classification.

Under Section 193.461(3)(b), Fla.Stat., "lands that are used primarily for bona fide agricultural purposes" shall be classified as agricultural. In deciding whether to grant an agricultural classification, a property appraiser must therefore determine whether the land is being used "primarily for bona fide agricultural purposes". This language has been interpreted to mean that the agricultural use of the land must be "real, actual, and of genuine nature..." Hausman v. Rudkin, 268 So.2d 407, 409 (Fla. 4th DCA 1972). Stated another way, "[G]ood faith commercial agricultural use of property is defined as the pursuit of an agricultural activity for a reasonable profit or at least upon a reasonable expectation of meeting investment cost and realizing a reasonable profit. The profit or reasonable expectation thereof must be viewed from the standpoint of the fee owner and measured in light of his investment." Rule 12D-5.001(2), F.A.C.

Numerous factors should be considered in determining whether there is the requisite primary agricultural use, none of which are determinative. Roden v. K&K Land Mgmt., Inc., 368 So.2d 588 (Fla. 1978). These factors are enumerated in Section 193.461(3)(b), Fla.Stat. and Rules 12D-5.001 – 12D-5.004, F.A.C. The primary considerations are: a) the length of time the land has been so used; 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; or g) such other factors as may become applicable.

I considered and reviewed all of the testimony, evidence, and argument submitted by the Citrus County Property Appraiser. Petitioner, Bettina Dinsmore Tuttle, did not appear at the hearing and there was no testimony to support the Petition. Petitioner also did not submit any documentary evidence in support of the Petition. After hearing the testimony and receiving and analyzing the evidence and arguments submitted by the Citrus County Property Appraiser, I make the following finding of facts and conclusions of law.

Findings of Fact:

The subject property (the "Property") consists of a single-family home and approximately 7.264 acres of land.

The Citrus County Property Appraiser candidly admitted that the Property previously received an agricultural classification because the vacant land was considered timberland. However, it appears no timber was planted, harvested, or sold by Petitioner in 2017 or 2018.

Petitioner adduced no evidence whatsoever on the factors set forth above. Petitioner did not submit any receipts, licenses, permits, agricultural certificates, an agricultural business plan, forestry management plan or practices, or any financial records such as tax returns or profit and loss statements demonstrating the true commercial agricultural use of the Property on January 1, 2018.

Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

Conclusions of Law:

Considering the lack of evidence submitted by Petitioner on the relevant factors in Section 193.461(3)(b), Fla.Stat. and Rules 12D-5.001 – 12D5.004, F.A.C., Petitioner did not prove that the Property was used for bona fide agricultural purposes. Petitioner is therefore not entitled to an agricultural classification on the Property and the Property Appraiser's decision to deny Petitioner an agricultural classification is hereby upheld.

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Attachment: HoepkerAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☑ Attorney Special Magistrate
- ☐ Appraiser Special Magistrate for…
- ☐ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: Andrea M. Johnson Email: Andrea@amjlawfirm.com
Business Name: Law Office of Andrea M. Johnson, P.A.
Home Address: 212 69th St NW Bradenton, FL 34209
Business Address: P.O. Box 1283 Bradenton, FL 34206
Phone: Home/ n/a Business/ 941-896-7215 Cell/ 941-807-9590 Fax: n/a

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: 0802751 Date of Admission: September 2004
How many years of experience do you have in the area of ad valorem taxation: 17

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: _____ Valid Thru: _____
How many years of experience do you have in the area of real property valuation: _____
How many years of experience do you have in the area of tangible property valuation: _____

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* **F.S. § 194.035.**

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

Stetson University College of Law, J. D., Magna Cum Laude, 2004
Indiana University, B.A. Political Science, 2001



Attachment: JohnsonAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.
Manatee County, 2014-2020; Polk, 2018-2020; Pasco, 2018-2020; Hillsborough, 2019-2020, Pinellas, 20

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.
Attorney practice areas include Probate and Trust Litigation, Commercial Business Disputes
Trained FINRA Abritrator
Former JNC Judicial Nominee

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| n/a | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:
n/a

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:
n/a



Attachment: JohnsonAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | Property Tax Disputes; attorney magistrate issues |
| COMMERCIAL REAL PROPERTY | Property Tax Disputes; attorney magistrate issues |
| TANGIBLE PROPERTY | Property Tax Disputes; attorney magistrate issues |
| OTHER (PLEASE SPECIFY) | Property Tax Disputes; attorney magistrate issues |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

General familiarity with programs on PC and MAC including,
but not limited to, Microsoft Office, Excel, Powerpoint; proficient in Axia

13. List any additional information which makes you qualified to serve as a special magistrate:

See no. 4 above.



Attachment: JohnsonAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Andrea M. Johnson Date: 5-3-2021

Signature of Applicant

Andrea M. Johnson

Printed Name of Applicant



Attachment: JohnsonAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

**Andrea M. Johnson**

P.O. Box 1283
Bradenton, FL 34206

(941)-896-7215
Andrea@amjlawfirm.com
www.amjlawfirm.com

**Law Office of Andrea M. Johnson, P.A.**, Bradenton, Florida *October 2013-present*

*Practice Areas:* Probate and Trust Litigation, Commercial Business Disputes, Property Tax Disputes, and General Civil Litigation matters

- Handle various matters within *Practice Areas* including: Trust Disputes, Will Contests, Breach of Fiduciary Duty, Insurance Beneficiary Disputes, Elective Share and Homestead Issues, Real-estate and Contract/Business Disputes, Unjust Enrichment, Landlord-Tenant Matters, Judgment Collection & Creditors Rights
- Draft pleadings/discovery, legal research, conduct depositions and handle pretrial matters
- Attend hearings, including complex motions and contested evidentiary issues
- Attend mediation, participate in and draft settlement documents
- Prepare for and attend bench trials including fact and expert witness preparation
- Service as Attorney Special Magistrate, Manatee County VAB (2014-2020 tax years); Polk & Pasco County VAB (2018-2020); Hillsborough & Pinellas County VAB (2019-2020)

**Harllee & Bald, P.A.,** Bradenton, Florida *August 2004-October 2013*

*In addition to practice areas above:* Receiverships, Injunctions, Specific Performance, Community Development District Special Assessments, and Public Records Requests and Value Adjustment Board hearings including fact and expert witness preparation, trial strategy, and exhibit preparation

## EDUCATION

Stetson University College of Law, J. D., Magna Cum Laude, 2004
Indiana University, B.A. Political Science, 2001

## AWARDS AND RECOGNITIONS

AV-rated, Martindale Hubbell
10.0 AVVO Rating
2020-2014, Rising Star, Estate and Trust Litigation, Florida Super Lawyers
2020-2019, Legal Elite
2013, Rising Star, Business Litigation, Florida Super Lawyers
2018, President's Award, Junior League of Manatee County
2012, "Spirit of the League" Award, Junior League of Manatee County

## PROFESSIONAL ORGANIZATIONS

The Florida Bar, 2004-present, 12th Judicial Circuit Grievance Committee (2018-present)
Manatee County Bar Assn, 2004-present; President (2016-2017), Board of Directors (2012-2017)
Manatee County FAWL, 2006-present; President (2011-2012), Board of Directors (2008-2017)
Manatee County Young Lawyers Division, Board of Directors (2009-2014)
Manatee American Inns of Court, 2015-present; Social Chair (2018-2019), Membership Chair (2019-present)
Federalist Society, 2019-present
Volunteer-Teen Court, Legal Aid, Justice Teaching
Member-Florida Bar Foundation Fellow, Florida Supreme Court Historical Society
Junior League of Manatee County 2009-present, President (2014-2014) Exec Council (2012-2015)

Attachment: JohnsonAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# The Florida Bar

Member Sinc

9/25/200

Andrea M. Johnson

Attachment: JohnsonAty_App

51

Attachment: JohnsonAtty_App

This card is evidence that the person named hereon has been admitted to The Florida Bar. In order to practice law in Florida, with limited exceptions, a lawyer must be eligible to practice law. A member's eligibility may be verified by visiting www.floridabar.org, contacting Membership Records, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300. This card is valid until revoked, at which time it should be surrendered to The Florida Bar.

Signature

Amanda M. Johnson

Petition No.: 2020-VB-4
Petitioner: Jerry Hicks

Findings of Fact:

This petition involves the late filing of a homestead exemption. The Petitioner appeared at the hearing and represented herself. Scott Tussing and Faith Danke appeared on behalf of the Property Appraiser. After recitation of all required statements, the Special Magistrate swore in the parties and received into evidence certain documents set forth in the Evidence Log(s) and as recited during the hearing. There was no objection by either party. The Petitioner and Property Appraiser submitted sworn testimony in support of their respective positions. The Special Magistrate finds the testimony and evidence submitted was credible, relevant, and admissible.

The property was purchased by Petitioner on December 17, 2019. A New Owner Packet, which explains the homestead application process and March 1 filing deadline, along with providing information to apply with the Property Appraiser, was sent to Petitioner on January 13, 2020. (Exhibit B). Petitioner filed for the homestead exemption on March 17, 2020. The deadline to file for homestead exemption was March 2, 2020. Other than the untimely filing, Petitioner qualifies for the homestead exemption.

Petitioner testified to the issues associated with caring for her special-needs child that she is in the process of adopting. The child is actually her grandchild that she has been caring for three years. The child suffers from epilepsy, is partially blind, has a feeding tube, and has 24-hour care. The child has ten specialists and therapists. In addition to the child's care, Petitioner is also dealing with Child Protective Services and a Guardian Ad Litem, becasuse the child is currently a ward of the state. The attention provided to the special-needs child was excessive and overwhelming prior to the March 2, 2020 filing deadline. The undersigned finds this testimony credible that but for the amount of attention required to care for the special-needs child, Petitioner would have timely filed.

Conclusions of Law:

Every person who owns and resides on real property in Florida on January 1 and makes the property their permanent residence is eligible to receive a homestead exemption provided a timely application is received. *See*, § 196.011, Fla. Stat. Petitioner's application was not timely filed; so the burden was on the Petitioner to prove by a preponderance of the evidence that extenuating circumstances exist for the late filing. *See*, § 196.011(8), Fla. Stat. Neither the statute nor the caselaw define the term "extenuating circumstances," so the term must be applied to each specific case according to the facts. [1]

In this case, the significant care required for the special-needs child was the reason the filing deadline was missed. This medical conditions amount of doctor's appointments, legal matters, and other extensive issues and care required over a significant period of time, at or around the filing deadline, rises to the level of such a nature that it would be justifiable for a

[1] While "extenuating circumstances" is not defined under the statute, the term "extraordinary circumstances" is defined in Florida Administrative Code 12D-9.015 for purposes of the late filing of a petition to the value adjustment board. Medical and family conditions are an extraordinary circumstance under such Rule. *See*, Rule, 12D-9.015(14)(a)(2), Fla. Admin. C.

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reasonable person to have missed the deadline. Accordingly, Petitioner has demonstrated extenuating circumstances by the preponderance of the evidence that would justify the late filing.

Recommended Decision:
Petition GRANTED.

Attachment: JohnsonAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☑ Attorney Special Magistrate
- ☐ Appraiser Special Magistrate for…
- ☐ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: Thomas Tukdarian Email: ttukdarian@tukdarianlaw.com
Business Name: Tukdarian Law
Home Address: 5633 Masters Boulevard, Orlando, Florida 32819
Business Address: P.O. Box 783, Windermere, Florida 34786
Phone: Home/ 407-876-2247 Business/ 407-363-7880 Cell/ 407-739-7886 Fax: 407-363-7990

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: 457965 Date of Admission: Jan. 10, 1986
How many years of experience do you have in the area of ad valorem taxation: over 10

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: _____ Valid Thru: _____
How many years of experience do you have in the area of real property valuation: _____
How many years of experience do you have in the area of tangible property valuation: _____

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

University of Richmond, B.A. Economics, with honors, 1980
T.C. Williams School of Law, University of Richmond, J.D. 1983
multiple continuing education classes and seminars attended and given



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# SPECIAL MAGISTRATE APPLICATION
## VALUE ADJUSTMENT BOARD
(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Orange County VAB - August 2017 to date; Osceola County VAB - September 2018 to date; Citrus County VAB - September 2019 to date; Seminole County VAB (approved as back-up) 2020-2021; Volusia County VAB (approved, no cases) 2020-2021

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

As an attorney practicing real estate law for over 20 yeasrs I have experience with creation, use and application of ad valorem taxes. I have experience with residential and commercial transactions and issues, many of which involve ad valorem taxation in some capacity. I also have experience managing and administering community development districts which involved ad valorem taxes and assessments.

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:



Attachment: TukdarianAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | As a real estate attorney with over 20 years of experience |
| COMMERCIAL REAL PROPERTY | handling residential and comercial real estate matters |
| TANGIBLE PROPERTY | including tax issues and as a district manager for community |
| OTHER (PLEASE SPECIFY) | development districts |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

none

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

none

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

I am proficient in Word and MicroSoft Office applications including Outlook and Excel, as well as other office administration programs including PC Law and Quickbooks. I am also familiar with the Axia program and VeriClock program utilized by some VABs.

13. List any additional information which makes you qualified to serve as a special magistrate:

I also have extensive experience in business law and finance with significant experience relating to government operations. I successfuly managed professional and administrative staff in small, medium and large law firms as well as in a corporate environment. I regularly apply my keen attention to detail to my strong ability to organize and follow through with projects and tasks for clients.



Attachment: TukdarianAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

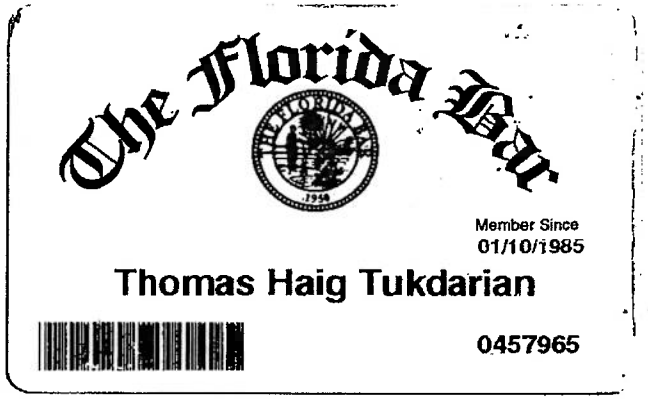
*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

_____ Date: 4-15-21
Signature of Applicant

Thomas Tukdarian
Printed Name of Applicant



Attachment: TukdarianAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)


The Florida Bar
Member Since
01/10/1985
Thomas Haig Tukdarian
0457965

CITRUS COUNTY VAB

ATTORNEY SPECIAL MAGISTRATE APPLICATION

THOMAS TUKDARIAN, ESQ.

WRITING SAMPLE

Citrus VAB – 2019 Petition #5

The petitioner in this matter is Big Sky Retirement Hopes, LLC, the owner of the property located at 10150 S. Istachatta Road, Floral City, Florida (Parcel No.: 20-E-20-S-26-32200; AK No.: 2702869). At the hearing on the petition, the Petitioner was represented by John Sadler, and testimony was provided by Mr. Sadler.

The Property Appraisers Office (hereinafter "PAO") was represented by Kim Whitton, Dan Robins, and Herb Mack, CFE and testimony and evidence were provided on behalf of the Property Appraiser's Office by Ms. Whitton.

The PAO submitted the following documents which were admitted into evidence:

Evidence List and Summary of Testimony; the Petition to the Value Adjustment Board (dated 07/23/19; correspondence between the Petitioner and the PAO; Petitioner's Application (dated 12/27/18); Receipts from the Petitioner for landscaping services including bush hog services, tractor work, tree trimming and mowing; Property Record Card for the subject property; Aerial Photos of the property (dated Jan. 2017 and Jan. 2019); Site Photos (dated 12/28/18, 2/19/19, and 3/14/19), and; Photos of the subject property (dated 9/16/19).

The testimony provided by the PAO included the following:

The subject property is located in Citrus County and is comprised of approximately 44 acres, of which approximately 34 acres is the subject of Petitioner's request for an agricultural classification. The Petitioner purchased the property on March 8, 2017. The primary reason for the denial of the agricultural classification is because the property is non-producing and therefor is not being used for a bona fide agricultural purpose. The aerial photos and site photos are consistent with the PAO's description of the subject property as an open Bahia field with scattered oak hammocks. The PAO provided testimony establishing that the Petitioner has not produced sufficient evidence to show that the subject property is being used primarily for a bona fide agricultural purpose. No evidence has been provided by the Petitioner to show any good faith agricultural use of the subject property, nor has any evidence been provided by the Petitioner showing that the Petitioner owns any hay cutting equipment,

Attachment: TukdarianAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

has an agreement for someone else to perform hay cutting on the subject property, or otherwise has the ability to perform hay cutting or otherwise operate a commercial hayfield. The PAO cited and reviewed the factors listed in §193.461 (3)(b) as they apply to the subject property. The PAO emphasized that the factor most determinative in this case is §193.461(3)(b)1.e. The PAO asserts that 1.e. supports the removal of the agricultural classification because the subject property has not been sufficiently and adequately cared for or maintained in accordance with accepted agricultural purposes. The PAO reiterated that the subject property has not been maintained or been productive and therefore is not entitled to an agricultural classification.

The Petitioner submitted the following documents which were accepted into evidence:

The transcript from University of South Florida of Petitioner's representative.

The testimony provided by the Petitioner included the following:

The Petitioner stated that the subject property has been mowed, but has not been harvested. The Petitioner acknowledged that the subject property has not produced any hay or marketable products, that the Petitioner has not harvested, cut or sold any hay or marketable products, that the Petitioner is not currently growing any crops on the subject property, and that the subject property has not produced a profit for any endeavor. The Petitioner openly admits that the subject property has been fallow and that the Petitioner has allowed the subject property to remain fallow. The Petitioner stated that he is attempting to restore the land by allowing it to remain fallow. However, the Petitioner also stated that he has put the subject property up for sale and has had it listed with an agent for sale. The agent was supposed to manage the subject property but failed to do so. The Petitioner's plans for the property seem to range from selling the property, to donating to the State for use as a park, to conducting organic farming, to allowing cattle on the property, to building on and living on the property. The Petitioner asserted that allowing the land to remain fallow will promote organic farming sometime in the future. However, the Petitioner did not introduce any evidence or testimony establishing when that might be or that such plans were any more definite than the variety of possible uses otherwise identified. In summary, the Petitioner acknowledged that the subject property has not been a productive hayfield and has not generated any revenue.

What is more telling from the testimony provided by Petitioner is not necessarily what was presented but rather what was not presented. Petitioner did not present any testimony of any concerted effort to maintain the land for a bona fide agricultural purpose. While the concept of organic farming is commendable and to be encouraged, there was a dearth of testimony or evidence presented showing what and how steps were being taken to care sufficiently and adequate for the land in accordance with

Attachment: TukdarianAty_App (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

accepted commercial agricultural practices. The only testimony from Petitioner in this regard was the general statement that the property was mowed and Petitioner's references to an extensive list of books on organic farming. This alone cannot support a showing of a good faith effort to maintain the land in accordance with accepted commercial agricultural practices. Furthermore, the photos introduced into evidence by the PAO seem to contradict the existence of any bona fide commercial agricultural operation. Petitioner also did not provide any testimony or evidence to support or show how, if at all, Petitioner is attempting to make a good faith commercial agricultural use of the property, or that Petitioner has some reasonable expectation of realizing a reasonable profit from any agricultural operations on the subject property.

Conclusions of Law:

Applying the facts of this case to the applicable law confirms the PAO decision to deny the Petitioner's application for agricultural classification. The factors to be taken into consideration in determining whether agricultural classification is warranted are set forth in Florida Statute §193.461(3)(b), addressing bona fide agricultural purposes. In this matter, even though the Petitioner asserts that allowing the subject property to remain fallow is somehow part of a plan to engage in an agricultural purpose, the Petitioner has failed to establish that fallow land with no evidence of possible commercial agricultural activity is sufficient to overcome the PAO's determination that the subject property was not being used for a bona fide commercial purpose as of January 1, 2019, or otherwise being maintained for a legitimate and bona fide commercial purpose. The subject property is not producing hay and has not produced any agricultural crops. It has long been recognized that "the key to determining entitlement to agricultural classification is the actual physical activity being conducted on the land." Love PGI Partners, LP v. Schultz, 706 So.2d 887, 891 (Fla. 5th DCA, 1998) (citations omitted). And the use of the land needs to be immediate and not speculative. Straughn v. Tuck, 354 So.2d 368 (Fla. 1978). The immediate use of the subject property is not primarily for bona fide agricultural purposes and allowing land to remain fallow with the intention of possibly using the land for organic farming at some time in the future is too speculative in nature to be of any evidentiary value. It has long been established that a good faith commercial agricultural use does not require that the agricultural operations on the property produce a profit. Wilkinson v. Kirby, 654 So.2d 194 (Fla. 2nd DCA, 1995) However, profitability is a factor to be considered even though by itself it is not a controlling or determinative factor. Straun, id., Department of Revenue v. Goembel, 382 So.2d 783 (Fla. 5th DCA, 1980). In this case, the inability to produce any indication that the subject property is or might soon be a profitable operation further supports the denial of Petitioner's application for agricultural classification. The bona fide agricultural use must be "real, actual, of a genuine nature" to be considered actual use under the applicable statute. Bystrom v. Union Land Investments, Inc., 477 So.2d 585, 586 (Fla. 3rd DCA, 1985). Although Petitioner testified that some minimal effort is being put forth to maintain the subject property, it does not appear to be sufficient or adequate to be in keeping with accepted commercial agricultural practices. Such minimal efforts are not enough to warrant an agricultural classification. Tilton v. Gardner, 52 So.3d 771

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(Fla. 5th DCA, 2011). The evidence in this case revealed that little was done to further any agricultural operation or activities on the subject property and this supports a finding that the Petitioner did not intend to use the land for a bona fide agricultural purpose. RH Resorts, Ltd. v. Donegan, 881 So.2d 1152 (Fla. 5th DCA, 2004). The record in this case does not reveal the existence of a bona fide agricultural purpose but rather reveals that the Petitioner is not carrying on any bona fide agricultural operations, as defined by Florida law.

Petitioner did not sufficiently or adequately show that there is currently a good faith commercial agricultural use of the land. Fla. Stat. §193.461

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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for: ☑ Attorney Special Magistrate
☐ Appraiser Special Magistrate for…
☐ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: LAURA L. WALKER Email: LLW4ATTY@AOL.COM
Business Name: Law Offices of Laura L. Walker
Home Address: 199 Dali Boulevard, Unit 902, Saint Petersburg, Florida 33701
Business Address: 199 Dali Boulevard, Unit 902, Saint Petersburg, Florida 33701
Phone: Home/ Business/ 813.784.7003 Cell/ 813.784.7003 Fax: _____

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: 509434 Date of Admission: September 1985
How many years of experience do you have in the area of ad valorem taxation: 8

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: _____ Valid Thru: _____
How many years of experience do you have in the area of real property valuation: _____
How many years of experience do you have in the area of tangible property valuation: _____

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

BS Accounting from the University of South Florida
Juris Doctorate from Stetson College of Law



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Pinellas 2018 through 2020

Manatee 2019 through 2020

Sarasota 2019 through 2020

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

Was a parter at Gilbert Garcia Group from 2010 to 2018. Was the attorney in charge of all title issues, including title curative. This included resolution of all curative issues regarding ad valorem taxation. Have been a real estate attorney specializing in title curative since 1985.

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | Title Agent |
| COMMERCIAL REAL PROPERTY | Title Agent |
| TANGIBLE PROPERTY | |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None.

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None.

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Proficient in numerous law management systems such as Perfect Practice and Time Matters. In addition have training and knowledge of Axia through my services as Attorney Special Magistrate.

13. List any additional information which makes you qualified to serve as a special magistrate:

Have truly enjoyed my appointment as Attorney Special Magistrate in Pinellas, Manatee and Sarasota. I enjoy meeting the petitioners and believe I have a personality well suited for this type of appointment.



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

_____ Date: 4·26·21
Signature of Applicant

Laura L. Walker
Printed Name of Applicant



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References of Laura L. Walker, Esquire:

Gregory Hall, Esquire- Stewart Title- Claims Counsel
ghall@stewart.com; 813-676-0619

Sheldon Wind, Esquire; sheldonwindpa@hotmail.com;
813-888-6869

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# Resume'

**LAURA LAYNE WALKER**
**199 DALI' BOULEVARD**
**UNIT 902**
**SAINT PETERSBURG, FLORIDA 33701**
**PHONE: 813.784.7003**
**EMAIL: LLW4ATTY@AOL.COM**

## QUALIFICATIONS

**Experienced attorney with strong background in real estate and contract law. Excellent in writing and presentation skills. Adapts quickly to new environments and has ability to handle multiple tasks. Detailed oriented and result driven. Ability to accomplish tasks through analysis and critical thinking. Pleasant personality who truly enjoys people. Works great with all types of personalities.**

## EXPERIENCE

### GUARDIAN AD LITEM ATTORNEY:

**1990s to current date: Appointed ad litem in real estate cases as guardian ad litem to research heirs/beneficiaries. Appointed by judges throughout the State of Florida.**

### SPECIAL MAGISTRATE:

**September 2018 to current date have been an appointed Attorney Special Magistrate in Pinellas, Manatee and Sarasota County, Florida.**

### GILBERT GARCIA GROUP

**October 2010 to July 2018, Managing Partner**

**Senior attorney for first legal. Supervises title team which consists of review of title for all foreclosure complaints, amended complaints, reforeclosures and title curative.**

**As part of the title curative process, I work with county Officials and the client(s) to resolve ad valorem taxation Issues involving scheduled tax deed sales, determination Of various lien priorities and homestead penalties Pursuant to Florida Statute 196.161.**

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

**LAW OFFICES OF DANIEL C. CONSUEGRA**

**June 2007 to September 2010, Senior Attorney.**

**Supervised all attorney hearings, including both outside counsel and in-house hearings.**

**Supervised complaint team and reviewed title for all complaints.**

**Reviewed and resolved title issues, including supervision of all title claims.**

**LAW OFFICES OF LAURA LAYNE WALKER**

**Private practice specializing in real estate, Business law, family law and probate.**

## EDUCATION

**STETSON UNIVERSITY COLLEGE OF LAW**

**Juris Doctor (cum laude)**
**Graduated cum laude**
**Dana Scholar Scholarship Recipient for all but one (1) semester in law school. Dana Scholar Scholarship reimbursed tuition for any student who obtained a 3.5 GPA**

**UNIVERSITY OF SOUTH FLORIDA**

**Bachelor of Arts in Accounting**
**Graduated cum laude**

## BAR ADMISSIONS AND ACTIVITIES

**Member, State Bar of Florida**
**Member, Middle District of Florida**
**Member, Hillsborough County Bar Association**

## REFERENCES

**Available upon request.**

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# WRITING SAMPLE

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

**Pinellas County Clerk of Court and Comptroller**
Value Adjustment Board
Board Records Department
315 Court Street, 5th Floor
Clearwater, Florida 33756
Telephone (727) 464-3458
Fax (727) 464-4716

Email:Clerk.VAB@mypinellasclerk.org

## Transfer of Homestead Assessment Difference

| PETITION: | PARCEL: | PETITION TYPE: | HEARING DATE: |
|---|---|---|---|
| 2020-1242 | [redacted] | Transfer of Homestead Assessment Difference | 1/29/2021 9:00:00 AM |
| **OWNER NAME:** | **MAGISTRATE:** | **NOTICE NAME:** | **DOR USE CODE:** |
| [redacted] | Laura Walker | [redacted] | 0110 |

**NOTICE NAME:** [redacted]

**Magistrate Recommendation Code:**

DENIED: 5 - Denied by Special Magistrate at Hearing & after Tax Roll

| COUNTY VALUES | TRIM VALUES | BEFORE ACTION | AFTER ACTION |
|---|---|---|---|
| 1. MARKET VALUE | 514,366.00 | 514,366.00 | 514,366.00 |
| 2. ASSESSED OR CLASSIFIED USE VALUE (if applicable) | 410,906.00 | 410,906.00 | 410,906.00 |
| 3. EXEMPT VALUE | 50,000.00 | 50,000.00 | 50,000.00 |
| 5. TAXABLE VALUE | 360,906.00 | 360,906.00 | 360,906.00 |

**Exemption, Classification, or Assessment Difference Transfer**

| | | | |
|---|---|---|---|
| Homestead | Widow/er | Blind | Totally and permanetly disabled veteran |
| Low income senior | Disabled | Disabled Veteran | Use classification, specify: |
| Parent/grandparent assessment reduction | | Deployed Military | Use exemption, specify: |
| Transfer of homestead assessment difference | | | Other, specify: |
| Qualifying improvement | | Change Of ownership or control | |

FINDINGS OF FACT AND CONCLUSION OF LAW

Findings of Fact:

Present at the hearing was the Petitioner, [redacted] appeared on behalf of himself and his Wife, [redacted], the Petitioners. [redacted] appeared via telephone. Present on behalf of the Property Appraiser's office was staff attorney Alex Luca and Ms. Meera Jattansingh All parties were sworn in by the Special Magistrate prior to providing the testimony. [redacted] is petitioning as he is objecting to the value of the portability transferred from Hillsborough County to Pinellas County in 2019. The taxpayer values were verified. The taxpayer information sheet was reviewed on the record. [redacted] were granted homestead exemption and the portability transfer from Hillsborough County in 2019. The Petitioners are currently receiving the homestead exemption and Save Our Homes cap in 2020 in relation to their current property in Pinellas County, Florida. The property address and parcel number in relation to the Hillsborough County Property is: [redacted]

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

The property address and parcel number in relation to the Pinellas County property is:
[redacted]3

Petitioner completed a homestead exemption and portability application on January 31, 2019 with an occupancy date of November 11, 2018. On the application [redacted] listed the prior home located in Hillsborou County, Florida with an address of [redacted]. The Hillsborough County, Flori property was sold on June 4, 2019.
Hillsborough County provided a Certificate for Transfer of Homestead Assessment Difference (DR501RVSH) to Pinellas County. The Certificate of Transfer of Homestead Assessment Difference lists a homestead just value o $340,236 and a homestead assessed value of $268,660. In addition, the Certificate of Transfer of Homestead Assessment Difference states that the applicant did in fact received a homestead exemption in either of the la two years and that the most recent year the exemption was received was in 2018. The Certificate for Transfer o Homestead Assessment Difference is dated March 6, 2019.
On September 18, 2020, the Petitioners filed a Petition to the Value Adjustment Board Transfer of Homestead Assessment Difference and Request for Hearing. Petition Number 2020-1242.
In support of their case the Property Appraiser submitted the following documents which the Special Magistrate admitted into evidence as the P.A's Composite Exhibit A:

2020 Property Record Card;
2020 TRIM Notice;
Florida Statute 193.155; 194.011; 194.032; 200.069; 193.122;
FAC 12D-9-028 Petitions on Transfer of "Portability" Assessment Difference;
FAC 12D 9-015 Petition: Form and Filing Fee;
FAC 12D-8-021 Procedure for the Correction of Errors of Property Appraisers;
Quit Claim Deed found in Official Records Book 20315, Page 1026 with a notarized date of October 24, 2018;
Email correspondence with the Petitioner;
Certificate for Transfer of Homestead Assessment Difference dated March 6, 2019;
Value Adjustment Board Notice of Hearing to Petitioner regarding Transfer of Homestead Assessment for Petition Number 2020-1242;
Petition to Value Adjustment Board Transfer of Homestead Assessment Difference Request for Hearing.

Ms. Jattansingh stated that pursuant to Florida Statute 194.011(3)(d); 193.122; 194.032; and Fla.Admin.Code 12I 9.015(10), the Value Assessment Board is authorized to hear disputes relating to the current tax year, not pri years. Specifically, the Value Assessment Board is granted specific power to review prior year values only in the context of corrections or back taxes.

As to timing, Ms. Jattansingh stated that any Petition filed with the Value Assessment Board must be in a substantially the form prescribed by the department pursuant to Florida Statute 194.011(3) and must be filed, to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided by statute (TRIM notice). See Florida Statute 194.011(3)(d).

Florida Administrative Code 12D-8.021(2)( c) is titled Procedure for the Corrections of Errors by Property Appraisers. This section details that the Value Assessment Board may not correct assessments from previous years, however, and the property appraiser may issue a certificate as provided by in this rule section. Ms. Jattansingh testified that therefore the limitations placed on the Value Assessment Board is only as it relate to the current 2020 tax roll.

Ms. Jattansingh testified that the Petitioners were entitled to have the Pinellas County property assessed at less than just value as they met the criteria of a person who establishes a new homestead and has received a homestead exemption as of January 1 of either of the 2 immediately preceding years.

The information provided by the Hillsborough County Property Appraisers office pursuant to the Certificate for Transfer of Homestead Assessment Difference indicates that the Petitioner did in fact receive a homestead exemption in either of the last two years and additionally that the property will be reassessed at the just value as of January 1, 2019. The Hillsborough County Property Appraiser than listed in Box 1 that that the homestead just value is $340,236 and the homestead assessed value to be $268,660. The values listed herein relate to the 2018 tax year, which is stated in the DR-501RVSH as the year that the last homestead exemption w received.

The Petitioner, [redacted], testified that he and his wife [redacted] purchased the house at [redacted] in 2011. In 2018 he and his wife were expecting their third child and therefore purchased a home in Pinellas County located at [redacted]da. The purchase price in October of 2018 was $525,000.

[redacted]s did not sell their Hillsborough County home until June of 2019. The sale price was $435,000.

The Petitioners presented as evidence a two page correspondence addressed to the Value Assessment Board with a attached one page chart.

The Petitioners believe that with only a 16% increase in the sold price ($435,000) and the new purchase price ($525,000), the Petitioners do not believe that their property taxes should have increased by 55%. It was the testimony of [redacted] that he believes that his portability amount should have been calculated to be $149,946. See Petitioner's chart on Page 3 and Petition Number 20-1242.

The evidence and testimony were all admitted, relevant and credible.
At the conclusion of the hearing the Special Magistrate informed the parties that she would be taking the mat under advisement to review the testimony given, the documents submitted into evidence, and the applicable lega authority.

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

The Special Magistrate has reviewed the testimony of the parties, the documents admitted into evidence and the applicable Florida law and makes the following findings:
The Special Magistrate finds that the Petitioners filed a homestead exemption and portability application on January 31, 2019. The application involved properties in Hillsborough and Pinellas County, Florida. The Petitioners are seeking an adjustment of the calculated homestead and portability amount based on their application filed on January 31, 2019 in regard to portability of the Save Our Homes transfer from their Hillsborough County, Florida property to their subsequently purchased Pinellas County, Florida property in 2019. Based on that 2019 application, the Petitioners were granted homestead and a portability transfer from Hillsborough County in 2019. Said granting of homestead exemption and portability was granted based on the DR-501RVSH received by the Pinellas County Property Appraiser in 2019. The Hillsborough County Property Appraiser listed the Homestead Just Value as $340,236 and the Homestead Assessed Value as $268,660. This resulted in a portability amount of $71,576. The Hillsborough County Property Appraiser found that the Petitioners did in fac receive a homestead exemption in either of the last two years and that the most recent year that the homestead exemption was received was in 2018.
The Special Magistrate notes and hereby finds that for the current 2020 tax roll, the Petitioner's are receivir a Save Our Homes cap of $103,450.
It is the conclusion and finding of the Special Magistrate that the Petitioners are seeking an adjustment of th portability amount of $71,576.00 calculated in 2019 and based on the 2018 property values and believe that the portability amount of $71,576.00 should have been greater when calculated in 2019 and believe that the portability amount should have been calculated at $149,946 rather than the calculated amount of $71,576.
The Special Magistrate hereby finds that the Petitioner's have failed to prove by the preponderance of the evidence that the 2020 Value Adjustment Board has authority to modify the portability calculations from a 2019 tax roll. As detailed herein, the current Value Assessment Board only has the authority to hear disputes relating to the current tax year, not prior years. Therefore, the Special Magistrate is recommending a denial c the petition.

CONCLUSIONS OF LAW:

Fla.Admin.Code 12D-9.028(2) states that "A Petitioner may file a petition with the value adjustment board, in the county where the new homestead is located, to petition either a denial of a transfer or the amount of the transfer on Form DR-486PORT. Such petition must be filed at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes as provided in Section 194.011 F.S.
The Special Magistrate finds that the Petitioners filed their homestead exemption and portability application c January 31, 2019. The application involved property in Hillsborough and Pinellas County, Florida. The Petitioners were seeking homestead and portability from their Hillsborough County, Florida property to the subsequently recently purchased Pinellas County, Florida property.
In response to said application, the DR-501RVSH was received by the Pinellas County Property Appraiser in 2019. The Hillsborough County Property Appraiser listed the Homestead Just Value as $340,236 and the Homestead Assessed Value as $268,660. This resulted in a portability amount of $71,576. ($340,236 less $268,660). The Hillsborough County Property Appraiser found that the Petitioners did in fact receive a homestead exemption in either of the last two years and that the most recent year that the homestead exemption was received was in 2018.
Florida Statute 194.011(3)(d) states that "The Petition may be filed, as to valuation issues, at any time durin the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provide in subsection (1).
Florida Statute 193.155 titled HOMESTEAD ASSESSMENTS, states in Paragraph 8 that "Property assessed under this section shall be assessed at less than just value when the person who establishes a new homestead has received homestead exemption as of January 1 of either of the 2 immediately preceding years.
Florida Statute 193.155(8)(a) states that "If the just value of the new homestead as of January 1 is greater than or equal to the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the immediate prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this section."
The Value Assessment Board is only authorized to hear disputes relating the current tax year, not prior tax years. See Florida Statute 193.122; 194.011(3)(d); 200.069 and Florida Admin. Code 12D-9.015(10). The relevant and credible evidence establishes that Petitioners are seeking to dispute amounts from the 2019 tax roll and nc the current 2020 tax roll.

The Special Magistrate finds that the Petitioner's have failed to prove that the Value Adjustment Board has authority to modify the portability calculations from a 2019 tax roll. As detailed herein, the current Value Assessment Board only has the authority to hear disputes relating to the current tax year, not prior years. Therefore, the Special Magistrate is recommending a denial of Petition 2020-1242.

Worksheet completed on 2/10/2021 2:20:38 PM by Bernie Y

**Optional:**

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

State of Florida )
County of Leon )

In Re: 0509434
Laura Layne Walker
Law Offices of Laura Layne Walker
199 Dali Blvd Unit 902
Saint Petersburg, FL 33701-3991

I CERTIFY THE FOLLOWING:

I am the custodian of membership records of The Florida Bar.

Membership records of The Florida Bar indicate that The Florida Bar member listed above was admitted to practice law in the state of Florida on **October 25, 1985**.

The Florida Bar member above is an active member in good standing of The Florida Bar who is eligible to practice law in the state of Florida.

Dated this 11th day of **June, 2021**.

Cynthia B. Jackson, CFO
Administration Division
The Florida Bar

PG:R10
CTM-138260

Attachment: WalkerAtty_Appl (15112 : Selection of Special Magistrate(s) for Exemptions, Classifications, and Portability Difference Trans)

# Florida Department of Revenue

Certificate of Training

## Laura L. Walker

has received

## 2020 VAB Attorney Special Magistrate Training

on

07/16/2020

FLORIDA

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
- ☑ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: Lawrence J. Golicz, Ph.D., MAI, ASA Email: lgolicz@tampabay.rr.com
Business Name: Vista Appraisal Services, Inc.
Home Address: 5738 West Hunters Ridge Circle, Lecanto, FL 34461
Business Address: same
Phone: Home/ 352-527-2677 Business/ same Cell/ 352-287-1903 Fax: none

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: RZ2860 Valid Thru: 11/22
How many years of experience do you have in the area of real property valuation: 44
How many years of experience do you have in the area of tangible property valuation: 34

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to F.S. § 194.035.*

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. **Do not submit a copy of an appraisal as a writing sample.**

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

See Resume



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

See Resume

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

Extensive experience as a Special Magistrate, 10 years as an Assessor, Expert witness.
See Resume

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | 1978 | 5832 |
| American Society of Appaiser | ASA | 2013 | 7034 |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

Five years with 200 hours of examination clasess, two demonstration reports, final exam, work credit review, and continuing education credit over 1,000 hourse. See resume.

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:

Machinery and equipment for a cement manufacturing plant, 10 years of personal property roll for City of Lake Geneva, mfg. plants for funiture, auto parts, tool and die shops, car dealerships, restaurants retail store fixtures, See Resume



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
## VALUE ADJUSTMENT BOARD
(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | All types from modulars to mansions. Apts. Condos, |
| COMMERCIAL REAL PROPERTY | All types from retail, industrial, office, medical, |
| TANGIBLE PROPERTY | machinery and equipment, furnishings, flixgtures, |
| OTHER (PLEASE SPECIFY) | land fills, quarries, harbors, canals, marinas, power plants. |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

Elks Club of Homosassa

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Forty plus years of desk top software with Microsoft.

13. List any additional information which makes you qualified to serve as a special magistrate:

See Resume



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
## VALUE ADJUSTMENT BOARD
(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Lawrence J. Golicz Date: 4/4/21
Signature of Applicant

LAWRENCE J. GOLICZ
Printed Name of Applicant



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

APPRAISAL INSTITUTE

# MEMBERSHIP CERTIFICATE

*This Certifies That*

## *Lawrence J. Golicz*

*was admitted to membership in the American Institute of Real Estate Appraisers as an* ***MAI Member*** *(5832) on the 8th day of May, 1978 and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

PRESIDENT

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP.





Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# American Society of Appraisers

ASA
American Society of Appraisers
Providing Value Worldwide

*The Society's Board of Examiners Certifies That*

## *Lawrence J. Golicz*

*Is hereby awarded the designation*

*Accredited Senior Appraiser*

*Real Property / Real Property (All Property Types)*

*and is entitled to use the designation in accordance with the society's bylaws and administration rules.*

*Signed, Sealed and Attested*
*This 14 day of June 2013*

*International Secretary/Treasurer*

*This certificate is the property of the American Society of Appraisers and must be returned to the International Office upon membership termination.*



*International President*

Ron DeSantis, Governor

Halsey Beshears, Secretary

Florida dbpr

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

**GOLICZ, LAWRENCE JOHN**

5738 W HUNTERS RIDGE CIRCLE
LECANTO FL 34461

**LICENSE NUMBER: RZ2860**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Present for Petition 94 and 96 is Petitioner by telephone conference arrangement, Property Tax Professionals, represented by Mr. John McDonald, for Kingwood Crystal River Resort Corporation, and in person with County Appraiser Mr. Herb Mack in company with Mr. Timothy Renard providing testimony at this hearing on November 18, 2020. All are duly sworn. The County Appraiser first provides evidence and testimony after which Petitioner provides a package of assumed evidence on the subject and no testimony, claiming to withhold comment and rebuttal until all parcels under consideration have been heard. This does not eliminate the need for Petitioner to provide specific comments to the subject property's value. As the Petitioner fails to specifically identify for this hearing any evidence in his package regarding this parcel by and of itself, Petitioner fails to show with a preponderance of evidence that the making of the subject assessment did not meet the standards of F.S. 193.011. As such, the Magistrate hears the testimony of the County Appraiser to show his meeting of the standards of appraising as required in by F.S. 193.011

The subject property includes two parcels combined to represent a nine hole executive course called the Lagoon built in 1957. It is tied into the eighteen hole site with access to the Driving Range, Putting Green, Tennis Courts, Restaurant with Beverage Service, Pro Shop, and Maintenance, Offices and Cart Storage Buildings. Located at 9453 West Plantation Lane in Crystal River, the course site contains 60.73 acres zoned CH intense commercial and is contoured, graded and improved with greens, fairways, irrigation, sand traps, water hazards and rough areas including trees, shrubs and bushes along the fairways and cart paths. The course is designed as a par 33. There are no buildings on this site. Sprinkling is provided by pond water. The overall site shape is irregular, level with a high water table and is well contoured for play with good access and shared parking at the 18 hole site. Evidence added by the Petitioner for this analysis indicates that the subject site is fully contaminated with Arsenic to a depth of two feet and for any change in use requiring human habitation, it is assumed it would require a clean-up.

County Property Appraiser presented a cost, market and income approach. County Appraiser notes that the contamination, sourced by fertilizer and pesticides over the years, do not affect the current use of the subject as a golf course. Moreover the water table is not contaminated with soluble arsenic; therefore blooming of contamination to other properties is not indicated in the report. As such the following appraisal reflects its current use, not the County Appraiser's discovery of a proposed conversion of the site, after clean-up, into a quality campground likely sited for over 55 owners of RV's, campers, and single and double wide modular housing, all of which would elevate the value of the land significantly being next to an eighteen hole course. As such County Appraiser remains certain of the following value conclusion as being relevant as used today. All approaches included supporting documentation in accordance with the 8 factors of value per FS 193.011 are considered by the Property Appraiser in the following manner.

1) Present cash value: This is the price a buyer would pay for a fee simple property in a hypothetical sale, after deducting 15% for factor 8 including non realty items and the cost of sale. With arms length sales, the Property Appraiser also provided a value estimate by comparison of recently sold competitive properties of vacant land for the subject. As required by FS 193.011 Factor 8, the value estimate was

Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

adjusted downward for the costs of sale including personal property. Both the cost and income approaches were also adjusted downward for this reason.

2) Highest and best use: County Property Appraiser identified and valued the subject property as a mixed use site improved for recreation as a golf course. As operating, the current use is represented as the highest and best use with other potential uses available as if vacant.

3) Location: The County Property Appraiser reviewed the location of the subject with a map relative to its neighborhood, access and complimentary uses in an area of similarly aged and developed industrial property uses. The subject location was similarly considered in the cost, sales and income approaches.

4) Quantity or size: The County Property Appraiser properly described the size of the subject property by land and building area relative to the cost, sales and income approaches.

5) Cost and present replacement value: The County Property Appraiser provided a detailed cost approach with site improvement costs a replacement cost new and supporting documentation, including land sales.

6) Condition: The County Property Appraiser provided a description of the condition of the subject property, properly taking into account its age relative to market comparables for rents and sales.

7) Income: The County Property Appraiser's income approach for the petitioned property is provided with the pro forma income and expense with capitalization of the net income. Rental data or expenses reflect market data collected and utilized by the County Appraiser, and considered appropriate and adequate supporting documentation for a Just Value conclusion.

8) Net proceeds of sale: The County Property Appraiser adjusted the cost, sales and income approaches with this factor as required by F.S. 193.011.

The County Property Appraiser presented evidence supporting the valuation of this property readily taking into account the declining market conditions for rounds played nationally as well as in Florida and Citrus County, noting a reduction in the current assessment relative to 2019. The Just Value is based upon an adjusted cost approach at $515,482, an adjusted sales approach at $515,482, and an adjusted income approach at $607,538. The County Property Appraiser then concluded upon a Just Value of $516,400, when divided by the two parcels equally, amounts to $258,200 for Petition #94 and $258,200 for Petition #96.

Petitioner failed to present any analysis for an indication of value for the subject. Petitioner's package of evidence, however, does include the details of an environmental study indicating the subject site contamination. Yet this evidence and a collection of articles on going concern valuation, manuals issued by the State of Florida, a list of sold golf courses country wide, and a summarized, not departmentalized operating statement for the entire eleven parcel property, and a one page income approach valuing the subject complex as a whole, does nothing to indicate the value of the subject property.

Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

It is this Magistrate's conclusion that the Petitioner's lack of concern about the detail of the subject property along with a lack of evidence to provide a value for this valuable component property of a large complex of multi-uses indicates, demonstrates a lack of competence and awareness regarding this assessment and a Just Value consideration. As promised, after all of the hearings, Petitioner claimed a loss in value for this course and that the assessment was too high because of the contamination, again without any kind of stigma analysis required for an adjustment. The County Appraiser responds that the subject assessment has been lowered from the previous year for the decline in the golf industry based upon local course information provided by the owners, except for the subject owner, and that the current use is not interrupted. The Petitioner's consultant recommends a cost to clean-up the contamination at plus or minus $900,000 to $1,000,000, which far exceeds the return to the land as used, thus making a clean-up unfeasible and unnecessary for the current use as assessed. The Petitioner's shot gun evidence and lack of detailed analysis and testimony lacks sufficiency, credibility, and suitability for a conclusion of Just Value. As such, Petitioner has failed to provide a preponderance of evidence to overcome the County Property Appraiser's Just Value. The Special Magistrate recommends a denial of this appeal by the Petitioner to the Valuation Adjustment Board.

Per the requirements of F.S. 193.011 and F.S. 194.30, Special Magistrate has found that the County Appraiser has provided sufficient, relevant, and credible evidence to reasonably support the County Appraiser's conclusion of a Just Value for the subject property, including a cost of sale adjustment provided by law in the 8th factor in F.S. 193.011. Petitioner failed to show with a lack of relevant evidence to overcome the property appraiser indication of Just Value per the criteria in F.S. 193.011; therefore, Special Magistrate recommends denial of the relief requested by Petitioner. This decision is being issued in order that any right the Petitioner may have to bring an action in circuit court is not impaired. (Rule 12D-9.021 (6) & (8), F.A.C.)

Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)



Experience, Integrity, Service



LAWRENCE J. GOLICZ, Ph.D., MAI, ASA
President, Vista Appraisal Services, Inc.
**Florida – State Certified General Real Estate Appraiser RZ2860**
**Michigan – State Certified General Real Estate Appraiser 1201000600**
**Updated August 2020**

## HIGHER EDUCATION:

| | | |
|---|---|---|
| Henry Ford Community College<br>Dearborn, Michigan | A.A. | 1962 - 1964 |
| University of Michigan<br>Ann Arbor, Michigan | B.A. | 1964 - 1966 |
| Washington State University<br>Pullman, Washington | M.A. | 1966 - 1968 |
| University of Maine<br>Orono, Maine | Ph.D. | 1968 – 1973 |
| University of Wisconsin<br>Center for Demography and Ecology<br>Madison, Wisconsin<br>(Non-Degree, Training and Dissertation Research) | | 1970 - 1972 |

## HONORS CONFERRED:

Michigan Board of Regents Scholarship, 1964 - 1966, University of Michigan

Phi Alpha Theta (National Honor Society), Washington State University

Graduate School Trustee Scholarship, University of Maine, 1969 - 1972

Assistantships, University of Maine and Washington State University, 1967 - 1970



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Research Training Grantee, Social Science Research Council, New York, 1970 - 1971

Biography, Who's Who in Finance and Industry; Who's Who in the Midwest; Who's Who in the World; Men of Achievement, and Marquis Who's Who 2018.

## ACADEMIC CONTRIBUTIONS

**Founder and Editor**, Talos, a Graduate Student Journal, University of Maine, 1969.
Two Papers Presented, Population Association of America, 1972
On Patterns of Urban Growth and Regional Development in the United States.
Funded Research , The National Archives, Washington D.C., 1971.
Paper Presented on the Design & Development of a Population Estimation Program for the State of Wisconsin, 1972.
Dissertation research and writing at UW w/ IBM 360 On Population Growth of Cities and Economic Value Added (US 1860-1910) A multiple regression analysis of US Census Data.

## PROFESSIONAL DESIGNATIONS & LICENSES

Appraisal Institute
Designated Member MAI, 1978
Society of Real Estate Appraisers (Merged with American Institute of Real Estate Appraisers) Senior Real Property Appraiser SRPA, 1976
State of Michigan
State Certified General Real Estate Appraiser 1201000600
State of Florida
State Certified General Real Estate Appraiser RZ 2860
American Arbitration Association
Real Estate Construction
Federal National Mortgage Association
Appraiser #1110175-Level Two
Resolution Trust Corporation
Approved for Appraising Distressed Real Estate Owned by Savings and Loans in Bankruptcy
American Society of Appraisers, ASA, Senior Real Property Appraiser, 2013

## PAST PROFESSIONAL LICENSES AND CERTIFICATIONS

States of Wisconsin, Ohio, Indiana- Certified General Appraiser



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

State of Wisconsin Real Estate Broker (1973-1990)
State of Wisconsin **Assessor** II (1978-1990)
State of Michigan Real Estate Broker and Appraiser (1990-2002)
State of Wisconsin, Demographer, Department of Administration (1972-73)

## PROFESSIONAL POSITIONS

**Special Magistrate** for Real Estate, Valuation Adjustment Board, Lee County, Florida, 2006-10; Special Magistrate for Real Estate, Clearwater, Pinellas County 2010-19. Special Magistrate for Tangible Personal Property, Value Adjustment Board, Brooksville, Hernando County, Florida, 2008. Special Magistrate for Sumter County for Real Estate and Tangible Personal Property, 2008-2012. Consultant to Citrus County Property Appraiser, 2011-2014, Magistrate for Citrus County 2017, 2019. Special Magistrate for Seminole County, 2018-2019.

**Chair of Executive Committee, Designated Appraiser Coalition (DAC), 2011-2021**. Principle, NAI Tampa Bay Commercial Real Estate Valuation Services, Seminole , Florida, 2009-2010. Senior Appraiser, Herr Valuation Advisors, Inc., Tampa, Florida 2007 to 2008.

Chief Commercial Appraiser, ValueNet Appraisers, Inc. 2005-2007
Sarasota, Florida.
President, Manhattan Appraisal Group, 1992-2004
Detroit, Michigan.
Head, Appraisal Department, Lambrecht Company, 1990-1992
Detroit, Michigan.
President, American Appraisal & Feasibility Corp., 1973-1990
Madison, Wisconsin.
President, Total Realty, Inc. Madison, Wisconsin 1973-1990.

**Assessor**, City of Lake Geneva, Wisconsin, 1980-1990
Assessor, Village of Cambria, Wisconsin, 1980-1990

**Mass Appraisals** for Ad Valorem Taxation, 1978-1985, Town of Windsor, City of Lake Geneva, City of Monona, Town of Berry, Town of Rock, Village of Cambria, City of Monroe all in Wisconsin
Demographer, Department of Administration, State of Wisconsin, 1972-73
Madison, Wisconsin

**Part Time Teacher** Madison Area Technical College, 1973-75
Part Time Teacher, University of Wisconsin School of Business, 1973-74

## APPRAISAL EXPERIENCE:



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Active for forty six years appraising real estate, including mass appraisal, feasibility studies, appraisal of personal property, machinery and equipment, business valuations and valuations dependent on special purpose real estate, in several states in the Midwest with national interstate assignments for shopping centers, recreation properties, manufacturing facilities, and special purpose property.

Appraised commercial, industrial, residential, and agricultural properties of all types, vacant and improved, from dairy farms to subdivision developments to shopping malls to office buildings. Provided feasibility studies for apartment complexes, branch bank locations, clinics, and condominium developments.

Special purpose appraisals include an oil refinery for tangible personal property, an engine plant for real estate, a nuclear power plant for tangible personal property, real estate of the seventh largest power complex in the US, real estate of water and sewer utilities and real property of the major automotive technical centers including the GM Technical Center and the Chrysler Technical Center, foundries, metal stamping facilities, cement plants. real estate for power distribution coops, and plastic molding plants nationwide. Appraised easements of all types including rail corridors, power corridors, and pipeline corridors as well as caves, open pit mines, quarries, harbors and canals, and licensed land-fills.

## PARALLEL EXPERIENCE IN REAL ESTATE:

**Property management** of apartments, office buildings, a warehouse, and residential special care facilities. **Property development** includes construction and management of congregate care residential facilities for physically and mentally handicapped, conversion of a nursing home to assisted living for 110 residents, construction and conversion of three office buildings, a warehouse, and apartments. **Financing experience** involves mortgage brokerage, and acting as financing agent and manager of five real estate partnerships. **Construction experience** includes management of construction for an office building, conversion of a warehouse to a mini warehouse, conversion of a school to offices, conversion of a Bell Telephone Switching Building to offices, conversion of a nursing home to assisted living, and conversion of single family dwellings to handicap code for handicapped residents with special living quarters. Acted as a part time **real estate broker** including leasing, listing, and selling commercial real estate.

**Defended assessments** in circuit court, before the Board of Review, and before the State Supreme Court of Wisconsin as well as the Michigan Tax Tribunal. **Court testimony** and depositions in real estate appraisal also include bankruptcy in federal court, testimony in condemnation proceedings, appraisals and testimony before the IRS.



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Trained and appointed by the American Arbitration Association for **arbitration** on a panel of three for construction claims. Hearing experience includes appointed as a special magistrate for Valuation Adjustment Boards over tax appeals in Florida providing briefs and recommendations for the Board on assessments.

**Teaching** in real estate appraising includes evening instruction for the Madison Area Technical College in real estate, finance, law, planning, appraising and brokerage from 1973 to 1975. Taught Society of Real Estate Appraisal courses for the University of Wisconsin Business School Extension including SREA 101 and 201 courses in residential and income property appraising from 1973-74. Recent courses taught for the ASA include the appraisal of golf courses in 2013-2014 and hotel motel appraising.

Professional contributions in real estate include articles published in the **Appraisal Journal**, and active participation in the Appraisal Institute as a member of its **Board of Directors** and several committees. Served on the chairs for the Wisconsin chapter of the SREA, the Board of Directors of the Wisconsin Chapter of the Appraisal Institute, and served as regional representative for the Michigan chapter of the Appraisal Institute. Represented the Appraisal Institute's **Ethics Committee** for the State of Michigan. Currently serve on the Real Property Committee of the American Society of Appraisers and formerly as a director on the ASA Educational Foundation. Also **served** as a member of Florida's Region X for the Appraisal Institute and as a member of the Appraisal Institutes **Leadership Development and Training Committee as well as a special reviewer for ASA online course developments.** Contributed articles to the American Society of Appraisers E Journal for Real Estate on hotels & motels and served as the editor for the EJournal. Acting as a course reviewer for developing online appraisal courses for the ASA as well as serve on the Education Committee.

Presented papers at the national meetings of the International Association of Assessing Officers, **American Society of Appraisers**, the National Association of Realtors, and the Appraisal Institute Symposia. Appeared as a guest speaker at appraisal chapter meetings, public forums, attorney bar associations, and before the chartered life underwriters. Presented a paper at the **Thai Appraisal Foundation** Conference, Bangkok, Thailand, Valuing Infrastructure, 2007. Presented a paper at the September **2008 Pan Pacific Congress of Real Estate Valuers and Consultants** in Seoul, S. Korea, regarding the valuation of water parks. Co-presented in 2011 an Appraisal Institute sponsored **Webinar** on Fair Value Applications. Presented an Appraisal Institute Webinar in April 2012 on Impairment Valuation. Co-presented a paper on the valuation of power plants for the American Society of Appraiser in July 2012. Presented a paper at the American Society of Appraisers Conference in 2013 on appraising golf courses. Co-presented a session on Insurance Valuation at the Appraisal Institute Conference in 2013. Presented a Power Point on the Cost Approach for Appraising Casinos, ASA Conference, 2015.



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Presented a Power Point of Appraising Big Boxes, 2018.

## EXPERIENCE OUTSIDE OF REAL ESTATE:

**Demographer**, the State of Wisconsin 1972-73
(Developed Population Estimation Program for Revenue Sharing -Upheld by the State Supreme Court in Milwaukee v. State of Wisconsin.)

**Developer, Owner, Operator, Protel Games**, 1983-1988. Developed a chess-like board game named Pharaoh's Quest which was awarded the Parents Choice Seal of Approval for 1983. The game was translated into French and German. Sold over 10,000 copies in US, Canada, and Europe. Designed and implemented game board prototype and production, marketed the game and managed game sales and distribution. Presented a pewter set to the Egyptian Ambassador in Washington D.C. and was granted the privilege of game sales at all King Tut traveling exhibits in the U.S.

**Finance Committee**, Good Shepard Lutheran Church. Contributed to negotiation and sale of excess land for assisted living project sponsored by the Lutheran Brotherhood.

**Member Japanese American Society** of Detroit and Windsor. – Participated in the development of joint cultural and economic interaction between Japanese officials and automotive manufacturers and American businessmen. Awarded 1st Prize for Haiku Poetry Submission to judging panel in Yokohama, Japan.

**Good Will Citizen Ambassador** to Russia and China in People to People Citizen Ambassador Program. Offered advice and organizational frameworks for mass appraisal techniques for ad valorem taxation and for independent fee appraisal. Met with officials of cities and regional government.

**Board of Directors**, Polish American Society, Warren, Michigan. Worked to promote membership, develop budgets, update the by-laws, and assist in the negotiation, sale, and development of excess land with uses that complimented an architecturally significant hall.

**Author,** published a book of poetry on Amazon. Published a children's book on Lulu, A Fish Called Bad Eyes. Currently completing editing for an adult novel and publication.

## SPECIAL APPRAISAL AND REAL ESTATE RELATED COURSES:



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

A.I.R.E.A. & A. I.

Course IA, Principles of Valuation, 1973
Course II, Urban Properties, 1974
Course VI, Industrial Properties, 1975
Course IX, Rural Appraising, 1976
Business Valuation Seminar, 1978
Instructors Seminar, Indiana University, 1980
Feasibility and Highest & Best Use, 1991
Landfills and Their Effect on Value, 1991
Valuation for Litigation, Tufts University, 1990
Professional Standards, USPAP 1986,-90,-93,-98, -05, -07,-08 Current with Updates Per State Licensing.
Highest & Best Use Analysis, 1992
Computer Spreadsheets, 1992
Depreciation Analysis, 1993
Americans with Disabilities Act, 1993
International Appraising, 1993
Easement Valuation, 1994
Valuation of Cellular Towers, 2000
Urban Land institute, Real Estate Forum, 2000
Iowa Curves, Valuation of Fixtures, 2000
Valuing Commercial Vessels, 2000
Highest and Best Use and Market Analysis, 2001
Advanced Sales Comparison and Cost Approach, 2003
Uniform Relocation Assistance Act, 2005
Feasibility, Investment Timing, Option Value 2005
Analyzing Distressed Real Estate, 2005
Appraising Historical and Unique Residences, 2006
Appraising Condominiums and Cooperatives, 2007
Business Practices and Ethics, 2007
Introduction of GIS Applications in Real Estate 2007
Appraising from Blueprints & Specifications 2007
Environmental Pollution and Mold, 2007
Valuing High Value & Historic Homes, 2007
Valuing Infrastructure and Utility Properties, 2007
USPAP Update 2009
Valuation for financial Reporting, 2010
Appraising Distressed Commercial Real Estate 2010
Lease Accounting for Valuation 2011
Loss Prevention Program for Real Estate Appraisers 2011
Central Florida Real Estate Valuation Forum 2011
Case Studies in Appraising Green Residential Buildings, 2011
Overview of the US Hotel Industry 2012
Curriculum Overview-Residential 2012
Curriculum Overview General 2012
Business Practices and Ethics, 2012



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| | |
|---|---|
| S.R.E.A. | Course 201, Income Property Appraising, 1975<br>R-2 Exam, (Single Family), 1976<br>Course 301, Advanced Appraisal Techniques, 1977<br>Instructors Seminar, Purdue University, 1978 |
| I.A.A.O. | Valuation of Machinery and Equipment, 1982 |
| A.S.A. | Valuation of Machinery and Equipment, Level Two, Seattle, 1991<br>Gas Station Valuation, 2012<br>Power Plant Valuation, 2012<br>Shopping Mall Intangible Value 2012<br>Valuation of Religious Properties, 2013<br>Ad Valorem Mass Appraisal, 2013<br>The Appraisal Spreadsheet: Find the Adjustment 2013<br>Marrying Business and Tangible Assets, 2015<br>Going Concern Valuation 401 2019 |
| | L.I.L.U.P. Computer Systems and Property Valuation, Lincoln Institute for Land Use Policy, 1982 (Designated Master User of Institute Computer Mass Assessing Programs) |
| I.C.S.C. | University of Shopping Centers, Dallas, Texas, 1977 |
| U.W. EXT. | Property Management, 1975<br>Land Use Investment and Analysis, 1974<br>Real Estate Finance, 1976 |
| A.A.A. | Basic Commercial/Construction Arbitrator Training, 1991 |
| W.A.A.O. | Municipal Assessor's Institute, 1978 - 1989 |
| A.S.F.M.R.A. | Environmental Risk Seminar, 1993 |
| I.B.A. | Appraising Closely Held Businesses, 1996 |
| McKissock On Line | 2008-2009 National USPAP Update, 2009<br>Disclosures and Disclaimers, 2009<br>Appraisal Trends, 2009<br>REO and Foreclosures, 2009<br>Odd Properties, 2009<br>Appraising Distressed Commercial Real Estate<br>REO & Foreclosures 2011<br>Mortgage Fraud 2011 |



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2010-2011 National USPAP Update
Systems Built Housing, 2012
Regression Analysis for Appraisers, 2012
Deriving and Supporting Adjustments, 2012
2012-2013 National USPAP Update
Construction Details & Trends, 2013
7-hour Update USPAP 2012-2013
Michigan Appraisal Law 2013

McKissock Live

Nuts and Bolts of Condo Appraisal 2016
Florida Appraisal Oddities 2016
Exploring Appraiser Liability 2016
Appraising Complex Residential Properties
Florida Appraisal Laws 2016
USPAP UPDATE 2016-2017,2018-2019
Limited Scope Appraisals, 2018
Reviewing Residential Appraisals 2018
Appraising 2-4 Unit Properties 2018
Real Estate Damages After a National Disaster, 2018
USPAP UPDATE 2020-2021
Appraising 2-4 Units 2020
Desktop Appraisals: An Overview,2020
Estate Appraising, 2020
Property Inspection, 2020

Currently meet all Continuing Education Requirements for the Appraisal Institute, the American Society of Appraisers and the State of Michigan, and Florida.

**PURPOSE FOR WHICH APPRAISAL AND FEASIBILITY ASSIGNMENTS HAVE BEEN ACCEPTED:**

Ad Valorem Taxation
Mortgage Financing and Guarantees
Property Acquisition and Disposal
Foreclosure/Bankruptcy
Highest and Best Use/Planning and Land Development
Insurance Value to Replace
Market Analysis for Consumer Demand - Supermarkets, Banks, Clinics
Depreciation for Tax Purposes
Fair Market Value of Book Assets and Impairments
Review of Appraisals for Best Value Indication
Determination of Easement Value
Feasibility of Conversion or Rehabilitation
Condemnation - Voluntary/Jury Trial
Going Concern Valuation (Goodwill, Equipment, Inventory, Real Estate)



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Consulting on Investment Alternatives in Real Estate
Tax Appeal - Boards of Review, Michigan Tax Tribunal
Special Magistrate for a Value Adjustment Boards

## APPRAISALS OF REAL ESTATE INCLUDE THE FOLLOWING

**Residential**: Single family, historical renovations, mansion water front homes, condominiums, apartments, and unique architectural grade and earth homes, including unique locations and adverse conditions including site hazards and stigma.

**Land:** Acreage for dairy and crop farming, cattle raising, horse breeding, orchards, fish farms, and landscaping plats Other large scale uses include open pit mining for limestone, granite and marble and relevant mineral rights for oil and gas leases. Environmental .conservation for deed restrictions for special parcels apply to my experiences as well as numerous residential, commercial, and industrial developments, including special purposes such as landfills, power plants, sewer and water distribution, power corridors, rail lines, and automotive rights of way. And restrictive uses including coastal lands, harbors, water ways, lakes, wetlands, and swamps.

**Commercial:** Office buildings, restaurants, fast food, movie theatres, motels/hotels, resorts, shopping centers, malls, big box retailing, self storage, outlets, free standing store fronts, auto-trailer-rv-modular home dealerships, automotive repair garages, entertainment centers, exercise and athletic facilities, gas stations, drug stores, banks, taverns, including hospitals, clinics, and medical research facilities.

**Industrial:** Metal fabrication, cutting, bending, stamping, welding, tempering, and molding. Assembly, bodies, engines, paint lines automotive parts production, automotive plants, research facilities, manual and automated warehouses, large and small, oil storage facilities, refineries, tool and die shops, tv and radio towers and station facilities, terminals boat, truck, and rail, airport hangers and runway expansions, power plants, water and sewage treatment plants, landfills.

## APPRAISALS OF MACHINERY AND EQUIPMENT, FURNISHINGS AND FIXTURES

Total Oil Refinery, Alma, Michigan - Refinery with 55,000 Barrel/Day capacity. All refinery equipment, machinery, fixtures, furnishings, controls, etc.

Namasco Corp., Roseville, Michigan - Coil Steel Slitting and Blanking Plant 140,000 sf., seven lines, plus all other equipment, furnishings, and fixtures including computers.



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Kelsey Hayes Plant in Fayette, Ohio - Brake Rotor and Brake Assemblies
All furnishings, fixtures, and equipment in a 60,000 sf. plant.

Jervis Webb, South Lyon, Michigan - Consult on Equipment Value for a 180,000 square foot plant for assembly line and conveyor equipment for financing purposes.

Sushi-Iwa, Mazda Corp., Riverview, Michigan - Appraise Japanese Restaurant with all fixtures and furnishings for corporate purposes.
Grant-Durbin, Madison Heights, Michigan - Appraise high speed machinery and equipment, and furnishings and fixtures in a 20,000 sf. facility of an auto parts manufacturer.

CMI, Southfield, Michigan -- Consult with City of Southfield on Value Potential for production line equipment at two separate industrial facilities.

Danse Corporation, Madison Heights -- Appraise plastic injection molds for City of Madison Heights.
Vulcan Rock Cement Plant- Gainesville, FL -- Appraise all plant equipment.

Over the last 34 years the following types of fixtures appraisals were made:

| | |
|---|---|
| Amusement Parks | Hospitals and Clinics |
| Agricultural Implement Dealers | Meat Packing Plants |
| Bowling Alleys | Metal Working, Stamping, and |
| Breweries | Punching Facilities |
| Bulk Oil Facilities | Oil Refinery |
| Plastics Plants | Cement Plants |
| Whey Plants | Engine Plants |
| High Speed | Parts Production |
| Stamping Plants | Car Dealerships |
| Forging Mills | Casting and Mold Foundries |
| Restaurants | Cheese and Dairy Plants |
| Saw Mills | Concrete Batch Plants |
| Trucking Fleets | Concrete Casting |
| Maintenance & Repair Facilities | Educational Institutions |
| Wood Working Plants | Furniture Manufacture |

**CLIENTS**

Clients include federal, state, county and municipal governments, universities, housing authorities, law firms, banks, (in state and out of state), mortgage companies, REO Liquidations by Court Order, insurance companies, investment bankers, manufacturing firms, power companies, investment partnerships, corporate acquisitions, property developers, property owners and operators, estates, partnerships, and dissolutions.



Attachment: GoliczRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
  - ☑ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: Robert C. Hicks Email: robhicks65@gmail.com
Business Name:
Home Address: 4405 Charleston Court, Tampa, Florida 33609
Business Address: 4405 Charleston Court, Tampa, Florida 33609
Phone: Home/ 813 323 0403 Business/ 813 323 0403 Cell/ 813 323 0403 Fax: 813 254 5750

## LICENSURE / EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: N/A Date of Admission: N/A
How many years of experience do you have in the area of ad valorem taxation: N/A

**Appraiser Magistrate Applicant:** Residential Appraiser License #: N/A Valid Thru: N/A
General Appraiser License #: RZ1059 Valid Thru: November 2022
How many years of experience do you have in the area of real property valuation: 15 years
How many years of experience do you have in the area of tangible property valuation: None

## DOCUMENTATION REQUIRED

***Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.**

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

Florida State University BS in Real Estate, BS in Finance, Appraisal Institute MAI, Florida Association of R
Center of Florida Courts, Florida Department of Revenue Value Adjustment Board Certification Training 20



Attachment: HicksRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Hillsborough County since 2016, Sarasota County since 2017, Manatee, Pasco and Hernando Counties si

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

N/A

4. List any additional information which makes you qualified to serve as a special magistrate.

I have been working in the Tampa Bay real estate market since 1989 in valuation, property management, leasing and sales. I am a licensed Real Estate Broker, member of the Greater Tampa Association of Realtors, and State Certified General Real Estate Appraiser.

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | 07/12/17 | 115755 |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

MAI requirements attached

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

N/A

8. If applicable, describe experience you have appraising tangible property:

Limited experience



Attachment: HicksRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | moderate residential valuation experience |
| COMMERCIAL REAL PROPERTY | extensive valuation, leasing, sales and management |
| TANGIBLE PROPERTY | limited valuation experience |
| OTHER (PLEASE SPECIFY) | agriculture, mining, easements, submerged land, billboards |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Proficient in Excel, Word, Access, Wordperfect, Adobe, Axia and various mapping and deedplotting software

13. List any additional information which makes you qualified to serve as a special magistrate:

I have five years of experience (more than 880 hours) hearing VAB cases in six Florida counties and writing recommendations from vacant residential lots to the Ritz Carlton Sarasota and Desoto Land Mall.

Attachment: HicksRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: N/A

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Robert C. Hicks

Signature of Applicant Date: April 13, 2021

Robert C. Hicks

Printed Name of Applicant

Attachment: HicksRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# QUALIFICATIONS
# Robert C. Hicks, MAI

**APPRAISAL COMPETENCY**

Fee Simple Interest, Leased Fee Interest, Leasehold Interest, Condominium Interest, Going-Concern Value, Ground Lease, Utility/Access Easement, Conservation Easement, Corridor Valuation, Timeshare Estate, Fractional/Partial Interest, Insurable Valuation, Condemnation, Community Development Districts, Transfer Development Rights, Taxation

**PROPERTY TYPE PROFICIENCY**

Acreage, Agricultural, Assisted Living, Auto Dealership, Billboard, Borrow Pit, Church, Conservation, Estate, Governmental, Hotel/Motel, Industrial, Island/Coastal, Manufacturing, Marina, Multi-family, Multiunit Retail, Natural Resource, Office, Parking, Reservoir, Restaurant, Retail Store, Right-of-Way, Rock Mining, RV/MH Park, Salvage Yard, School, Self-storage, Subdivision, Submerged Land, Timberland, Timeshare, Wetland

**PROFESSIONAL EXPERIENCE**

Since 2011 – **State-Certified General Real Estate Appraiser**
*Senior Vice President, Trigg, Catlett & Associates*

Since 2016 – **Florida Certified General Appraiser Magistrate**
*Value Adjustment Board – Citrus, Hernando, Pasco, Pinellas, Hillsborough, Polk, Manatee & Sarasota Counties*

2015-2020 –**Certified County Court Mediator**
*Florida Supreme Court Sixth Judicial Circuit, Pinellas & Pasco*

2007-2018 – **Real Estate-Governmental Affairs Consultant** *Logan Outdoor Advertising, Inc.*

2007-2011 – **Commercial Real Estate Broker-Owner**
*Hicks Real Estate Brokerage & Investments*

2006-2007 – **Commercial Real Estate Broker**
*Vice President, Harris and Company, Inc.*

1995-2005 – **Vice President of Real Estate - Tampa Bay**
*Clear Channel Outdoor, Inc. f/k/a Eller Media, f/k/a Patrick Media*

1994-1995 – **Industrial Properties Leasing Agent**
*Grubb & Ellis of Florida, Inc.*

1989-1994 – **State-Certified General Real Estate Appraiser**
*DeLaVergne, Ellis, McKeon & Menard and McKeon & Stroud*

**PROFESSIONAL AFFILIATIONS**

MAI designation from the Appraisal Institute
National Association of REALTORS®
Florida Association of REALTORS®
Mid-Florida Regional MLS
Greater Tampa Association of REALTORS®

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**LICENSES & CERTIFICATIONS**

State-Certified General Real Estate Appraiser
Certification No. RZ1059 *since 1991 valid through November 30, 2022*

Licensed Florida Real Estate Broker
License No. BK534411 *since 1990 valid through September 30, 2022*

**GENERAL EDUCATION**

**Florida State University**
Bachelor of Science in Real Estate
Bachelor of Science in Finance

**SPECIALIZED EDUCATION**

**Florida Department of Revenue**
Value Adjustment Board Certification Training *annually since 2016*

**Florida Association of REALTORS®**
14-hours of Real Estate Continuing Education *biannually since 1988*
FAR/BAR Contracts *2005*
GRI Course 3 Real Estate Specialties *2005*
GRI Course 2 Advanced Residential Real Estate *1990*
GRI Course 1 Residential Real Estate *1989*

**Dispute Resolution Center of the Florida Courts**
16-hours of Continuing Education *biannually 2011-2020*
Florida Circuit Civil Mediation Training *2011*
Florida County Mediation Training *2011*

**Appraisal Institute**
Small Hotel/Motel Valuation *2020*
Florida Appraisal Law and Rules *2020*
2020-2021 Uniform Standards of Professional Practices Update
Valuation Impacts of COVID-19 *2020*
COVID-19 Rapid Response and Latest Developments *2020*
Business Practices and Ethics *2019*
General Appraiser Site Valuation & Cost Approach *2019*
Evaluating Commercial Leases *2019*
Analyzing Operating Expenses *2018*
Florida Appraisal Law and Rules *2018*
2018-2019 Uniform Standards of Professional Practices Update
Parking and its Impact on Florida Properties *2018*
Supervisor-Trainee Course for Florida *2018*
Florida Appraisal Law and Rules *2016*
2016-2017 Uniform Standards of Professional Practices Update
Value Adjustment Board Training *2016*
Trial Components: A Recipe for Success or Disaster *2016*
General Demonstration Report Writing *2016*
Quantitative Analysis *2015*
Advanced Market Analysis & Highest and Best Use *2015*
Advanced Concepts & Case Studies *2015*
Advanced Income Capitalization *2015*
General Appraiser Report Writing and Case Studies *2014*
Intermediate Regression Modeling *2014*
Florida Appraisal Laws and Regulations *2014*
2014-2015 Uniform Standards of Professional Practices Update

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Market Analysis and Highest and Best Use *2014*
Appraisal Business Practices and Ethics *2014*
General Market Analysis & Highest and Best Use *2014*
2012-2013 7-Hour National USPAP Update *2012*
Appraisal Of 2-4 Family Residential *2012*
Challenging Assignments for Appraisers *2012*
Foreclosure Basics *2012*
Florida Real Estate Appraisal *2012*
2010-2011 7-Hour National USPAP Update *2010*
Sales Comparison Approach *2010*
Supervisor/Trainee Role & Rules *2010*
Neighborhood Analysis *2010*
Florida Real Estate Appraisal License Law *2010*
Appraisal Principles in Residential Appraising *2010*
Communicating the Appraisal *2010*
New FNMA Forms *2008*
Manufactured Housing *2008*
Supervisor/Trainee Role & Rules *2008*
Florida Real Estate Appraisal License Law *2008*
Communicating the Appraisal *2008*
2008-2009 7-Hour National USPAP Update *2008*
Neighborhood Analysis *2008*
Florida Real Estate Appraisal License Law *2006*
Real Estate, Mortgages, & The Law *2006*
Sales Comparison Approach *2006*
Neighborhood Analysis *2006*
2006-2007 7-Hour National USPAP Update *2006*
Appraisal Principles *2006*
Communicating the Appraisal *2006*
2004-2005 7-Hour National USPAP Update *2004*
Communicating the Appraisal *2004*
Florida Real Estate Appraisal License Law *2004*
Real Estate, Mortgages, & The Law *2004*
Residential Subdivision Analysis *2004*
Sales Comparison Approach *2004*
The Federal National Mortgage Association *2004*
Report Writing & Valuation Analysis 540 *1993*
Basic Valuation Procedures 1A2 *1992*
Capitalization Theories and Techniques 1BA *1991*
Capitalization Theories and Techniques 1BB *1991*

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Ron DeSantis, Governor

Halsey Beshears, Secretary

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

## HICKS, ROBERT C

3800 W BAY TO BAY BOULEVARD
UNIT 23
TAMPA FL 33629

**LICENSE NUMBER: RZ1059**

**EXPIRATION DATE: NOVEMBER 30, 2022**

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Ron DeSantis, Governor

Halsey Beshears, Secretary

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## DIVISION OF REAL ESTATE

THE BROKER HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

## HICKS, ROBERT C

HICKS REAL ESTATE
3800 W. BAY-TO-BAY BOULEVARD
UNIT 23
TAMPA FL 32629

**LICENSE NUMBER: BK534411**

**EXPIRATION DATE: SEPTEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

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**PARWANI LAW, P.A.**
PHONE: 813-514-8280
FAX: 813-514-8281

9905 Alambra Avenue
Tampa, Florida 33619
website: www.parwanilaw.com

Rinky S. Parwani, Managing Attorney, licensed in FL, CA, TX, IA

May 27, 2020

To Whom It May Concern:

This letter is provided at the request of Robert C. Hicks, who has asked me for a written reference on his behalf. It is my understanding that Mr. Hicks is being considered as an appraiser special magistrate in your County.

Robert C. Hicks has served as an appraiser special magistrate for Hillsborough County Value Adjustment Board since 2016. I have been the legal counsel for the Hillsborough County Value Adjustment Board since that time. During my time supervising his work as a magistrate, it is my understanding that all his submitted recommendations have been approved by the Hillsborough County Value Adjustment Board.

Please feel free to contact me with any questions or concerns.

Very truly yours,

Rinky S. Parwani

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FRANK A. CATLETT, MAI, SRA
Cert Gen RZ531

ROBERT C. HICKS, MAI
Cert Gen RZ1059

KYLE A. CATLETT, MAI
Gert Gen RZ3875

TRIGG, CATLETT & ASSOCIATES

3800 W. Bay to Bay Blvd, Ste 23
Tampa, Florida 33629
Off (813) 254-5700
Fax (813) 254-5750

8633 Highway 194 N
Todd, North Carolina 28684
Off (828) 264-9952

To Whom It May Concern:

This letter is provided at the request of Robert C. Hicks, who has asked me for a written reference on his behalf. It is my understanding that Mr. Hicks is being considered as an appraiser special magistrate in your County.

Robert C. Hicks has served as an appraiser special magistrate for Hillsborough County VAB since 2016, as well as serving in Sarasota, Manatee, Pasco and Hernando Counties since that date. He has worked as a State Certified General Real Estate Appraiser in our offices since 2011 and consistently produces quality on-time work product. In 2017, he attained his MAI designation from the Appraisal Institute, their highest designation. I believe Robert C. Hicks would make a good special magistrate for the Value Adjustment Board.

Sincerely,

Kyle A. Catlett

Kyle A. Catlett, MAI
President

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First name like 'robert' and Last name like 'Hicks' and Company name like 'Trigg Catlett & Associates'
1 People Found. Designated: 1

## DESIGNATED MEMBER

**Robert C. Hicks, MAI**
www.triggcatlett.com
Trigg Catlett & Associates
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Fax: (813) 254-5750
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Continuing Education Program Completed
Accepts Fee Assignments
Commercial, Residential, Industrial, Land,
Agricultural, Recreational, Special Purpose



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# WRITING SAMPLE

## Findings of Fact

Tax Recourse, LLC representing WALGREENS STORE NO 3332 LLC (referred to herein as "PETITIONER"), has failed to appear before this Special Magistrate on November 28, 2018 at 1:00 PM to provide testimonial evidence relating to the 2018 property assessment for real property located in Sarasota County, Florida, identified on the tax rolls as Parcel Number 0061-13-0007. The Sarasota County Property Appraiser (referred to herein as "PAO") was represented at the hearing by Jim Ashburn, CAE, MAI, Commercial Valuation Director. Mr. Ashburn has been read, or has waived, an opening statement regarding an overview of the hearing process and the rules of procedure and he was sworn in. The PETITIONER has submitted documentary evidence to the Clerk's Office and has requested that this evidence been considered at the hearing in their absence. As this is one of twenty petitions for related properties, relevant evidence presented during hearings numbers 2018-059 through 2018-079 will be incorporated herein by reference.

The subject of this particular petition is a free-standing drug store located at 3601 Bee Ridge Road, Sarasota, Sarasota County, Florida 34232. The Property Record Card ("PRC") indicates a total gross building area of 18,416 square feet with 16,435 square feet of net rentable area. The building was constructed in 1995 indicating a chronologic age of 23 years. The building is situated on a 1.74-acre tract of land indicating a Floor Area Ratio of 0.24. The subject's property characteristics are detailed in the PRC, entered into evidence as part of Exhibit "PAO A". The 2018 just, assessed and taxable values were confirmed by the PAO to be $4,611,000, $4,611,000 and $4,611,000, respectively. The Special Magistrate has reviewed all evidence presented by the parties and has determined that all evidence has relevance to the valuation issue at hand. Thus, the evidence, as presented, was admitted to the record for consideration in relation to the appropriateness of the real property assessment of the subject property.

The Department of Revenue ("DOR") has developed specific evidence rules for presenting relevant and credible evidence. See Rule 12D-9.025(1), Florida Administrative Code ("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. This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, although it 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. The following evidence has been entered on the record by the PAO:

Exhibit "PAO-A"; includes a property records card, listing of appraisal review elements, scope of work, appraiser's certification, aerial photographs, street scenes, maps, cost approach, comparable improved sales adjustment grid, income capitalization approach, improved sale maps and photos, rent survey, regression analysis, Calkain Capitalization Rate study, excepts from Marshall and Swift Cost Valuation Manual, and subject lease documents where applicable.

The Florida Legislature has enacted eight criteria that the PAO must consider when determining just value. In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the PAO's estimate of just value is presumed to be correct if proven that assessment was arrived at by complying with the eight criteria of Section 193.011, F.S. (referred to herein as "193.011") and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. The only standard of proof that applies in this administrative review of the assessment is "Preponderance of the evidence", meaning "greater weight of evidence" or "more likely than not". The Florida Courts have consistently held that the eight criteria need only be considered by the property appraiser, the application of each factor is not mandatory and further goes on to say if

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any one factor is not reflective of just value, it should not be used by the Property Appraiser. The extent to which the PAO has considered of each of the eight criteria specified in 193.011 is summarized as follows:

193.011 (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 arms-length – This is generally supported by comparable sales analysis. In consideration of the first criterion, the PAO has presented the following improved sales of free-standing retail buildings in support of just value:

For this analysis, the estimated land value for each sale has been deducted as an indication of contribution by the building improvements. This method accounts for locational differences in the land values. Only adjustments for building characteristics are necessary for comparison.

Sale 1 is located at 4301 Bee Ridge Road in Sarasota. This building has 13,050 square feet of net leasable building area constructed in 2000. This drug store is located on 1.64 acres of land. The property was sold April 7, 2015 for $7,281,600. Land value was deducted indicating improvement contribution of $361 per square foot. This price has been adjusted for time and 15% cost of sale indicating improvement contribution of $324 per square foot for comparison.

Sale 2 is located at 1964 Marcia Street in Sarasota. This building has 4,500 square feet of net leasable building area constructed in 2017. This retail mattress store is located on 0.63 acres of land. The property was sold May 8, 2017 for $2,145,000. Land value was deducted indicating improvement contribution of $301 per square foot. This price has been adjusted for time, smaller building size, inferior construction quality, and superior condition along with a 15% adjustment for cost of sale indicating improvement contribution of $158 per square foot for comparison.

Sale 3 is located at 3901 South Tamiami Trail in Sarasota. This building has 17,208 square feet of net leasable building area constructed in 1999. This drug store is located on 1.43 acres of land. The property was sold June 22, 2018 for $8,150,000. Land value was deducted indicating improvement contribution of $305 per square foot. This price has been adjusted for time and 15% cost of sale indicating improvement contribution of $264 per square foot for comparison. Primary weight was not given to this sale but rather it was used to indicate value trends in the market after the just valuation date.

Sale 4 is located at 215 Jacaranda Boulevard in Venice, Sarasota County. This building has 12,921 square feet of net leasable building area constructed in 2009. This drug store is located on 1.35 acres of land. The property was sold August 19, 2016 for $9,525,000. Land value was deducted indicating improvement contribution of $557 per square foot. This price has been adjusted for time and 15% cost of sale indicating improvement contribution of $492 per square foot for comparison.

Sale 5 is located at 3085 Price Boulevard in North Port, Sarasota County. This building has 12,828 square feet of net leasable building area constructed in 2014. This discount store is located on 1.46 acres of land. The property was sold January 15, 2016 for $3,000,000. Land value was deducted indicating improvement contribution of $182 per square foot. This price has been adjusted for time, inferior construction quality and 15% cost of sale indicating improvement contribution of $203 per square foot for comparison.

Sale 6 is located at 3303 South Tamiami Trail in Sarasota. This building has 5,116 square feet of net leasable building area constructed in 1999. This retail bank is located on 1.02 acres of land. The property was sold April 13, 2015 for $5,950,000. Land value was deducted indicating improvement contribution of $522 per square foot. This price has been adjusted for time, smaller building size and 15% cost of sale indicating improvement contribution of

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$234 per square foot for comparison. This bank sale was considered based on similarities in utility from the drive-through windows.

Sale 7 is located at 3709 North Tamiami Trail in Sarasota. This building has 11,200 square feet of net leasable building area constructed in 1998. This drugstore is located on 1.21 acres of land. The property was sold April 19, 2017 for $4,500,000. Land value was deducted indicating improvement contribution of $213 per square foot. This price has been adjusted for time and 15% cost of sale indicating improvement contribution of $186 per square foot for comparison.

Sale 8 is located at 4023 South Tamiami Trail in Sarasota. This building has 5,025 square feet of net leasable building area constructed in 2015. This general retail store is located on 1.01 acres of land. The property was sold November 25, 2015 for $5,537,500. Land value was deducted indicating improvement contribution of $786 per square foot. This price has been adjusted for time, smaller building size, inferior construction quality and 15% cost of sale indicating improvement contribution of $280 per square foot for comparison.

Overall, these adjusted improvement contribution prices range from $158 per square foot to $492 per square foot, with a mean of $268 per square foot. The PAO has reconciled to an improvement contribution of $180 per square foot or $2,958,300. Adding this to the undisputed land value of $2,299,100 indicates a total value by the Sales Comparison Approach that has been rounded to $5,257,400;

193.011 (2) Highest and best use – 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.

Mandatory consideration must be given to both present use of property and current zoning, however, actual use is not always the highest permitted there under. An assessment based on actual under-utilization of property is in conflict with the constitutional requirement of just value (fair market value). In some instances, valuing the subject property according to its current use results in a value which is less than fair market value. In cases of under-improved property, if comparable sales support a higher market value for the property than that based on present use, the constitution requires the Property Appraiser to use the higher value. Bystrom v. Valencia Center, Inc., 432 So.2d 108 (Fla. 3rd DCA 1983). Uses of property which were barred by current zoning, but which were permitted by the Comprehensive Plan which had priority over zoning restrictions, and for which there was present market demand, could be considered by the Property Appraiser in assessing the higher and best use to which the property could be expected to be put in the immediate future. Holland v. Walker, 492 So.2d 1093 (Fla. 4th DCA 1986). The appraiser should not consider future or potential uses unless they are to be expected immediately and not at a vague or uncertain time in the future. Lanier v. Overstreet, 175 So.2d 521 (Fla. 1965). This property is used as an operating, free-standing drug store. The market sales and rents used to support value have similar highest and best uses. This criterion has been appropriately considered by the PAO in this valuation review;

193.011 (3) Location of the property – The PAO assigns a neighborhood code to every property in the county. Sales of properties in the same or similar neighborhoods are typically used to determine locational adjustments. Often, site-specific location adjustments are made to reflect either an enhanced location (such as commercial sites

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located at traffic-light corners) or an inferior location (such as single-family home abutting a major thoroughfare). The location of this property was taken into consideration in the analysis of just value;

193.011 (4) Quantity or size of the property – The PAO considers the quantity or size of the property by determining and recording the correct land size, building size, and extra features sizes and quantities. Land size is determined by reviewing the legal description and calculating the land size from recorded plats or metes and bounds. Building size and extra features sizes are often determined through inspections and measurement by PAO deputy appraisers. The quantity or size of the property has been considered;

193.011 (5) The cost of the property and present replacement value of any improvements thereon – This analysis considers the value of the land and depreciated value of the improvements. Both the PAO and PETITIONER has used the same land valuation found on the property records card of $2,299,100. No comparable land sales have been presented by either party at this hearing since there is no dispute of land value. The building was constructed in 1995 and designed as a typical freestanding drug store. Then building costs were estimated using the Marshall and Swift Cost Manual considering adjustments for various building characteristics, location and an adjustment for cost of sale. The adjusted cost is $138.90 per square foot. Soft costs and impact fees have been accounted for. Depreciation has been accounted for using an age-life method with the effective age of 10 years and 40-year life. Site improvement contribution of $49,300 has been added, as well as a 12% entrepreneurial incentive. The value indicated in this analysis is rounded to $4,880,000. This method is a generally accepted method for addressing the cost of newer properties due to difficulties in accurately estimating depreciation. This 193.011 criterion has been appropriately considered;

193.011 (6) The condition of the property – The PAO considers the condition of properties through periodic property inspections, no less than once every five years as required by statute. Other events can trigger more frequent site inspections, including the sale of a property, issuance of a building permit, assessment appeal, or at the taxpayer's request. This is considered in a factor applied to the CAMA value calculation for value loses from all sources based upon an age/life method. For the subject property, the PAO has estimated an effective age of 10 years based on the condition of the property, in consideration of this criterion;

193.011 (7) The income from the property – The income approach must be considered when assessing income-producing property or property types which are typically rented. When income information has not been supplied, or the property (if a type typically rented) is owner occupied, the Property Appraiser must make a good faith effort to use whatever similar data is available for considering of the income approach. The court has also ruled that when "determining the fair market value of income- producing property which is encumbered by a long-term sub market lease...the resulting valuation must represent the value of all interest in the property - in other words, the fair market value of the unencumbered fee." The Property Appraiser, therefore, may use "economic income" (current market rent) when assessing income-producing property encumbered by leases which return to the owner sub-market rent. Schultz v. TM Florida Ohio Realty Ltd., 577 So.2d 573 (Fla.1991). In valuing this property, the PAO has considered the income generating potential through the use of direct capitalization. The subject property is owner-occupied. A rental survey of twenty similar retail properties in and around the Sarasota area was the basis of supporting a typical rental rate for the subject. More than half of these are leases with Walgreens and CVS drug stores. The mean rental rate indicated is $38.41 per square foot with a median of $32.12 per square foot. These are triple net rates with the Tenants responsible for most of the building expenses. A regression analysis based on building size has been used to fine tune the rent estimate to a market rate of $29.34 per square foot. The indicated potential gross income is $482,201. Vacancy and collection loss have been estimated at 2% with an additional 2% of EGI deducted for landlord expenses, yielding a net operating income of $463,105. The percentages used for vacancy and expenses appear to be at the low end of the range. A base capitalization rate of 7% was supported by market data provided by Calkain Research. This rate has been adjusted to 8.05% to account for the Cost of Sale pursuant to the Eighth Criterion of

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193.011. This income analysis indicates a value of $5,750,000, which exceeds the 2018 just value providing support that the just value is not over-stated; AND

193.011 (8) The PAO is further required to consider the net proceeds of a 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 also exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property. The PAO has made specific adjustments in each valuation approach to account or these additional costs.

It appears that the PAO has considered each of the eight criteria of 193.011 in estimating the Just Value of the subject property. Based upon relevant, competent and substantial evidence presented during the hearing, in the opinion of the Special Magistrate, the PAO has established the presumption of correctness by a preponderance of the evidence.

The PETITIONER failed to appear at the hearing but requested that documentary evidence submitted to the Clerk's Office be considered in their absence. The following evidence has been admitted to the record and considered by the Special Magistrate in the preparation of this recommendation to the Value Adjustment Board:

Exhibit "PET-1" is a 2-page document comprised of a Marshall & Swift Calculator Cost Approach and Income Stream Analysis. The PETITIONER's cost method uses a per-square-foot building cost of $119 plus $3.63 per square foot for fire sprinklers. Cost multipliers including story-height multiplier, floor-area perimeter multiplier, local cost multiplier and current cost multiplier have been applied. The resulting replacement cost estimate is $120.65 per square foot. Depreciation is based upon a 40-year life and effective age of 14.8 years has been deducted. An estimate of the depreciated value of the improvements has been added to the land value found on the County's property records card of $2,299,100. The resulting value indication by the PETITIONER's cost analysis is $3,548,303. Exhibit "PET-4" is comprised of 10 pages that contains copies of relevant and supporting pages from the Marshall & Swift Cost Manual. In preparing this cost analysis, the PETITIONER has failed to account for any soft costs, impact fees or any contribution by the site improvements which results in an understatement of value for the subject property.

Exhibit "PET-1" also includes an Income Stream Analysis. Exhibit "PET-2", a 24-page document, has comparable lease datasheets for 23 multi-tenant retail properties from the Sarasota area. None of these properties are free standing buildings. These are much smaller units in multi-tenant retail strip centers or neighborhood centers, not adequate to support a use like the subject. None of these properties are considered to be similar to the subject on the basis of highest and best use. In the opinion of the Special Magistrate, these rental listings have no relevance to the subject. This property is owner-occupied. The PETITIONER's income valuation is based upon an unsupported rental rate of $24.00 per square foot, or $394,440. A vacancy rate of 8%, expenses amounting to 10% of effective gross income and reserves for replacements of $0.25 per square foot have been deducted, however, no market support has been provided for vacancy or expense estimates. The indicated net operating income is $332,488. A capitalization rate of 8%, similar to that used by the PAO, has been applied to indicate a value of $4,031,095 by the income approach.

Exhibit "PET-3" is 21 pages of comparable sale data sheets from Costar. These appear to be 21 sales of various retail properties located throughout Sarasota County. The first sale is a CVS free-standing drug store built in 1998, located at 3709 N Tamiami Trail that sold April 2017 for $354 per square foot. This appears supportive of the PAO's $281 per square foot valuation. The second sale was also a free-standing drugstore building, but it was sold

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subject to restrictive covenants requiring a change of use by the buyer and is, therefore, not considered to be comparable to the subject on the basis of highest and best use. Sale 3 is a bank branch. Sale 4 is a restaurant. Sale 5 is an auto parts store. Sale 6 is a multi-story mixed use building. The Costar writeup indicates that this is not and arm's length sale. Sale 7 is a restaurant. Sale 8 is a mixed-use building. Sale 9 is a tire store. Sale 10 is used for auto repair. Sale 11 is a free-standing retail store used as a Staples that sold January 2017 for $226.27 per square foot with a 7.1% capitalization rate. Sale 12 is a restaurant. Sale 13 is a two-story strip retail/office building constructed in 1952. Sale 14 is a restaurant. Sale 15 is a metal warehouse building used for retail. Sale 16 is a veterinarian and kennel. Sale 17 is a vacant free-standing drug store that was sold by Walgreens with use restrictions in May 2017. The sale write-up indicates that there is no improvement contribution and the value in this property is in the land. Sale 18 is a multi-unit retail strip center located in Northport. Sale 19 is a bank branch. Sale 20 is a multi-unit, mixed-use plaza constructed in 1977 with a total building area of 5,791 square feet. Sale 21 is a bank branch. With the except of Sale 1, none of these buildings possess the same utility and highest and best use as the subject. Nearly 60% of these are of insufficient size to accommodate a typical drug store. Other than Sale 1 at $354 per square foot, none of these are representative of value for the subject property.

Exhibit "PET-5" is a 56-page document containing a survey rents from 56 Walgreen's Across Florida. All but one of these are located in locations outside of Sarasota County with no adjustment for location. Many of these buildings are too small to accommodate the subject use ranging in building size from 1,427 square feet. The chronologic age of these range from three years to over 100 years with no adjustment for age or condition. This listing shows per-square-foot rental rates ranging from $8.01 per square foot to $27.70 per square foot. Most of these are indicated to be NNN leases. Some are marked as modified gross; one is full service. Many do not indicate any type of lease. No adjustments have been made for lease type. None is possible for leases where the type is no indicated. The dates of these leases extend back as far as August of 1994, more than 24 years ago. At least 16% of these leases have already expired; many do not indicate expiration dates. More than 25% of these properties are listed as former Walgreens or CVS stores indicating a change in highest and best use incompatible with the subject. Overall, this exhibit represents unadjusted raw data having little relevance to the valuation issue at hand.

Exhibit "PET-6" is a 148-page document with a two-page summary grid labeled Walgreens Sales Across Florida. This listing contains 84 sales. Of these one is located in Sarasota County at 12600 South Tamiami Trail in North Port. This property was purchased May 19, 2017 for $1,200,000. The drug store had been closed for approximately two years and the property was sold for land value according to the provided sale datasheet. This is not representative of the value of the subject. The sales from other counties indicate a value range from $60.36 per square foot to $328.71 per square foot and capitalization rates ranging from 4.38% to 11.72%, with an indicated mean of 7.21%. A value range this broad indicates that there are many differences in the location, age, condition, quality of construction and utility of these various properties, however, no adjustments or analyses have been provided. Being that the subject's just value falls within this indicated per-square-foot price range, the evidence presented in this Exhibit does not prove that the value is over-stated.

At this hearing the PETITIONER has provided voluminous exhibits including leasing and sales data for many retail locations across the state of Florida. The PETITIONER has failed to appropriately consider and adjust for the location of each comparable property, the age and condition of each comparable property, and most importantly the utility or highest and best use of each of the comparable sales and comparable leases. A review of the PETITIONER's exhibits proves this with the inclusion of bank branches, restaurants, multi-tenant buildings, mixed-use properties, office buildings, multi-story buildings and properties that were purchased for land value only in their average prices and rents. The relevance and reliability of this market data in this valuation is thereby diminished. The Special Magistrate finds that the PETITIONER has failed to overcome the presumption of correctness established by the POA by a preponderance of evidence.

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## Conclusions of Law

In administrative reviews of the Just Valuation of property pursuant to Florida Administrative Code section 12D-9.027, the special magistrate has followed this sequence of general procedural steps:

1) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's Just Valuation methodology is appropriate. The 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. Based upon documentary and testimonial evidence presented during this hearing, the presumption of correctness has been established by the property appraiser.

2) In administrative reviews of Just Valuations, if the property appraiser establishes a presumption of correctness, the special magistrate must 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. Since neither of these two conditions have been met, in the opinion of this Special Magistrate, the petitioner has failed to overcome the presumption of correctness.

3) If the property appraiser establishes a presumption of correctness and that presumption of correctness is not overcome, the assessment stands. In view of the findings of fact and conclusions of law as they relate to this Petition before the Value Adjustment Board, the Special Magistrate recommends the request to revise the Property Appraiser's determination of the 2018 Just Value of the property be DENIED.

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Appraisal Institute®

# Overview: MAI Designation Requirements

| | |
|---|---|
| **Eligibility to Enter** | Required to be a Certified General Real Property Appraiser (or equivalent).<br>Required to have Good Moral Character to enter the Candidate for Designation program seeking designated membership. |
| **Start!** | **Click link here to Enter Candidate for Designation Program**<br>Once you are approved and enrolled as a General Candidate for Designation, you will be required to complete the following designation requirements. |
| 1. | **Standards Requirement* (within first year unless readmitting)**<br>Provide proof of your most current USPAP** completion certificate. *For those readmitting to AI, Standards and Ethics requirements must be completed *before* readmission occurs.<br>**Candidates who practice solely outside the US may complete *Introduction to International Valuation Standards Overview*. |
| 2. | **AI *Business Practices and Ethics* Requirement* (within first year unless readmitting)**<br>For those readmitting to AI, Standards and Ethics requirements must be completed *before* readmission occurs. |
| 3. | **College Degree** bachelor's degree from an accredited degree-granting educational institution (or international degree equivalent for international Candidates).<br>Certified General Real Property Appraisers are **not** required to submit a bachelor's degree. |
| 4, 5, 6, 7 | **Pass exam for *Advanced Income Capitalization***<br>**Pass exam for *Advanced Market Analysis & HBU***<br>**Pass exam for *Advanced Concepts & Case Studies***<br>**Pass exam for *Quantitative Analysis***<br>Classroom or live online courses available, or challenge examination without taking the course. |
| 8. | **Pass General Comprehensive Examination** 1- 8 must be completed prior to sitting for this exam |
| 9. | **Specialized Experience** 4,500 hours of specialized experience |
| 10. | **General Demonstration of Knowledge** |
| 11. | **Apply for MAI Designated Membership** |
| **Finish!** | **General Candidate for Designation Program Completed (within 4 years or less)** |

**Candidate for Designation Program Overview**

Regulation No. 1: Admissions to General Candidacy and MAI Membership (Account set-up required to access AI Bylaws and Regulations. Set up an account now)

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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
- ☑ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: Stephen Jamir Email: clientservice@jamirassociates.com
Business Name: Jamir & Associates, Inc.
Home Address:
Business Address: 4501 W North B Street, Tampa, FL 33609
Phone: Home/ Business/ 813-870-1334 Cell/ 813-732-8788 Fax:

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: RZ299 Valid Thru: 2022
How many years of experience do you have in the area of real property valuation: 36
How many years of experience do you have in the area of tangible property valuation: _____

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

BS in Political Science
Education necessary to obtain and maintain a Florida General Real Estate Appraisal license.
See "Appraiser Qualifications" attached.



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Hillsborough County - 2004, 2007, 2008, 2010, 2012, 2013, 2014, 2015, 2016, 2017, 2018,, 2019, 2020

Citrus County - 2009, 2010, 2011, 2012, 2014, 2015

Hernando County - 2019 Orange County - 2020

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | 10/29/1987 | 7667 |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

Appraisal Institute - Education necessary to obtain and maintain a Florida General RE Appraiser license, 5 years experience as a State Certified General RE Appraiser Log listing all appraisals performed in the past 5-year period as well as 5 appraisals selected from that list submitted for review by the Appraisal Institute.

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | 36 years |
| COMMERCIAL REAL PROPERTY | 36 years |
| TANGIBLE PROPERTY | |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

Performed Special Magistrate services.

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Proficient in Axia, Microsoft Word, Excel, Adobe, Explorer, Google Earth and MLX Exchange, WebEx

13. List any additional information which makes you qualified to serve as a special magistrate:



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Stephen Jamir Date: 4-15-2021
Signature of Applicant

Stephen Jamir
Printed Name of Applicant



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Ron DeSantis, Governor

Julie I. Brown, Secretary

Florida dbpr

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

**JAMIR, STEPHEN J**

4501 W NORTH B STREET
TAMPA FL 33609

**LICENSE NUMBER: RZ299**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

# MEMBERSHIP CERTIFICATE

APPRAISAL INSTITUTE

*This Certifies That*

## *Stephen J. Jamir*

*was admitted to membership in the American Institute of Real Estate Appraisers as an* ***MAI Member*** *(7667) on the 29th day of October, 1987 and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

APPRAISAL INSTITUTE CORPORATE SEAL

PRESIDENT

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP.





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The VAB hearing for Petition 2020-01213 commenced as scheduled on January 6, 2012 at 2:30PM as a WebEx virtual hearing. The Petitioner, Altus Group as agent for property owner "1001 South Dale Mabry LLC" was represented by Greg Bandemer. Mr. Brad Matheidas with the same company attended the hearing. The Property Appraiser's Office (PAO) was represented by Greg Sobel and Rick Rape, MAI. The petitioned property involves a 2,542 SF Branch Bank building constructed in 2017 on a 27,248 SF site located at 1001 S. Dale Mabry Highway and d/b/a TD Bank.

The hearing opened by the SM placing all parties under oath who may testify. The SM then presented opening comments: The Petitioner's representative acknowledged that he understood the VAB hearing's format, the role of the SM, and information on the Taxpayer Information Sheet. SM referred to evidence shown on the VAB's files for this petition and the parties acknowledged that a proper exchange of evidence had occurred prior to the hearing: Per Rule 12D-9.024(7), F.A.C., the PAO's office was then asked to proceed with their opening comments and identify the petitioned property to establish its "presumption of correctness".

**Property Appraiser's Evidence and Testimony**:

PAO Representative Sobel's opening comments first confirmed the values applicable to the hearing, i.e., 2020 Just/Market Value and Assessed Value as $1,579,504, and Taxable Value as $1,553,891, and then referred to the PAO's 83-page evidence packet submitted for the VAB petition. Mr. Sobel first identified sections and specific attachments in the PAO's evidence packet. PAO Representative Rape then presented the PAO's explanation of the County's Mass Appraisal system (CAMA) noting that this County assessment system passed the Florida Department of Revenue's audits, and that the Property Record Card displays consideration for most criteria required of the Property Appraiser as enumerated in Section 193.011 F.S. Mr. Rape further explained that Criterion 8 of that Florida Statute is addressed by the CAMA program by discounting the extremes of the ranges of unit sale prices input for the CAMA model. Mr. Rape testified that the CAMA model is best described as a hybrid valuation system whereby "costs are supported by sales data" to ensure that the values rendered are mutually supportive. Mr. Sobel then stated that all supporting sales he considered for purposes of the VAB hearing in support of the petitioned property's assessed value by the County's CAMA system were fully verified with buyer or seller (or agent) to ensure exclusion of all "costs of sale" or other concessions and/or personal property, if applicable, in order to further confirm that Criterion 8 of Section 193.011 was properly considered. Mr. Rape then requested that his discussions of the CAMA system be incorporated into the other 4 petitions to be heard for the same Petitioner to avoid the need for repetition.

Mr. Sobel addressed Page 2 the PAO's evidence packet summarizing the PAO's property-specific valuation for purposes of the hearing stating that all three appraisal approaches to value were developed. That page reflects the Cost Approach to value resulted in a value indication of $2,550,000, the Sales Comparison Approach performed resulted in a value indication of $1,910,000, and an Income Approach performed resulted in a value indication of $1,890,000. Mr. Sobel noted that the Cost and Income Approaches were afforded most weight in final reconciliation and that a Just Value/Fair Market Value estimate of $2,160,000 was concluded by this property-specific analysis that proves that the petitioned property's CAMA assessed Just/Market Value of $1,579,000 is not excessive. Page 5 summarizes the components of the Cost Approach utilized, reflecting that the Marshall Swift published cost service provided replacement costs and a depreciation rate, and that a land sales analysis supported his conservative estimate of $60/SF, or

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$1,634,880 for the subject's site, which the SM noted was by itself higher than the PAO's CAMA value. Mr. Sobel referred to information sheets for 5 land sales in the evidence: 4 occurred in 2019 and one in 2016, noting that the locations of these land sales were deemed inferior to the subject's Dale Mabry/Henderson Road location in terms of commercial development patterns, traffic levels, and signalization. Mr. Sobel then addressed Pages 12 and 13 of the PAO's evidence packet which summarizes 5 improved "leased fee" sales considered in relation to the petitioned property. One of these sales occurred in year 2019, two in year 2018 and two in year 2020. Mr. Sobel pointed out that these sales reflect branch bank properties constructed as such. The large unit price range reflects location and building quality considerations, plus varying site sizes. The average (mean) unit price of these sales was $855.72 PSF. Mr. Sobel then addressed 12 other branch bank sales sold "fee simple" for use by other bank companies plus alternative uses, and that the average unit sales price resulting was lower ($572.97 PSF). Mr. Sobel discussed various locations, physical factors and condition of sale factors affecting the sales and their subsequent uses and concluded that the $751/SF unit price selected to value the subject was reasonable. In discussing the Income approach to value, Mr. Sobel stated that he did not find good lease rates for the subject but rather considered return rates on cost components which is typical for many lease rates of newly constructed fast-food enterprises. His market lease rate conclusion reflects NNN lease arrangement expenses (owner only responsible for V&C, taxes, reserves) and derived lease rates based on sale prices, and concluding to $55 PSF, 10% V&C Loss and $1.15 expenses in comparison to a 6.5% capitalization rate. While noting that this approach to value also demonstrated that the petitioned property's CAMA just/market value was not excessive, he also noted that he placed least weight on this approach to value in final reconciliation.

SM found the PAO's evidence relevant and credible on face and admitted it to the hearing record.

**Petitioner's Evidence and Testimony:**

Petitioner Representative Bandemer addressed his 51-page evidence packet submitted for the hearing record and noted on page 1 that his Income Approach to value provides the primary valuation to challenge the PAO's Just/Market Value assessment. Mr. Bandemer noted that he did not find market leases to perform this approach, but rather utilized CoStar subscription data as is displayed on Pages 4 through 22 in his evidence. Mr. Bandemer noted that the 17 properties summarized in those pages reflect estimated NNN rental rates that display a maximum range of $46 PSF NNN, with most of these properties reflecting a $21 PSF - $26 PSF NNN range. Summary information provided locations, age of buildings and site sizes of these properties to facilitate further consideration. Mr. Bandemer then referred to the Income Approach summary on page 1 and noted that by utilizing a rental rate of $25 PSF NNN less a V&C Loss rate of 5%, he derived an Effective Gross Income (EGI) of $84,123 and then by subtracting operating expenses and reserves for replacement of 15% of EGI, reflects a Net Operating Income of $71,504. Mr. Bandemer then stated that he utilized a 5% cap rate based on information provided on three Costar generated sales sheets (pages 26, 28 and 30) to derive a Market/Just Value estimate of $1,300,000 for the petitioned property.

Mr. Bandemer objected to the petitioned property's assessment in relation to other similar branch bank properties, stating there is not uniformity of assessment between these properties and the subject. Mr. Bandemer then referred to page 23 and the pages that followed, reflecting the assessments of 9 branch bank properties located within 5 miles of the petitioned property to make this point. Mr. Bandemer then addressed the table on Page 34 which demonstrates 4 other TD Bank branch properties like the subject plus 5 sales of

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other banks and pointed out that only one of these properties was assessed higher than $388 PSF of building area in comparison to the petitioned property's assessment of $624.41 PSF of building area. Referring to the Income Approach summary on page 1, the Mr. Bandemer noted that the subject's "uniform assessment" would require a NNN rental rate of $25 PSF rather than the higher amount utilized by the PAO, but that Income Approach analysis could also warrant a lower capitalization rate than the PAO used. Mr. Bandemer again addressed a sale in his evidence "that sold for $1,000 PSF and the PAO has it assessed at $300 PSF" and objected that the petitioned property is not being uniformly assessed. Mr. Bandemer concluded his opening comments.

SM found the Petitioner's evidence relevant and credible on face and admitted it to the hearing record.

**PAO/Petitioner Rebuttals/Discussions:**

SM questioned the PAO regarding the PAO's requirement to apply uniform appraisal methodology for the property type countywide. Mr. Rape stated that the County's CAMA system was audited by FDOR and found to apply uniform methodology. Mr. Rape objected to the Mr. Bandemer's use of Just/Market value assessments for cross comparison to gage "uniformity of assessment". Mr. Rape pointed out that the 4 TD Bank properties cited sold years ago and may not have been properly increased over the years considering 10% annual cap limitations. As to these TD Bank properties and the recent sales, Mr. Rape addressed Page 76 of the PAO's evidence packet citing Deltona Corporation v. Bailey (336 So. 2nd 1163, 1976 Fla. SC 2269) case law whereby the Florida Supreme Court found that the assessed values of other properties are irrelevant if it is proven that the petitioned property's Just/Market value assessment is not above fair market value.

SM then addressed a comment PAO Sobel testified to earlier citing that many newly constructed branch banks that are leased reflect a lease rate based on construction costs, and that the subject's location on Dale Mabry Highway evidence land values that are higher than most if not all the other locations for the sales presented by both parties. Mr. Sobel addressed several sales evidencing land values much less than the subject's location and acknowledged that since land value is part of the Cost Approach, large land value differences between sales could have a large effect on unit prices displayed. Mr. Sobel mentioned a sale on S. MacDill Avenue he considered whose land value unit price is easily half that of the subject's location. Mr. Bandemer pointed out that this sale is on his page 32, and is another example of a sale of a branch bank for $610 PSF whereas the PAO has its Just/Market value at $388 PSF.

**Ultimate Findings of Facts:**

The Florida Constitution requires ad valorem assessments to be made based on "just value". That term is defined by the Florida Department of Revenue in Rule 12-D-1.002(2) F.A.C. as: "The price at which the property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put; both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other". That definition is essentially the same as market value definition as defined by numerous agencies and organizations, and Florida case law has held that just value is synonymous with market value (Walter v. Schuler, 176 So. 2d 81 (Fla 1965).

The Legislature has enacted eight factors that a property appraiser must consider when determining just valuation, which are enumerated in Section 193.011, F.S. In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser's assessment is

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presumed correct if the appraiser proves by a preponderance of evidence that the assessment was arrived at by complying with S.F. 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 applicable. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and Section 193.011, F.S. 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 eight criteria specified in Florida Statute 193.011 were considered by the PAO in the following manner:

(1) Present cash value – The PAO's Property Record Card reflects that the PAO's CAMA valuation ("Mass Appraisal") program employs a valuation methodology that is primarily a "hybrid" Cost Approach supported by market sales that sometimes utilizes Income Approach data if enough is available. This assessment methodology is applied to the groups of similar properties. The PAO utilizes the documentary stamp tax amount as recorded in the public records, which inherently exclude fees and costs of purchase such as title insurance, attorney's fees, survey costs, financing expenses, etc. The sales are already properties on the tax roll that have coding for location and other attributes which the CAMA system considers in relation to others in the same class. Additionally, in the CAMA valuation process, the PAO analyzes all the sales for any class/stratum (such as industrial) and targets a sales ratio of 85% by adjusting base rates, structural elements, depreciation rates and the contributory value of extra features in relation to sales prices inputted before calculating the appropriate base rate in any given model to recognize requirements of the 1st and 8th criteria of F. S. 193.011.

In support of the PAO's CAMA value for purposes of the VAB hearing, the PAO employed the three traditional approaches to value, though the Income Approach was considered least reliable and given least weight. Compelling was the fact that the PAO's land value estimate in the Cost Approach at $60 PSF was supported by sales at locations having less traffic and not at a signalized intersection like the subject: Land value alone was estimated at $1,634,880 which is higher than the property's CAMA Just/Market value of $1,579,504. This fact lends to the notion that the improvements themselves may warrant accelerated depreciation similar to a special use property. The PAO's Sales Comparison Approach considered sales of buildings constructed as branch banks and purchased for continuation of this use plus several sales for alternative use. The PAO testified that criteria embodied in Section 193.011 F.S. was considered regarding these sales and the range of values displayed but specific adjustments were not made to the sales. Photographs of these sale properties reflect similarities to the subject but as these properties are often land value driven, locations of all the sales were deemed inferior. Overall, the PAO presented a preponderance of evidence that the petitioned property's Just/Market Value is not excessive and that this criterion and Criterion 8 were properly considered.

(2) Highest and best use – The PAO applied land uses and building codes on the Property Record Card to represent the highest and best use of the property as improved and compared it with like properties. The PAO is considered to have adequately considered this criterion.

(3) Location – The PAO considered locational features of the subject's desirable south Tampa location by various means, including neighborhood coding of comparable land sales, improved sales, and rents. The PAO's testimony clarified that the PAO's CAMA methodology was designed to achieve consistency of

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assessments for all similar properties countywide, and that the PAO's valuation analysis prepared for the hearing in support of its CAMA value reflected proper consideration for the subject property's location as required by this criterion embodied within F.S. 193.011.

(4) Quantity or size – The PAO considered the subject's size based on a basic building diagram having rectangular dimensions to contain 2,543 SF of heated area plus an attached drive-in canopy. Although the Petitioner's evidence noted 2,530 SF heated area, there were no objections to the sizes presented for the hearing record.

(5) Cost and present replacement value – The PAO's evidence packet states that its CAMA system considers applicable replacement costs through information provided by local building contractors and third-party building cost services such as Marshall Swift. In this case, the petitioned property's Property Record Card reflects depreciated replacement cost allocations that inherently synchronize with sales data and address cost of sale factoring in comparison to the "site-specific" Cost Approach prepared for the hearing. Published Marshall Swift cost data was utilized, and since the structure was only 3 years old on the assessment date, this approach provides an excellent methodology of the property's value components. The replacement costs/present costs presented plus testimony and evidence demonstrated that this appraisal criterion was considered.

(6) Condition – The improvements comprising the petitioned property were constructed in 2017, and photos presented reflect a structure in excellent condition. The hearing's evidence and testimony reflect that the PAO adequately considered the property's physical conditions.

(7) Income – The PAO's CAMA system involves a "hybrid" Cost/Market analysis. The PAO Representative stated that most lease rates for a new property like the subject are normally a reflection of construction costs. The PAO did prepare an Income Approach for the VAB hearing in support of the CAMA value, and testimony revealed that rental rates and cap rates have a symbiotic relationship. Though the PAO did not rely on this approach to value, evidence and testimony reflects that they properly considered this criterion.

(8) Net proceeds of the sale – As is explained by a PAO document in evidence, the CAMA model generally employs a reduction in value to ensure marketing/sales costs are not included in "mass" assessment methodology, and that this methodology and the CAMA model is approved by the Florida Department of Revenue. PAO evidence further notes that regarding DOR Form 493, a CAMA system's sales-to-assessment ratio analysis is checked by the Florida Department of Revenue during a tax roll approval process by setting the top of the bell shape curve at a median of approximately 85%, data will typically be plotted as a bell-shaped curve, whereby the top of the curve is placed at 100. In contrast, the three approaches to value prepared in support of the PAO's CAMA value were significantly higher and direct sales comparison of properties used to support the CAMA valuation and demonstrate that the PAO has met its requirements for this criterion.

The weight given to each of the factors is within the discretion of the property appraiser, and reliance on an approach is dependent upon the type of property being assessed (Atlantic International Inv. Corp. v. Turner, 383 So.2d 919,921 (Fla. 5th DCA 1980)). Ultimately, the proof of the correctness of value is paramount over the emphasis placed on the applicability of one particular method of value over another. The PAO testified that the County's CAMA system properly addressed all applicable approaches to value, employed

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correct appraisal methodology, and that the eight criteria specified by Section 193.011, F.S. were correctly considered in determining the petitioned property's assessment.

The hearing record reflects that the PAO presented a preponderance of evidence to support the fact that the petitioned property's assessed value is not excessive. The three approaches to value prepared in support of the PAO's CAMA Just/Market value revealed that land value is a major component in the property's type. Though pictures of comparable sales revealed that their improvements were like the subject's construction design and type, the PAO testified that most of these sales occurred at far inferior locations involving less expensive land. The PAO's evidence and testimony reflects that the PAO established its presumption of correctness.

Ultimately, the Petitioner's evidence does not overcome the PAO's presumption of correctness. The Petitioner only developed one approach to value to contest the PAO's Just/Assessed value, and that approach was performed utilizing published data. The Petitioner's representative did provide a compelling argument that potential NNN lease rates for the petitioned property's type could be less because several sales had capitalization rates below 5% in comparison to the PAO's use of a 6% overall (capitalization) rate. In contrast, a significant factor revealed during the hearing in establishing an appropriate lease rate is that any selected NNN lease rate would have to correspond with a property's land value contribution and return on that investment as well. The Petitioner did not specifically address this factor and how it could affect potential lease rate needs while describing the comparable sales shown on pages 34 and 35 of the evidence packet.

Additionally, the Petitioner's evidence and testimony challenged "uniformity of assessment" utilizing 4 other TE Bank properties plus showing the relationship between the sale prices of 5 sales and their assessed values in comparison to the petitioned property. Though the PAO is required to utilize the same credible appraisal methodology to assess the petitioned property and others like it, the PAO presented statutory evidence why comparison of one property's assessment to another is irrelevant to a VAB hearing, and that the ultimate basis is Just/Market value.

Ultimately, the PAO adequately demonstrated or otherwise supported its considerations of applicable valuation criteria embodied in Section 193.011 F.S., applied acceptable/credible appraisal methodology, and supported Presumption of Correctness. This was not overcome by the Petitioner's testimony and evidence.

**Conclusion of Law**:

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. Pursuant to Section 194.301, the Property Appraiser's assessment shall be entitled to a Presumption of Correctness if the Property Appraiser shows, by a preponderance of evidence, that the Property Appraiser considered each of the eight criteria set forth in Section 193.011 Florida Statutes, the Property Appraiser applied the correct appraisal methodology based upon the characteristics of the property, and the Property Appraiser did not use appraisal practices which are different than the appraisal practices generally applied by the Property Appraiser to comparable properties in the same county. To overcome the Property Appraiser's presumption of correctness, the Petitioner must show 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 valuation is arbitrarily based on appraisal

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practices that are different from the appraisal practices generally applied by the Property Appraiser to comparable properties within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

The Special Magistrate has determined that there is an abundance of relevant and credible evidence on the hearing record. Whereas both parties submitted lengthy evidence packets, the preponderance of evidence provided by the PAO supports the facts that the PAO adequately demonstrated its considerations for applicable criteria embodied in Section 193.011 F.S., did not use appraisal methodology that was arbitrary, but rather utilized credible methodology like that of professional appraisal practice. It is recommended that the Property Appraiser's Just/Assessed/Taxable values be upheld and relief to the Petitioner be denied.

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Attachment: JamirRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# QUALIFICATIONS OF STEPHEN J. JAMIR, MAI, CCIM
## STATE CERTIFIED GENERAL REAL ESTATE APPRAISER #RZ299

### BUSINESS ADDRESS

JAMIR & ASSOCIATES, INC.
4501 North B Street West
Tampa, FL 33629

Telephone: 813-870-1334
Website: www.jamirassociates.com
E-mail: clientservice@jamirassociates.com

### EDUCATION

B.A. Degree in Political Science, University of Florida, 1977
Florida Department of Transportation R/W Training Program, 1980

### AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS COURSEWORK

| | |
|---|---|
| Course 8-2 | Single-family Residential, 1980 |
| Course 1A | Principles and Procedures of Appraisal, 1981 |
| Course 2-2 | Valuation Analysis and Report Writing, 1982 |
| Course 7 | Industrial Valuation, 1982 |
| Course 10 | Market Analysis, 1984 |
| Course IB | Capitalization Theory and Techniques, 1985 |
| Course IIB | Capitalization Theory and Techniques, 1986 |
| Course 2-1 | Case Studies, 1986 |
| Course 4 | Litigation Valuation, 1989 |
| Course 2-3 | Standards of Professional Practice, 1991, 1992 |

### OTHER COURSES AND SEMINARS

- USPAP Update; Florida Law Update; The Cost Approach, Unnecessary or Vital; Business Practices & Ethics; Artificial Intelligence; How Tenants Create or Destroy Value, 2020
- USPAP Update; Florida Law Update; Real Estate Damage; Residential & Commercial Valuation of Solar, 2018
- USPAP Update; Florida Law Update; Litigation Assignments for Residential Appraisers; The Implications of 3D Printing for Real Estate; The Tough Ones - Mixed-Use Properties, 2016
- USPAP Update; Florida Appraisal Law Update; Business Practices & Ethics; Real Estate Finance & Statistics; Trial Components, 2014
- USPAP Update, Florida Appraisal Law Update; Project Management; Common Errors and Issues In Appraising, 2012
- USPAP Update; Florida Appraisal Law Update; Advanced Appraisal Review; Supervisor/Trainee Roles & Rules, 2010
- Appraisal of Real Property in Distressed Markets; Attorney Professionalism and Legislative Updates on Ethics; Case Law and Legislative Updates; Reading R/W and Construction Plans; Finding a Way to Effective Representation, 2009
- USPAP Update; Florida appraisal Law Update; Supervisor/Trainee Roles & Rules; Advanced Appraisal Review; 2008
- USPAP Update; Eminent Domain Conference; Business Practices and Ethics, 2006
- USPAP Update; Appraisal Fraud; and The Appraiser as Expert Witness, Tampa, 2002
- Business Valuation, Tampa, 2000
- Decision Analysis for Commercial Investment Real Estate CI-301, CCIM, San Diego, 1998
- Financial Analysis C1-101, CCIM, Tampa, 1997
- Market Analysis for Commercial Investment Real Estate CI-210, CCIM, St. Petersburg, 1996

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## QUALIFICATIONS, PAGE 2

- Environmental Risk; Appraisal Practices for Litigation, 1995
- Analyzing Operating Expenses; Understanding Limited Appraisals,1994
- Hotel/Motel Valuation; Appraising Troubled Properties; Eminent Domain, Hillsborough County Bar Association; Boundary Law in Florida, National Business Institute, 1992
- Review Appraisal; PRO-JECT Plus Leasehold Analysis Software Training; Rates, Ratios & Reasonableness; Investment Property Analysis, 1991
- Concurrency Seminar, Pinellas County Property Appraiser's Office; Review Appraisal, AIREA, Jacksonville; Appraiser Under FIRREA, Society of Real Estate Appraisers; Citrus Seminar as taught by Ronald P. Muraro (Florida Dept. of Citrus), 1990
- Easement Valuation, AIREA (T. Roberts, MAI), 1988
- Valuation and Evaluation of Proposed Projects, Society of Real Estate Appraisers, November, 1987
- Marshall and Swift Computer Seminar, 1985, 1989
- Federal Home Loan Bank Board Memorandum R41b and R41c seminars, 1985, 1986, 1987
- Appraising for Condemnation, Federal Highway Administration, 1983
- International Right of Way Association Courses in Appraising, Road Construction and Land Acquisition, 1982-1983
- Numerous others on such subjects as shopping center development, urban land use planning, mortgage underwriting, in-house computer training, and spreadsheet applications.

## EXPERIENCE

*1992 to Present*: Owner and President of Jamir & Associates, Inc., a Commercial Real Estate and Consulting firm specializing in Litigation Valuation, Eminent Domain and Ad Valorem Tax matters. Have appraised over 1,000 eminent domain related parcels. Primary clients include the Florida Department of Transportation, Hillsborough County, and others. Served as Special Magistrate for the Valuation Board in Hillsborough County in 2004, 2007, 2008, 2009, 2010, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019, and in Citrus County in 2009, 2010, 2011 and 2012, 2014 and 2015 and in Hernando County in 2019.

*1988-1992:* Senior Partner and Commercial Manager of Pardue, Heid, Church, Smith & Waller of Tampa, Inc. Responsibilities included management of production, appraisal review, appraiser recruitment and training, business development and general management and supervision. Production management responsibilities included the origination of over 200 commercial appraisal assignments annually and overseeing the completion and correctness of these assignments utilizing 25 junior and senior staff appraisers. Production was also in the form of fee reviews for outside banks/clients, property tax consultations, and limited fee appraisal work, primarily for condemners and property owners affected by eminent domain actions. Notable property specialties either directly appraised or under my direct responsibility included:

PUDs and DRIs (Bulk Subdivision Analysis)
Golf Courses and Country Clubs
Shopping Centers of all types
Hotel Properties
Wetlands and Acreage
Industrial Manufacturing Plants
Apartment Complexes
Eminent Domain
Regional and Branch Banks
Timberland

*1984-1988:* Senior Appraiser with Pardue, Heid, Church, Smith & Waller, Inc. (Orlando). Personally, performed over 200 commercial real estate appraisal assignments on a wide variety of existing and proposed projects, such as apartment complexes, condominium complexes, professional and medical office buildings, manufacturing and warehousing properties, shopping centers, retail buildings, mobile home and recreational vehicle parks.

- Restaurants, commercial buildings, residential/office/industrial subdivisions. Assignments included appraisals of many specialty-type properties such as gas stations, convenience stores, banking facilities, automobile dealerships, and downtown historical buildings.

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- Restaurants, commercial buildings, residential/office/industrial subdivisions. Assignments included appraisals of many specialty-type properties such as gas stations, convenience stores, banking facilities, automobile dealerships, and downtown historical buildings.

- Performed many appraisals for municipalities, governmental and quasi-governmental agencies. Several of these assignments involved analysis of lowlands and submerged properties as part of larger tracts. Have considerable experience in valuing temporary and perpetual easements, leasehold and leased fee interests, timber rights, and other "divisions" of the "bundle of rights."

- Conducted many market studies to measure feasibility, loss of physical and legal access rights, effects of assemblage, proximity studies to determine enhancement or diminution of real estate values, adaptive use studies, cost feasibility studies, investment sensitivity analysis, and other studies of research and analysis on a consulting basis.

*1983-1984:* Staff Appraiser, Bullard & Associates, Daytona Beach, Florida. Responsibilities included preparation of eminent domain appraisals, wetland appraisals and timberland appraisals.

*1981-1983:* Florida Department of Transportation Staff Appraiser. Obtained valuable training performing condemnation appraisals. Also performed consultations and appraisals for Borrow Pit Site Acquisition, and appraised Surplus Property.

*1979-1981:* Florida Department of Transportation Right-of-Way Specialist. Responsibilities included Right-of-Way Acquisition, Title III Relocation, and Liaison to Legal Department.

## EXPERT WITNESS

Served as expert witness in foreclosure hearings, bankruptcy and deficiency hearings, and other matters of value in Hillsborough and Leon County Courts, as well as in US Bankruptcy Court and US District Court (Jacksonville). Have served as expert witness for eminent domain actions in Hillsborough, Pasco, Manatee, Marion, Hernando, Pinellas, Glades and Brevard Circuit Courts.

## SPEAKING ENGAGEMENTS

Highest and Best Use Analysis – to Robert Morris Associates, 1990
FIRREA Guidelines/Reviewing Commercial Appraisals – to SunTrust Bank, NA, 1991
Eminent Domain Appraisal Issues – to Hillsborough County Bar Association, 1992

## PROFESSIONAL STANDING

Member of the Appraisal Institute – MAI Designation #7667, 1987
Florida State Certified General Appraiser – #RZ299, October 1991
CCIM (Certified Commercial Investment Member) Designation #8018, 1998
Florida Real Estate Broker #0265744
Realtor Member – Tampa Board of Realtors
Member, Florida Association of Realtors
Member, National Association of Realtors

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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
  - ☑ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: John Robinson Email: john@property-specialists.com
Business Name: Property Investment Specialists, Inc.
Home Address: 800 Windergrove Court, Ocoee, FL 34761
Business Address: 204 S. Dillard Street, Winter Garden, FL 34787
Phone: Home/ 407-877-3757 Business/ 407-877-9694 Cell/ 407-399-9818 Fax: 407-877-8222

## LICENSURE / EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: RZ417 Valid Thru: 11/30/22
How many years of experience do you have in the area of real property valuation: 38 years
How many years of experience do you have in the area of tangible property valuation: Approx. 20 years

## DOCUMENTATION REQUIRED

***Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.**

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

See attached qualifications



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

See attached qualifications

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

Have served as a Special Magistrate since 1994 and have been a real estate appraiser since 1984

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | 1989 | 8135/Acct. 47472 |
| CCIM Institute | CCIM | 1990 | 9080 |
| Appraisal Institute | AI-GRS | 2014 | 8135/Acct. 47472 |
| American Society of | | | |
| Appraisers | ASA | 2020 | 123278 |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

MAI: 5 years of appraisal experience and successful completion of required courses (7), demonstration appraisal report and comprehensive examination; CCIM: Proof of MAI designation, successful completion of required courses (3), and comprehensive exam; AI-GRS: general state certificatino, successful completion of 2 courses and comprehensive exam; ASA: Proof of MAI designation, Ethics course, 3 references

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:

Have heard tangible VAB cases sporadically over the past approximately 20 years, most recently in 2020

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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | 37 years in Northwest and Central Florida |
| COMMERCIAL REAL PROPERTY | 36 years all property types in Central Florida |
| TANGIBLE PROPERTY | Approximately 20 years of TPP VAB cases |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Have used Microsoft Word and Excel since 1987 and have used Axia software since 2006

13. List any additional information which makes you qualified to serve as a special magistrate:

Have served as a Special Magistrate since 1994 in Central Florida and have served as a fee appraiser since 1985 in central Florida

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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

John Robinson

_____ Date: 7/3/21

Signature of Applicant

John Robinson

Printed Name of Applicant

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Ron DeSantis, Governor

Halsey Beshears, Secretary

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

## ROBINSON, JOHN ALAN

204 S DILLARD ST
WINTER GARDEN FL 34787

**LICENSE NUMBER: RZ417**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

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**QUALIFICATIONS OF JOHN A. ROBINSON, MAI, AI-GRS, CCIM, ASA** 
**State-Certified General Real Estate Appraiser #RZ417**

Business Address:
Property Investment Specialists, Inc.
204 S. Dillard Street, Winter Garden, FL 34787
(407) 877-9694 Fax: (407) 877-8222

Residence Address:
800 Windergrove Court
Ocoee, Florida 34761

Education
Auburn University - Auburn, Alabama
BS in Business Administration, Major: Finance, December 1982
Melbourne High School - Melbourne, Florida

Appraisal courses sponsored by IAAO:
Course 300-Fundamentals of Mass Appraisal, Orlando, FL, May 2016
Course 201-Appraisal of Land, Lake Mary, FL, August 2016

Appraisal courses sponsored by The Appraisal Institute:
Course 1A, Part 1 - Real Estate Appraisal Principles, Univ. of North Carolina, July 1984
Course 1A, Part 2 - Basic Valuation Procedures, University of San Diego, June 1985
Course 1B, Part A - Capitalization Theory and Techniques, Orlando, Florida, May 1986
Course 1B, Part B - Capitalization Theory and Techniques, Daytona Beach, Florida, September 1986
Course 2-3 - Standards of Professional Practice, Orlando, Florida, March 1987
Course 2-1 - Case Studies in Real Estate Valuation, Orlando, Florida, May 1987
Course 2-2 - Valuation Analysis & Report Writing, Arizona State Univ., February 1988
Comprehensive Examination, Atlanta, Georgia, August 1988
Course 6 - Computer Assisted Investment Analysis, College Park, Maryland, June 1990
Course II520 - Highest & Best Use and Market Analysis, Orlando, Florida, March 1994
Course 430 - Standards of Professional Practice, Part C, Orlando, Florida, Sept. 1997
Course 430 - Standards of Professional Practice, Part C, Altamonte Springs, FL, Nov. 2002
Condemnation Appraising: Principles & Applications, Destin, FL, April 2009
Review Theory-General, Orlando, FL May 2014

Courses sponsored by the CCIM (Certified Commercial Investment Member) Institute:
Course CI 101 - Financial Analysis for Commercial Real Estate, October 1997
Course CI 201 - Market Analysis for Commercial Investment Real Estate, May 1998
Course CI 104 - Investment Analysis for Commercial Investment Real Estate, May 1999
Comprehensive Examination – Orlando, Florida, November 1999

Courses sponsored by CoreLogic
Marshall & Swift Commercial Cost Approach Certificate, May 2016

Courses sponsored by the American Society of Farm Managers and Rural Appraisers:
Valuation of 'Conservation Easements' & Other Partial Interests in Real Property, September 2009

Appraisal seminars sponsored by The Appraisal Institute (and South Florida Water Management District):
Rate Extraction/Application, July 1989
Impact of Environmental Considerations on Real Estate Appraisals, July 1989
Standards of Professional Practice Update, July 1990
Appraisal Regulations of the Federal Banking Agencies, November 1990
Environmental Concerns, September 1991
Subdivision Analysis, November 1991

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Standards of Professional Practice, October 1992
Americans with Disabilities Act, February 1993
Rates, Ratios & Reasonableness, February 1993
Appraisal Review Overview, August 1993
ARGUS Beginning Training, October 1993
Appraising Troubled Properties, November 1993
Limited Appraisal Round Table, June 1994
Uniform Standards of Professional Appraisal Practice Update*, June 1994
(Instructed for Lincoln Graduate Center)
HUD/FHA Training Session, November 1994
Principles of Appraisal Review*, January 1995 (Instructed for Lincoln Graduate Center)
Analyzing Operating Expenses, March 1995
Fair Lending and the Appraiser, June 1995
Farm and Land Appraisal*, June 1995 (Instructed for Lincoln Graduate Center)
The Internet and Appraising, February 1997
Understanding and Using DCF Software: A Comparison of ARGUS, PRO-JECT and
DYNALEASE, December 1997
USPAP Update Core Law For Appraisers, February 1998
Econometrics, June 1999
Public Market for Real Estate, June 1999
General Appraiser USPAP Update, June 1999
Client Satisfaction/Retention/Development, June 1999
Technology Forum, June 1999
Appraising from Blueprints & Specifications, February 2000
Current Appraisal Issues in Florida (South Florida Water Management District), May 2000
Professional Standards USPAP Update/Florida Law for Real Estate Appraisers, August 2000
Florida State Law and USPAP Review for Real Estate Appraisers, April 2002
Appraisers and the Gramm-Leach-Bliley Act, April 2002
Mark-to-Market-The Next FIRREA, April 2002
Current Appraisal Issues in Florida (South Florida Water Management District), May 2002
Internet Appraisal Research and the Florida Appraiser, May 2003
2003 South Florida Water Management District Appraisal Seminar, May 2003
Appraising A Proposed Property, February 2004
Florida Appraiser's State Law Update, March 2004
Course 400 – National USPAP Update Course, March 2004
Uniform Standards for Federal Land Acquisitions, March 2004
2004 South Florida Water Management District Appraisal Seminar, May 2004
Real Estate Finance, Value and Investment Performance, February 2005
2005 South Florida Water Management District Appraisal Seminar, May 2005
Subdivision Valuation: A Comprehensive Guide to Valuing Improved Subdivisions, February 2006
2006 South Florida Water Management District Appraisal Seminar, April 2006
2006 Scope of Work and the New USPAP Requirements Seminar, June 2006
2006 New Technology for the Real Estate Appraiser: Cool Tools Seminar, June 2006
Florida Core Law and National USPAP Update, September 2006
Business Practices and Ethics, May 2007
2007 South Florida Water Management District Appraisal Seminar, May 2007
USPAP Update Course including Florida Law and Supervisor/Trainee Roles & Relationships, April 2008
2008 South Florida Water Management District Appraisal Seminar, May 2008
Course-I400 – National USPAP Update Course, July 2010

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Florida Law and Supervisor/Trainee Roles & Rules, July 2010
Uniform Standards for Federal Land Acquisitions: Yellow Book, February 2011
Appraising the Appraisal, January 2012
Business Practices and Ethics, March 2012
Fundamentals of Separating Real Property, Personal Property and Intangible Business Assets, March 2012
Trial Components: Recipe For Success of Disaster?, August 2012
USPAP Update Course, November 2012
Marketability Studies: The Six-Step Process and Basic Applications, March 2013
Marketability Studies: Advanced Considerations and Applications, March 2013
Front of the House/Back of the House, April 2013
Central Florida Real Estate Forum-The Road to Recovery, September 2013
Critical Thinking in Appraisals, January 2014
Introduction to Land Valuation, April 2014
USPAP Update Course, September 2014
STDB Hands-On Presentation Training Course, August 2015
USPAP Update Course, July 2016
Business Practices and Ethics, March 2017
Central Florida Real Estate Forum, October 2017
Solving Land Valuation Puzzles, February 2018
USPAP Update Course, April 2018
2018 Central Florida Real Estate Forum, October 2018
Evaluating Commercial Leases, February 2019
Supervisory Appraiser/Trainee Appraiser Course, February 2019
2019 Central Florida Real Estate Forum, October 2019
USPAP Update Course, January 2020
Valuation Impacts of COVID-19 webinar, April 2020
The Cost Approach: Unnecessary or Vital to a Healthy Practice?, October 2020

Real Estate Experience

2017-2019 - Assistant Vice President, Appraisal Department, Valley National Bank, Orlando, FL
2015-2017 – Senior Commercial Real Estate Valuation/VAB Advisor Orange County Property Appraiser, Orlando, FL
2000 - President, Property Investment Specialists, Inc., Winter Garden, FL
1994-2015 - Founder and President, Property Valuation & Consulting, Inc., Orlando, FL
1991-1994 - Vice President/Senior Review Appraiser, First Union Corporation, Orlando, FL
1990-1991 - Appraisal Review Officer, Southeast Bank, N.A., Orlando, FL
1986-1990 - Senior Appraiser, SEMCO Services, Inc., Orlando, FL
1985-1986 - Appraiser, Pardue, Heid, Church, Smith & Waller, Inc., Orlando, FL
1983-1985 - Appraisal/Property Manager, Sherrill Realty Company, Pensacola, FL

Appraisal experience includes narrative and form report writing and review of single-family and multi-family residential, agricultural, commercial (office, retail, hotels/motels), industrial, special purpose and vacant land properties. Experience includes providing expert witness testimony.

Publications

"Scope of the Appraisal - A Practical Analysis", *The Appraisal Journal*, January 1992, *The Canadian Appraiser*, Winter 1993

Professional Affiliations and Memberships

Member Appraisal Institute (MAI Number 8135-Account No. 47472)

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Certified Commercial Investment Member (CCIM Number 9080)
Accredited Senior Appraiser, Real Property-American Society of Appraisers (Member ID 123278)
Former Member IAAO (International Association of Assessing Officers), Member ID 10197078
State-Certified General Appraiser, License No. RZ417
Licensed Florida Real Estate Broker/Salesman - Active Status
1991 and 1993 Young Advisory Council - Appraisal Institute
Florida General Appraiser Instructor, License No. GA1000019
Former Instructor for Lincoln Graduate Center, San Antonio, Texas
Approved Instructor for Valencia College Adult Ed. (R.E. Appraisal), Orlando, Florida
Selected as Special Magistrate for Orange County (1994-1996, 1998, 1999, 2001-2007, 2009-2014, and 2018-2019), Seminole County (1997-2000, 2002-2003, 2006, 2010-2011, 2017, 2019 and 2020), Volusia County (1999-2009, 2017, 2019 and 2020), Brevard County (1999-2012, 2014, and 2018), Indian River County (2004-2007), Citrus County (2005, 2006, 2008-2009, 2013, and 2017-2020), Hillsborough County (2008-2014, and 2017-2018, 2020), Pinellas County (2008-2014, and 2017-2018), Lake County (2019, 2020), Osceola County (2014), Escambia County (2012), Polk County (2013-2014 and 2017), Pasco County (2013-2014), Hernando County (2012, 2020), Sarasota County (2017, 2019 and 2020), Alachua County (2017-2018, 2020), Leon County (2019 and 2020), Sumter County (2020) and Okaloosa County (2010-2011, and 2015)

References
Available upon request.

Attachment: RobinsonRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

APPRAISAL INSTITUTE

# MEMBERSHIP CERTIFICATE

*This Certifies That*

## *John Alan Robinson*

*was admitted to membership in the American Institute of Real Estate Appraisers as an* ***MAI Member*** *(8135) on the22nd day of May, 1989 and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

PRESIDENT

APPRAISAL INSTITUTE CORPORATE SEAL

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP.

Attachment: RobinsonRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# Appraisal Institute®

*Professionals Providing Real Estate Solutions*

This Certifies That

*John A. Robinson, MAI*

has been admitted to membership as an

**AI-GRS Member**

in the Appraisal Institute and is
entitled to all the rights and privileges of membership
subject only to the limiting conditions set forth from time to time
in the Bylaws and Regulations of the Appraisal Institute.

In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President, and the Corporate Seal to be hereunto affixed on this 28th day of July 2014

*President*

*This certificate is the property of the Appraisal Institute and must be returned to the Secretary upon termination of membership.*

Appraisal Institute
CORPORATE SEAL

Attachment: RobinsonRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

**Commercial Investment Real Estate Institute**

CCIM

*430 N. Michigan Avenue*
*Chicago Illinois 60611.4092*
*Telephone 312.321.4460*
*Facsimile 312.321.4530*

*Affiliated with the NATIONAL ASSOCIATION OF REALTORS®*

November 10, 1999

John A. Robinson, CCIM
Property Valuation and Consultant, Inc
331 Northtland Avenue
Suite B-4
Maitland, FL 32751

Dear John:

***Congratulations on earning your CCIM Designation!***

I sincerely hope that one of your membership goals includes active involvement in our organization. We find that the greatest overall satisfaction is derived from active members who utilize all the services we offer. We cannot effectively serve you as an organization, a networking medium or to have education and career development resource without your active participation. Get involved and feel free to contact me personally with any suggestions, comments or questions you may have about the Institute. Consider getting involved in your local CCIM chapter as well.

The CCIM designation number assigned to you is 9080. You will need this to access the CCIM Web site. Remember, all United States designees are required to be members of National Association of Realtors® (NAR) through a local board or association as either a REALTOR® or Institute Affiliate Member. If you choose Institute Affiliate Membership, simply present a copy of this letter to your local board to certify your CCIM status.

Again, congratulations on this milestone accomplishment in your career, and welcome to the ever-growing roster of CCIM's pledged maintain professional knowledge, expertise, and ethical practice in commercial real estate.

If you have any questions, feel free to contact Cathy Wright, CIREI Designation Supervisor 800/621-7027 ext. 4495.

Sincerely,

W. Duncan Patterson, CCIM
2000 CIREI President

Attachment: RobinsonRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

*The Society's Board of Examiners Certifies That*

# *John Robinson*

*Is hereby awarded the designation*

## *Accredited Senior Appraiser*

## *American Society of Appraisers Headquarters - Reston, VA*

*and is entitled to use the designation in accordance with the society's bylaws and administration rules.*

*Signed, Sealed and Attested*
*This 02 day of June 2020*

*International Secretary/Treasurer*

*International President*

*This certificate is the property of the American Society of Appraisers and must be returned to the International Office upon membership termination.*

Attachment: RobinsonRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Findings of Fact

Basic Underlying Facts

1. The property owner (Lowe's Home Center Inc.) was represented by Sabrina Weiss Robinson of Stears Weaver Miller Weissler Alhadeff & Sitterson, P.A. (an agent of the property owner), hereinafter referred to as petitioner. Dexter Dubose represented the Property Appraiser (PA).

2. The property is a freestanding Lowe's building, described as parcel ID# 17-21-31-5TS-0000-0010 and is located at 1155 Vidina Place in Oviedo. The property has 137,836 rentable square feet and was constructed in 2001, situated on 544,201 square feet/12.49 acre. The PA's market value of $9,963,770 reflects $72.29 per square foot of rentable area. The appeal is based on the petitioner's comments that the property has an excessive size as smaller footprints are now being constructed (resulting in functional obsolescence), the PA's estimated market rent is excessive and the PA's comparable sales are smaller and superior to the subject.

3. Evidence was properly exchanged between the PA and the petitioner prior to the hearing in accordance with Rule Chapter 12D-9.020 and 12D-9.025 which implements section 194.011(4), F.S.

4. In accordance with Rule Chapter 12D-9.024, Fla. Adm. Code, the PA first presented evidence to establish the presumption of correctness. Dexter Dubose presented the PA's opening address (Exhibit A-PA evidence) to demonstrate proper consideration of each of the following eight factors cited in Section 193.011, F.S., in developing the just value assessment.

The PA confirmed the TRIM and Before Board Action values noted in the Decision Summary section of this recommendation. The petitioner confirmed the values to be accurate.

5. The petitioner did challenge the PA's presumption with regards to the cost approach being overstated, the comparable sales being superior to the subject with respect to size and the income the property is capable of generating, as previously stated. The petitioner did offer an alternative value opinion of $8,311,552 based on the income approach and presented documentary evidence in advance of the hearing to refute the PA's value.

6. The petitioner disagreed with the PA's determination of just value, based on the evidence submitted as stated in paragraph 2 above.

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7. The petitioner presented the following documentary evidence to support the petitioner's arguments: cover letter and request for PA evidence; title page; index; property summary including property details; aerial map; property record card/information sheet (with property description information, plat map and land and building values including replacement cost new, permit data and improvement details); architectural site plan; cost analysis with supporting SwiftEstimator report, depreciation comparables and pages from the Appraisal of Real Estate regarding market extraction method; article functional obsolescence; standard methods of measurement resource; chart of smaller Lowe's stores in Florida; table of asking and actual big box rents in Florida; pro forma analysis; market support for cap rate from The Boulder Group, Avison Young, Realty Rates and CBRE investor surveys; Moody's Investors service rating of Lowe's; table of comparable land sales; subject land value table; table of 10 big box sales in Florida; table of 13 big box comparable assessments in the metro Orlando area including Seminole County; Chapter 194.304, Florida Statutes regarding hearing procedures/rules; table of 20 national sales of Target stores; table of 17 national sales of Lowe's stores; table of 6 Florida sales of mostly smaller (than the subject) Lowe's stores (less than 121,000 SF); Addenda/Supplemental Evidence items of relevant retail articles including: retail market conditions (numerous store closings), Lowe's (and their financial struggles related to an acquisition), smaller format stores (examples include Walmart, Target and Barnes & Noble) and e-commerce (and its growth); article on valuation of big box retail (methodologies that are appropriate and pitfalls to avoid); RERC big box study (methodologies to use with problems in using contract rents, sale price declines per unit as the building is larger, sale price declines as the lease term gets shorter, and most emphasis being on sales comparison approach); Florida DOR property tax information bulletin (Florida Department of Revenue (DOR) Property Tax Oversight PTO 11-01 regarding Value Adjustment Board Petitions and the Eighth Criterion); Form DR 493 regarding adjustment made to arrive at assessed value (15%); and portions of 2020 VAB training manual (modules 4 and 6).

The Special Magistrate (SM) reviewed all evidence presented by the petitioner. In accordance with Rule 12D-9.025(1), Fla. Adm. Code (F.A.C.), the SM determined the evidence and testimony was relevant and credible to the valuation issue at hand. Thus, the evidence presented by the petitioner was admitted for consideration in relation to the appropriateness of the subject's valuation.

8. The PA did have questions/comments relating to the petitioner's evidence. The PA's questions/comments included: the subject land value is understated, the comparable sales and rentals are not comparable to the subject (due to inferior characteristics), and the cost approach should be given primary consideration in concluding the subject's value.

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9. The PA presented the following documentary evidence to support its just valuation determination cited above. The evidence consisted of a street photograph of the subject with limited property information; contents; subject TRIM notice; statement of compliance with Section 193.011, Florida Statutes, professionally accepted mass appraisal standards and the Uniform Standards of Professional Practice; property record card/information sheet (with property description information, land and building values including replacement cost new, building sketch and improvement details); table of 8 comparable land sales in Seminole County from May 2018 to September 2019, ranging in size from 2.44 to 12 acres in Seminole County (that sold from $1,000,000 to $5,200,000 or $8.89/SF to $12.89/SF, averaging $8.85/SF); permit information; e-mail correspondence regarding details of permit costs; table of four Lowe's properties that are being petitioned including property details and just/market values for each property; Orange County Lowe's properties including property details and just/market values for 7 properties; traffic count information for subject; cost approach summary including excerpts from Marshall Valuation Service (MVS); Lowe's 2019 annual report (with statement that property is recorded at cost; income approach worksheet based on a $7/SF NNN market rental rate, 5% vacancy/collection loss rate, 5.8% operating expenses, 7% capitalization rate (indicating a value of $12,152,759); Lowe's annual report (Form 10-K); table of four asking rental rates for big box spaces in central and south Florida (averaging $10.81/SF); table of four asking rental rates for big box spaces in central and northwest Florida from 2019 hearing (averaging $9.65/SF); table of four signed big box rents in Seminole (3) and Miami-Dade (1) counties (averaging $10.53/SF for the Seminole County properties); CoStar underwriting report-retail property revealing two Home Depot properties and one Lowe's property (with reported rental rates of $17/SF-$21/SF) including map and exterior photos; Orlando retail market study from 3Q2019 CBRE and CoStar; management and reserves estimates based on PwC Investor survey; The Boulder Group report of Lowe's property profile and cap rates; 1Q20 PwC national net lease report; table of 15 freestanding retail sales in 2018 and 2019 (averaging $151.86/SF); table of 13 sales nationally (with credit rating of BBB+); CoStar information regarding industrial properties; articles about Amazon and Lowe's and new headquarters in Charlotte; article regarding hardware stores; request for petitioner's evidence; professional qualifications; final statements and certification.

The Special Magistrate (SM) reviewed all evidence presented by the PA. In accordance with Rule 12D-9.025(1), Fla. Adm. Code (F.A.C.), the SM determined the evidence and testimony was relevant and credible to the valuation issue at hand. Thus, the evidence presented by the PA was admitted for consideration in relation to the appropriateness of the subject's valuation.

10. The petitioner did have questions/comments relating to the PA's evidence, pointing out that the cost approach is not an appropriate indicator of value and the sales comparison approach is the best approach to value. Other comments about the PA's evidence include small improved sales rather than sales of properties as large as the subject and the PA's rental rate is too high and not supported by market evidence.

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Ultimate Findings of Fact

Based on the evidence submitted, I find the PA's evidence pertinent to the cost approach with support from the sales comparison and income approach to be persuasive, appropriate and supportive of the market value. However, I find the petitioner's evidence to also be pertinent, particularly regarding the sales comparison and income approaches and supportive of the property being overvalued. The PA presented all three approaches to value with most emphasis on the cost approach while the petitioner presented all three approaches to value with most emphasis on the sales comparison approach. Since the cost approach to value is considered primary to the PA, this analysis will be discussed initially, followed by the sales comparison and income approaches.

The PA identified eight land sales (May 2018 to June 2019), one of which is located in the Oviedo area and all are in Seminole County. All of the sales are qualified and are smaller than the subject's land area and although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. The PA's land value reflects $6.18/SF of usable/upland area ($3,366,177). No adjustments are made to the comparable land sales; however, the PA's comparable land sales range from $7.55/SF to $10.96/SF, averaging $8.85/SF after a 15% cost of sale adjustment.

The petitioner identified seven land sales (December 2017 to April 2019), one of which is located in the Oviedo area and all are in Seminole County. All of the sales are smaller than the subject's land area and although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. The petitioner's land value is $3.33/SF of usable/upland area ($1,812,189) which is reported to be the PA's value; however, that is not the case as previously stated. No adjustments are made to the comparable land sales; however, the petitioner's comparable land sales range from $0.92/SF to $5.44/SF, averaging $3.33/SF after a 15% cost of sale adjustment, significantly lower indications than the PA's sales. Traffic counts are presented, however, and show a wide range, although most are lower than the subject location. Without benefit of more specific information as to tax map, location map and traffic count details, it is difficult to determine which comparables are most similar to the subject site. However, the subject site is located off a major arterial (Red Bug Lake Road) in Seminole County and would command a unit value well above the petitioner's range in unit values from the land sales selected. Upon further review, the petitioner's comparables are inferior in location to the subject; therefore, the PA's land value is considered to be more appropriate than the petitioner's land value based on a preponderance of the evidence.

The PA's depreciated building value of $6,208,012 ($45.73/SF) and extra features value of $389,581 via the CAMA system were added to the land value for the indicated value by the cost approach of

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$9,573,915. Based on the replacement cost new of $7,908,295, the depreciation estimate reflects 21.5%. However, an independent analysis by the Marshall Valuation Service (MVS) resulted in a value by the cost approach of $12,163,889 (reflecting an assessment to cost ratio of 81.91%). The PA's cost approach using MVS is based on a cost replacement cost new of $72/SF with physical depreciation only estimated at 22%. The purpose of the PA's MVS analysis is to show consideration of the 15% cost of sale consideration.

The petitioner's depreciated building and extra features value of $3,127,204 ($23.03/SF) via the Marshall Valuation Service (MVS) were added to the land value for the indicated value by the cost approach of $4,470,313 ($32.93/SF). The petitioner's cost approach is based on a cost replacement cost new of $57.59/SF with physical depreciation only estimated at 40% and functional obsolescence estimated at 20% (based on the older footprint of the subject, which has been reduced by approximately 15% in newer Lowe's and retail big box stores). Primary differences between the PA and petitioner are in the quality rating of the cost new estimate (2.0 or average is used by the petitioner and good is used by the PA in the MVS analysis) and the 60% depreciation used by the petitioner (which includes functional obsolescence) compared with the 22% physical depreciation used by the PA. The petitioner has some valid points regarding the quality rating likely being more representative of average quality than good and the possibility of functional obsolescence in the subject's larger size/building footprint, compared with recent development trends. However, the PA's value via the CAMA system is reasonable and appropriate (and likely includes a conservative land value estimate) although it does not reflect a cost of sale deduction. Based on the petitioner's argument that the cost approach should not be the primary approach to value for a big box retail property like the subject, primary consideration is given to the sales comparison and income approaches.

The PA presented the income approach based on a $7/SF NNN market rental rate (which indicated a value of $12,152,759, or 121.97% of the concluded just/market value with an allowance for any disposition costs or cost of sale). The PA's value is based on a stabilized vacancy/collection loss rate of 5%, operating expense ratio of 5.77% and overall capitalization rate of 7% and these are similar to the estimates used by the petitioner with the differences from the petitioner's analysis being the market rent estimate of $6/SF NNN, slightly lower property expense ratio (5%), slightly higher cap rate (7.5%) and 15% cost of sale used by the petitioner (and indirectly applied by the PA as previously stated). The PA's $7/SF rate is based on 4 big box asking rental rates in Florida (ranging from $7/SF-$15.25/SF, averaging $10.81/SF) and 4 actual big box lease rates ($10.25/SF to $11.12/SF) signed between 2014 and 2018 in Florida (including three in Seminole County averaging $10.53/SF), two Home Depot properties with reported lease rates in Oviedo/Seminole County and additional rent comparables evidence from a 2019 hearing regarding Lowe's. The petitioner's $6/SF rate is based on 10 big box asking rental rates in Florida (ranging from $3/SF to $7.50/SF) and 7 actual big box rental rates in Florida (ranging from $2/SF to $5.50/SF). The PA's comparable rentals are all smaller buildings, although not enough information is presented as to the age of the buildings. The petitioner's comparable rentals are mostly of older

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buildings, although the actual rental rate properties are smaller (with one exception) than the subject (the asking rental rate properties are split between larger and smaller buildings). No adjustments are applied to the rental rates by the PA or petitioner. Based on the petitioner's and PA's evidence, the estimated market rental rate of between $6/SF and $7/SF is reasonable/supported and while the PA's supporting evidence is weakened by the smaller size of the comparables, the $7/SF rate does not appear to be overstated. The cap rate is based on investor surveys via the Boulder Group, RealtyRates.com, CBRE, PwC and Moody's Investor Service credit rating. The evidence does not support a convincing argument that the PA's cap rate of 7% is unreasonable. Secondary consideration is given to the income approach, given the subject is an income producing property.

The PA identified 15 sales (March 2018 to November 2019), five of which are located in Seminole County. Most of the sales are smaller than the subject (with the larger building sales being outside of the state or Seminole County) and although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. The PA's value reflects $72.29/SF of building area. No adjustments are made to the comparable improved sales; however, the PA's comparable improved sales range from $105.57/SF to $247.44/SF, averaging $151.86/SF, or $129.08/SF after a 15% cost of sale adjustment. Additionally, a November 2019 sale of a 135,268 SF Lowe's in Concord, NC (a suburb of Charlotte) sold for $112/SF at a 6.09% capitalization rate. The petitioner identified 10 sales (April 2016 to September 2019), two of which are located in Seminole County. Most of the sales are smaller than the subject (with two of the larger building sales being within Seminole County) and older than the subject (with three exceptions) although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. No adjustments are made to the comparable improved sales; however, the petitioner's comparable improved sales range from $27/SF to $67/SF, averaging $33/SF, after a 15% cost of sale adjustment. Having some familiarity with the locations of the comparable sales, most of the sales would be considered to be located in an inferior area to the subject and lower traffic counts. Additionally, the petitioner presents 13 assessment comparables of big box retail properties in Seminole County. These properties range from $31.33/SF to $68.16/SF, averaging $60.80/SF. However, all but two of the properties are older than the subject. The petitioner also presented 20 sales of Target stores (June 2014 to July 2017) in the US (including two in Florida) that ranged in unit prices from $14.04/SF to $52.17/SF. However, most of the buildings are older and the sale dates are dated (from July 2017 and older). Finally, the petitioner also presented 17 sales of Lowe's stores (March 2010 to July 2016) in the US (all outside of Florida) that ranged in unit prices from $18/SF to $40/SF. However, most of the buildings are newer but of similar size to the subject and the sale dates are dated (from July 2016 and older). Due to the lack of recent data, the Target and Lowe's sales are given minimal to no weight in making a recommendation. The assessment comps data is a secondary methodology when comparable sales are absent, which they weren't in this case. In comparing the two analyses, although the petitioner's evidence is very informative and relevant to the valuation of the subject with an excellent presentation, it is not convincing enough (given inferior building ages and locations of the comparables analyzed) to conclude that the PA's concluded value via the sales comparison approach is in excess of market value. The PA's just/market value of $72.29/SF lies 44%

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below the average indication of $129.08/SF after applying a 15% cost of sale adjustment. This approach to value has been given most consideration in the reconciliation to a final value estimate, based on the petitioner's market evidence that indicates this is the primary approach to value for big box retail properties.

Finally, the 15% cost of sale has been applied by the PA based on sale prices to the entire tax roll. However, the PA's value does reflect that the 1st and 8th criterion has been considered in the concluded value. Based on the PA's and petitioner's evidence, the PA's concluded value of $9,963,770 does not exceed its just/market value.

Conclusion of Law

Section 194.301, F.S., provides that the PA's assessment is presumed correct if the PA proves by a preponderance of the evidence that the assessment was arrived at by complying with section 193.011, F.S., any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. However, a taxpayer who challenges an assessment is entitled to a determination by the Value Adjustment Board of the appraisal methodology used in making the assessment. The value of the property must be determined by an appraisal methodology that complies with the criteria of section 193.011, F.S., and professionally accepted appraisal practices.

As SM, I considered all given evidence and testimony discussed at this hearing as noted in the findings of fact. Based on this evidence and testimony, the PA did comply with section 193.011, F.S., meeting the eight legal factors. Accordingly, pursuant to section 194.301, F.S., the PA's assessment is presumed to be correct. The Petitioner did not meet the burden of proving by a preponderance of the evidence that the PA's assessed value did not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property or was arbitrarily or erroneous based on appraisal practices that are different from the appraisal practices generally applied by the PA to comparable property within the same county. Thus, in accordance with section 194.301(2), F.S., the just value of the PA of $9,963,770 is affirmed and the petition is denied.

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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
  - ☐ Real Property and/or ☐ Tangible Personal Property

## APPLICANT INFORMATION

Name: Richard L Steeves, MAI Email: rsteeves@SECappraisers.com
Business Name: SEC Appraisers, LLC
Home Address: 2229 Pinyon Road, Apopka, FL 32703
Business Address: 2229 Pinyon Road, Apopka, FL 32703
Phone: Home/ 407-814-3639 Business/ 407-924-5807 Cell/ 407-924-5807 Fax: N/A

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: RZ2909 Valid Thru: 11/22
How many years of experience do you have in the area of real property valuation: 18 Years
How many years of experience do you have in the area of tangible property valuation: N/A

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

Lyman High School - 1991
UCF - 2001 - Finance - Bachelors



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.
Orange, Volusia, Brevard, Broward, Hillsborough, Osceola, Hernando, Sarasota

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.
10+ years conducting VAB hearings involving all property types in several counties around the state of Florida. Writing recommendations over multiple platforms, including Axia.

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | May 2014 | 454348 |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:
Several years' experience (job log), classes, testing, demonstration report, interview

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:
N/A



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# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | All types, including single family, multifamily, condo, etc |
| COMMERCIAL REAL PROPERTY | All types, incl. office, industrial, retail, land, hospitality, etc |
| TANGIBLE PROPERTY | N/A |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

20+ years in all Office applications, 13 years Axia

13. List any additional information which makes you qualified to serve as a special magistrate:

Thirteen years of experience conducting hearings regarding properties of all types, reviewing evidence and writing recommendations across multiple platforms, including Axia.



Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*



_____ Date: 4/16/2021
Signature of Applicant

Richard L Steeves, MAI
_____
Printed Name of Applicant

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# RICHARD L. STEEVES, MAI

## Professional Experience

- Commercial real estate appraiser more than 15 years of full time real estate appraisal, appraisal review and consulting experience
- Special Magistrate for the Value Adjustment Board in Orange, Seminole, Broward, Hillsborough, Osceola, Brevard, Sarasota, Hernando and Volusia counties

Previous clients include financial institutions, law firms, governmental entities and private property owners. Experience includes appraising many property types including retail power centers, neighborhood shopping centers, retail strip-centers, office buildings, industrial, flex-space, apartment communities, self-storage facilities, churches, schools, golf courses, mixed-use developments, residential subdivisions, conservation land, environmentally sensitive lands, wetlands, pasture, cropland, citrus groves, easements, and other similar property types.

Value Adjustment Board Special Magistrate experience includes conducting hearings on many property types (similar to appraisal experience) and writing recommendations regarding assessed values for the Value Adjustment Boards listed above. Special Magistrate experience spans nine years.

## Employment History

Southeast Commercial Appraisers & Consultants, Orlando, President, January 2015 - Present
Capstone Valuation Advisors, Maitland, Commercial Appraiser, March 2014 – January 2015
Property Valuation & Consulting, Winter Garden, Commercial Appraiser and Reviewer, March 2003 – March 2014

## Professional Activities & Affiliations

Appraisal Institute Member (MAI) No. 454348

## State & Regulatory Licensure

Florida: State-Certified General Real Estate Appraiser License No. RZ2909

## Education

University of Central Florida, B.S. Degree / Finance

Appraisal Courses:

Appraisal Board Course AB-1 (2003)
Course 510 – Advanced Income Capitalization (2006)
General Market Analysis and Highest & Best Use (2007)
Course 540 – Report Writing and Valuation Analysis (2010)
Advanced Concepts & Case Studies (2012)
General Demonstration Report – Capstone (2013)
FHA and the Appraisal Process (2014)
Subdivision Valuation (2016)
National USPAP Pre-Certification Course (2005)
Course 310 – Basic Income Capitalization (2004)
Florida Core Law Update (2004)
Course 400 – USPAP Update (2004)
Course 320 – General Applications (2005)
USPAP Update (2012)
Business Practices and Ethics (2011)
Cool Tools: New Technology for Real Estate Appraisers (2016)
Analyzing Operating Expenses (2016)
Real Estate Finance Statistics and Valuation Modeling (2018)

Appraisal Seminars:

Internet Appraisal Research and the Florida Appraiser (2003)
Site To Do Business Training Seminar (2005, 2006)
Subdivision Analysis (2003)
Real Estate Finance (2005)
Appraising Proposed Properties (2004)
USPAP Update Course including Florida Law and Supervisor/Trainee Roles & Relationships (2010)
National USPAP Update Course and Florida Law (2012)

Richard L. Steeves, MAI
Southeast Commercial Appraisers & Consultants
2229 Pinyon Road, Apopka, FL 32703
©407-924-5807 rsteeves@SECappraisers.com

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Petition #: 2020-00771

Special Magistrate: Richard L. Steeves, MAI

Representatives:

Property Appraiser (PAO): Mr. Walter Fletcher

Petitioner (PET): Mr. Tim Hart, Mr. Jeffery Nelson

Property Type: Community Shopping Center (Use Code 16)

Address: 1301 S Military Trail, Deerfield Beach, FL 33442

Land Area: 11.60 acres/ 505,321 square feet

Enclosed Building Area: 107,092 square feet (net rentable)

Land to Building Ratio: 4.72:1

Evidence:

Property Appraiser (PAO):

PAO package containing Florida Statutes, evidence summary, subject summary, subject tax ID card, location map, subject photographs (aerial and street level), tax map, subject leasing brochure with site plan, income approach, ;lease up analysis, market data/ articles, subject CoStar information sheet, comparable rentals, market/occupancy/cap rate data, rebuttal evidence regarding reserves and operating expense sources, Florida appraisal guidelines, correspondence regarding expenses, verbal testimony

Petitioner (PET):

Title page/ taxpayer's value estimate, summary of evidence, tax ID card, TRIM notice, subject map and photographs, site plan, DR-493 – Adjustments Made to Recorded Selling Prices or Fair Market Value in Arriving at Assessed Value, income approach (2019 actual), income approach (proforma), blended rental rate calculations, lease up analysis, rent roll, comparable rentals, income statement, expense data, market support, comparable sales, copy of petition, verbal testimony

Admissibility of Evidence:

The evidence submitted by the Property Appraiser and Petitioner is deemed relevant and admissible with no objections raised by either party. The evidence for both parties was admitted.

HEARING SUMMARY

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

The subject is a shopping center by the name of Sawgrass Promenade. The shopping center is anchored by Publix. The improvements were constructed in 1985.

INCOME

The subject is a multitenant retail property which would likely be purchased for its income producing capabilities. Therefore, the income approach is relevant. Both parties submitted an income approach. The two analyses were reviewed in a side-by-side grid.

SEE EXHIBIT B

RENTAL RATE/ POTENTIAL GROSS INCOME (PGI)/ EFFECTIVE GROSS INCOME (EGI)

In this case, the PAO's analysis was based on a NNN expense structure ($15.53/ SF, NNN). The PET's analysis is based on a Gross expense structure ($21.37/ SF, Gross, excluding taxes). The comparable data was examined for support.

The PAO's NNN analysis was supported by several rental comparables for each unit type/ size (anchor/ sub-anchor/ local). However, the PET provided the subject's rent roll, which contained several recently commenced local and sub-anchor leases. The leases showed that CAM was being added, resulting in an average Gross lease rate for the weighted sub-anchor and local spaces supporting the PET's blended Gross rental rate.

The PAO provided several anchor rent comparables. However, there is no information regarding the start dates. Most of the properties were constructed over 10 years prior to the January 1, 2020 valuation date. Therefore, many of the contract rents exhibited may have been negotiated long before the valuation date. The PET's anchor space data also contained many leases that commenced long before the valuation date. However, it did include a few Broward County located anchor spaces that commenced within the two years prior to the valuation date. The PET's Gross rental rate ($21.37/ SF) is supported by the actual rental data/ rent roll.

VACANCY & COLLECTION LOSS/ EFFECTIVE GROSS INCOME EGI

As of January 1, 2020, it appears that the subject was approximately 90% occupies (overall). However, the PET utilized an 11.5% vacancy figure. Most of the surveys provided in both packages indicate stabilized occupancy levels for the Broward County market area, and the subjects submarket area,

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

below 10%. Therefore, the PET's analysis was adjusted to reflect the subject's actual (overall) physical vacancy at 10% (supported by surveys), resulting in EGI of $2,059,700.

EXPENSES/ NET OPERATING INCOME (NOI)

The PET applies a Gross expense of $4.25/ SF + Non-Ad Valorem and Reserves. The PET's expenses are supported by surveys within the evidence package. The PAO's expense ratio (NNN) was unsupported. However, the rent roll (provided by the PET) offers good support for the subject pass thrus/ expenses on a Gross basis.

CAPITALIZATION RATE

The PAO applies a 7.00% (Base-NNN) cap rate, while the PET applies a 7.25% (Base)/ 9.31% (Tax Loaded) cap rate. Both are reasonable and within the range set by the surveys and comparable sales. There is no evidence indicating that the PAO's (Base) cap rate estimate is unreasonable/high. Therefore, the PAO's 7.00% cap rate, or 9.06% tax loaded is applied, resulting in a stabilized value via the income approach of $16,691,053 ($146.26/ SF).

LEASE UP/ RENT LOSS

As of January 1, 2020, it appears that the subject was approximately 90% occupies (overall). However, the PET utilized an 11.5% vacancy figure. The PET then subtracts $234,114 in lease up/ rent loss costs. The PET's lease up/ rent loss analysis is intended to exhibit the loss of income from the in-line space (which is the vacancy lies). However, it appears to be a double hit to the income stream (overall) to apply a stabilized vacancy above the subject's actual vacancy, then hit the subject again for lease up. The PET's lease up calculations appear reasonable. However, the total lease up space to reach stabilization amounts only 3,719 square feet (one to two tenant spaces). Therefore, a three year lease up period may be excessive. Overall, the stabilized value (Adjusted – AR) is above the assessment, while the "as is" value, using the PET's lease up figure is 1% below the assessment, and the lease up analysis is speculative. Therefore, the assessment is reasonable.

SALES

The PET provided sales. Based on the information provided (CoStar), it appears that most of the sales are unanchored, or are anchored by 2nd or 3rd generation users. The PAO is tasked with estimating Fee Simple Market Value, ignoring the tenant. However, the type of anchor tenant that the center can attract speaks to the quality of the real estate. Therefore, the PET's sales were relatively weak indicators of value for the good quality shopping center.

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Conclusion

The Petitioner requested a 10% adjustment to the value indication based on the Eighth Criterion of subsection 193.011 (8), F.S.

The eighth criterion must be properly CONSIDERED in each of the three approaches to valuation. Form DR-493 states the following;

The property appraiser must complete this form stating the eighth criterion adjustments made by the property appraiser to recorded selling prices or fair market value, based on Section 193.011 (8), F.S., in arriving at assessed value. The property appraiser must provide to the Executive Director complete, clear, and accurate documentation justifying any eighth criterion adjustments that EXCEED FIFTEEN PERCENT (Rule 120-8.002(4), Florida Administrative Code).

There is no evidence that the PAO has EXCEEDED 10%. However, the PET indicated that the COS (Cost of Sale) adjustment had not been considered by the PAO. The PAO stated that the COS adjustment would be reflected in the overall tax roll, not applied to individual parcels. There is no evidence that the PAO did not consider the COS adjustment in calculating the values for the overall tax roll.

The income approach was determined to be the only reliable value indicator (based on the evidence provided). The subject actual rent roll was determined to be the best indicator of (Gross) market rent (with support from the comparables). However, a slight adjustment to the stabilized occupancy, and applying a reasonably supported cap rate, results in a value supporting the assessment.

Therefore, the Petitioner did not present competent, substantial evidence to overcome the presumption of correctness established by the Property Appraiser. Therefore, the petition is DENIED.

**CONCLUSION OF LAW**

The evidence submitted by the Property Appraiser and Petitioner is deemed relevant, credible and admissible with no objections raised. The evidence submitted by both parties was admitted.

Based on the evidence and testimony presented at the hearing, the Property Appraiser lawfully considered the eight criteria enumerated in Section 193.011, Florida Statutes and, therefore did present sufficient evidence to establish a presumption of correctness. Petitioner did not prove by a preponderance of the evidence that the Property Appraiser's just value does not represent just value nor did the Petitioner prove that the Property Appraiser's just valuation is arbitrarily based on appraisal

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

practices that are different from the appraisal practices generally applied by the Property Appraiser to comparable property within the same county. The Petitioner did not present competent, substantial evidence to overcome the presumption of correctness established by the Property Appraiser. Therefore, the petition is DENIED.

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

**EXHIBIT A**

| PETITION 771 | |
|---|---|
| **1301 S Military Trail** | |
| **Deerfield Beach, FL 33442** | |
| SITE AREA (SF) | 505,321 |
| SITE AREA (ACRES) | 11.60 |
| BUILDING AREA | * 107,092 |
| LAND TO BUILDING RATIO | 4.72 :1 |
| PAO MARKET VALUE | $16,961,540 |
| Value/ SF | $158.38 |
| YEAR BUILT | 1985 |
| **** NET RENTABLE*** | |

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

**EXHIBIT B**

| SIDE-BY-SIDE COMPARISON | | | |
|---|---|---|---|
| | PAO | PET | AR |
| BLENDED = | $15.53 | $21.37 | $21.37 |
| EXPENSE STRUCTURE = | NNN | GROSS | GROSS |
| SUBJECT SQ. FT = 107,092 TOTAL | | | |
| PGI | $1,663,139 | $2,288,556 | $2,288,556 |
| V&C | 8% | 11.5% | 10.0% |
| EGI | $1,530,088 | $2,025,372 | $2,059,700 |
| EXPENSE RATIO | 10.0% | 25.3% | 24.9% |
| EXPENSES | -$153,009 | -$513,363 | -$513,363 |
| | | | |
| NOI | $1,377,079 | $1,512,009 | $1,546,337 |
| CAP RATE | 7.00% | 9.31% | 9.06% |
| STABILIZED VALUE | $19,672,556 | $16,242,793 | $17,070,003 |
| LEASE UP/ RENT LOSS | -$51,149 | -$234,114 | -$234,114 |
| "AS IS" VALUE | $19,621,407 | $16,008,679 | $16,835,889 |
| $/SF | $183.22 | $149.49 | $157.21 |
| ASSESSMENT | $16,961,540 | | |
| $/SF | $158.38 | | |

PGI - Potential Gross Income
V&C - Vacancy & Collection Loss
EGI - Effective Gross Income
NOI - Net Operating Income
CAP RATE - Capitalization Rate
AR - Administrative Review

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Appraisal Institute®

# Education Transcript

**Not an Official College Transcript**

**Must send actual signed certificate of completion**

April 16, 2021

Richard L. Steeves, MAI
2229 PINYON RD
APOPKA, FL 32703

Account # 454348

**This document may not be accepted by all licensing boards as verification of course completion.**
**Please note that the hours reflected below may differ by state.**
**Refer to the specific state matrix for actual state approved hours.**

| Program | Date | Location | Type | Status | Attendance | Hours Attend | Hours Exam |
|---|---|---|---|---|---|---|---|
| Appraisal of Medical Office Buildings | September 23 - December 22, 2020 | On-Demand Online Education | Hours | | Completed: September 25, 2020 | 7.0 | |
| Small Hotel/Motel Valuation | September 18 - December 17, 2020 | On-Demand Online Education | Hours | | Completed: September 24, 2020 | 7.0 | |
| Business Practices and Ethics | June 15 - July 15, 2019 | | Hours | | Completed: June 26, 2019 | 5.0 | |
| Appraising Automobile Dealerships | May 15 - June 14, 2019 | On-Demand Online Education | Hours | | Completed: May 30, 2019 | 7.0 | |
| Analyzing Operating Expenses | September 15 - October 15, 2018 | On-Demand Online Education | Hours | | Completed: October 8, 2018 | 7.0 | |
| Real Estate Finance, Statistics, and Valuation Modeling | August 15 - September 14, 2018 | On-Demand Online Education | Hours | Pass | Completed: September 10, 2018, Exam Date: September 15, 2018 | 14.0 | 1.0 |
| Florida Law | April 26, 2018 | Orange County Bar Association, Orlando, FL | Hours | | Attended | 3.0 | |
| 7-Hour National USPAP Update Course | April 25, 2018 | Orange County Bar Association, Orlando, FL | Hours | | Attended | 7.0 | |
| Analyzing Operating Expenses | September 15 - October 15, 2016 | On-Demand Online Education | Hours | | Completed: October 13, 2016 | 7.0 | |
| Subdivision Valuation | July 15 - August 14, 2016 | On-Demand Online Education | Hours | | Completed: August 8, 2016 | 7.0 | |
| Cool Tools: New Technology for Real Estate Appraisers | July 1 - 31, 2016 | On-Demand Online Education | Hours | | Completed: July 13, 2016 | 7.0 | |

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Appraisal Institute®

# Education Transcript
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**Must send actual signed certificate of completion**

April 16, 2021

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Analyzing Operating Expenses | September 15 - October 15, 2014 | On-Demand Online Education | Hours | | Completed: September 29, 2014 | 7.0 | |
| FHA and The Appraisal Process | August 15 - September 14, 2014 | | Hours | | Completed: August 28, 2014 | 7.0 | |
| Golf Course Property Valuation | May 7, 2014 | Webinar | Hours | | Attended | 2.0 | |
| Feedback on FMA | August 27, 2013 | Webinar | Hours | | Attended | | |
| Introduction to the Capstone Program & Introduction to FMA | August 2, 2013 | Webinar | Hours | | Attended | | |
| General Demonstration Report-Capstone Program | July 8 - 14, 2013 | Holiday Inn & Suites - Denver International Airport, Denver, CO | Hours | Pass | Attended, Exam Date: July 14, 2013 | | |
| Feedback on FMA | June 18, 2013 | Webinar | Hours | | Attended | | |
| General Demonstration Report-Capstone Program - Online Component | May 3 - July 14, 2013 | On-Line Seminar, Chicago, IL | Hours | | Attended | | |
| Introduction to the Capstone Program & Introduction to FMA | May 24, 2013 | Webinar | Hours | | Attended | | |
| General Demonstration Report Writing | December 15, 2012 - 14, 2013 | On-Demand Online Education | Hours | | Completed: January 3, 2013 | 7.0 | |
| AI Excel Diagnostic Examination | | Exam | Hours | Pass | Attended, Exam Date: December 31, 2012 | | |
| Advanced Concepts & Case Studies | July 16 - 21, 2012 | Fairfield Inn - Airport, Orlando, FL | Hours | Pass | Attended, Exam Date: July 21, 2012 | 37.0 | 3.0 |
| Advanced Concepts & Case Studies - Online Component | June 18 - July 9, 2012 | On-Line Seminar, Chicago, IL | Hours | | Attended | | |
| 7-Hour National USPAP Update Course | March 23, 2012 | Embassy Suite, International Dr./Jamaican Court, Orlando, FL | Hours | | Attended | 7.0 | |
| Florida Law | March 23, 2012 | Embassy Suite, International Dr./Jamaican Court, Orlando, FL | Hours | | Attended | 4.0 | |

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

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# Education Transcript
## Not an Official College Transcript
**Must send actual signed certificate of completion**

April 16, 2021

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Business Practices and Ethics | April 15 - May 15, 2011 | | Hours | | Completed: May 4, 2011 | 5.0 | |
| Report Writing and Valuation Analysis | July 19 - 24, 2010 | Florida Department of Transportation, Ocoee, FL | Hours | Pass | Attended, Exam Date: July 24, 2010 | 26.0 | 14.0 |
| Supervisor/Trainee Roles and Rules | May 21, 2010 | University of Phoenix - Maitland, Maitland, FL | Hours | | Attended | 3.0 | |
| Florida Law | May 21, 2010 | University of Phoenix - Maitland, Maitland, FL | Hours | | Attended | 3.0 | |
| 7-Hour National USPAP Update Course | May 20, 2010 | University of Phoenix - Maitland, Maitland, FL | Hours | | Attended | 7.0 | |
| Supervisor/Trainee Roles & Relationship | April 26, 2008 | Bahia Shrine Center, Orlando, FL | Hours | | Attended | 3.0 | |
| Florida Law | April 26, 2008 | Bahia Shrine Center, Orlando, FL | Hours | | Attended | 3.0 | |
| 7-Hour National USPAP Update Course | April 25, 2008 | Bahia Shrine Center, Orlando, FL | Hours | | Attended | 7.0 | |
| General Appraiser Market Analysis and Highest & Best Use | September 24 - 27, 2007 | University of Phoenix - Maitland, Maitland, FL | Hours | Pass | Attended, Exam Date: September 27, 2007 | 28.0 | 2.0 |
| Advanced Income Capitalization | April 3 - 8, 2006 | University of Phoenix - Maitland, Maitland, FL | Hours | Pass | Attended, Exam Date: April 8, 2006 | 36.0 | 4.0 |
| General Applications | March 10 - 16, 2005 | Classroom Resource Group, Atlanta, GA | Hours | Pass | Attended, Exam Date: March 16, 2005 | 37.0 | 3.0 |
| Real Estate Finance, Value, and Investment Performance | February 4, 2005 | Maison & Jardin Restaurant, Altamonte Springs, FL | Hours | | Attended | 7.0 | |
| 7-Hour National USPAP Update Course | November 11, 2004 | University of Phoenix - Maitland, Maitland, FL | Hours | | Attended | 7.0 | |
| Basic Income Capitalization | April 22 - 28, 2004 | Greater Tampa Association of REALTORS, Tampa, FL | Hours | Pass | Attended, Exam Date: April 28, 2004 | 36.0 | 3.0 |
| Subdivision Analysis | November 7, 2003 | Maison & Jardin Restaurant, Altamonte Springs, FL | Hours | | Attended | 7.0 | |

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Appraisal Institute

Checklist

**AI Affiliation**

**Status:** Active Affiliation

Membership

| Type | Joined | Expires |
|---|---|---|
| Designated Member - National | 03/03/2005 | 12/31/2021 |
| Designated Member - Chapter | 03/03/2005 | 12/31/2021 |
| Designated Member - Region | 03/03/2005 | 12/31/2021 |



Appraisal Institute

Attachment: SteevesRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

rpa
Real Property Analysts, Inc.

2433 Lee Road • Winter Park, Florida 32789-1755
(407) 628-0505 • FAX (407) 628-0523
E-mail: rpa@rpaflorida.com • www.rpaflorida.com

Members: Citrus County Value Adjustment Board June 28, 2021

Attention: Ms. GeorgetteTozer, VAB Clerk
110 North Apopka Avenue
Inverness, Florida 34450

Re: Real Property and Tangible Personal
Property Special Magistrate Services

I have had the privilege of serving your VAB for six of the last seven years. My primary responsibility has been real property petitions and periodically I also conducted tangible personal property hearings. I am hopeful to be considered for both this coming text cycle 2021 year. My proposed compensation remains the same. It is $125 per hour excluding travel time and lunch breaks with no reimbursement for business-travel expenses.

Included is my application to serve with additional descriptive information identified as Attachments A to I. Your attention is especially invited to attachment I, which are two recommendation letters from Clerks of the Board for Orange and Brevard Counties.

I have enjoyed visiting Inverness and working with your very capable staff and hope to be invited back. Thank you for your consideration of my application.

Respectfully Submitted,

Robert Sutte

Robert Sutte CRE, MAI, SRA

State-Certified General Appraiser RZ 241

Appraisal Qualifications Board Certified USPAP Instructor

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
- ☑ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: Robert Sutte Email: rpa@rpaflorida.com
Business Name: Real Property Analysts of Orlando
Home Address: 1320 Lakeview Drive, Winter Park , Florida 32789
Business Address: 2433 Lee Road, Winte Park, Florids 32789
Phone: Home/ 407-645-5199 Business/ 407-628-0505 Cell/ 407-388-4616 Fax: None

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: ( See attach. C)
General Appraiser License #: RZ 241 Valid Thru: 12-31-22
How many years of experience do you have in the area of real property valuation: 39 ( in Florida)
How many years of experience do you have in the area of tangible property valuation: 17 ( in Florida)

## DOCUMENTATION REQUIRED

***Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.**

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

Bachelor of Science Degree, Business Administration , Drake University ( Concentration in Finance)
Please see attachments A and B.
Regarding a writting sample please see Hillsborough VAB Recommended Decision (November 2020)
attachment H ( 5 pages). Regarding Florida Department of Revenue training see attachment E (2 pages)



Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Citrus 2006, 2013, 2014, 2016-2020 ( Both Tangible Personal Property and Real Property), Brevard 1997-2020, Orange 1997-1999, 2002-2011,2016-2019(Both TPP & RP),Lake 2016-2020, Osceola 2026 and 2019, Volusia 2016-2020. Other VAB service Hillsborough,Seminole,Polk, Escambia , Pasco and Santa Rosa.

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

Extensive appraisal experience since relocating here from Boston 1981( attachment A). Extensive teaching experience for the Appraisal Institute and the Florida Realtors ( attachments B & G). Appraisal Qualifications Board Certified Uniform Standards of Professional Appraisal Practice instructor. Recommendation letters from Clerk's of the Board for Orange and Brevard Counties ( attachment I ).

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI, SRA ( See attachment F) | 1970, 1968 | 4421 |
| Counselors of Real Estate | CRE | 1975 | 659 |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

Counselors of Real Estate : Many years of independent counseling for fee compensation. Appraisal Institute: Many courses, examinations and writing 3 demonsration appraisal reports.

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:

During the last 17 years I have served as a TPP special magistrate in 7 Florida Counties including Citrus, Orange , Lake, Santa Rosa, Escambia, Okaloosa and Walton. For a complete description please see attachment D ( 2 pages).I would be pleased to continue to serve the Citrus VAB regarding both Real Property and Tangible Personal Property petitions if it would be helpful.



Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | See attachments A, B, and G. Various excluding time share. |
| COMMERCIAL REAL PROPERTY | See attachments A, B, and G.Almost all commercial types. |
| TANGIBLE PROPERTY | See attachment D (2 pages). Many types no specialty. |
| OTHER (PLEASE SPECIFY) | Land. All types including fresh and salt water true islands. |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

I'm proficient in Microsoft Word, Excel, Power Point and more.I utilize both Mac ( desktop and Laptop) and PC (laptop) hardware. Since 2004, I have used Axia for seven Florida VAB's including Orange, Brevard and Osceola. The Citrus VAB has it's own exclusive petition processing software, which I have used during each of the last five tax cycle years ( 2016 to 2020).

13. List any additional information which makes you qualified to serve as a special magistrate:

In addition to the information provided for number 4, Robert Sutte became a Florida special master ( later called special magistrate) in 1997.During the last 34 years he has served the value adjustment boards in 14 Florida counties.They were Citrus, Orange, Hillsborough,Brevard, Osceola, Volusia, Seminole ,Polk, Pasco, Lake, Santa Rosa, Escambia, Okaloosa , and Walton.



Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Robert Sutte Date: 6/28/2(
Signature of Applicant

ROBERT SUTTE
Printed Name of Applicant



Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

rpa
Real Property Analysts, Inc.

2433 Lee Road • Winter Park, Florida 32789-1755
(407) 628-0505 • FAX (407) 628-0523
E-mail: rpa@rpaflorida.com • www.rpaflorida.com

ATTACHMENT A (SUTTE)

## QUALIFICATIONS OF ROBERT S. SUTTE CRE, MAI, SRA

Since 1962, Mr. Sutte has served as a real estate appraiser and consultant to a wide variety of private and public clients in eighteen states and the District of Columbia. His background includes both real property valuation and real estate counseling on the most efficient and profitable solutions to various real estate problems. Mr. Sutte has had training and experience in the field of finance and experience in designing environmentally acceptable mixed use land development plans.

**RESIDENT OF:** Winter Park, Florida

**EDUCATION:** Bachelor of Science Degree
Business Administration (Concentration in Finance),
Drake University, Des Moines, Iowa

**MEMBER OF:** Counselors of Real Estate (CRE)
Appraisal Institute (MAI, SRA)

**EMPLOYMENT:** Real Property Analysts of Orlando
2433 Lee Road
Winter Park, Florida 32789
(407) 628-0505 ( Direct ) 407-388-4616 ( Mobile )
rpa@rpaflorida.com

**APPRAISAL EXPERIENCE:** Mr. Sutte's appraisal experience includes preparation of market value estimates for use in conjunction with sales, acquisitions, leasing, mortgage lending, condemnation, real estate assessment equalization, charitable donations for conservation purposes and estate settlement. All types of commercial, industrial and residential land and almost all types of improved property have been involved. In many instances, the valuation of encumbered ownerships and the appraisal of leasehold or leased fee interests have been part of the appraisal problem.

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

## ROBERT S. SUTTE, CRE, MAI, SRA (Continued)

A partial list of types of appraisals which have been prepared include:

| | |
|---|---|
| Diminution in Value Studies | Outdoor Advertising Signs |
| Conservation easement encumbrances | Hotels-Motels |
| Most types of land | Banking facilities |
| Salt and freshwater islands | RV/Mobile Home Parks |
| Ocean and Gulf front property | Preparatory schools |
| Silviculture and agriculture land | Radio Transmission Facilities |
| Various types of residential property | Railroad property |
| Commercial and institutional buildings | Convenience stores |
| Shopping centers and retail stores | Warehouses |
| Restaurants | Truck terminals |
| Churches | Manufacturing plants |
| Nursing homes | Special purpose property |

**CONSULTING EXPERIENCE:** Mr. Sutte's consulting experience has encompassed many real estate disciplines. Counseling services rendered have involved guidance on individual property leasing, ownership and development problems. A partial list of types of assignments completed include:

Estimates of marketability and economic feasibility

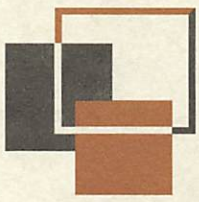
Highest and best and most profitable use analysis

Condominium conversion studies

Land planning and development strategies

Analysis of potential zoning and land use changes

Commercial, retail, hotel, apartment and industrial space rental surveys



rpa
Real Property Analysts, Inc.

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

## ROBERT S. SUTTE, CRE, MAI, SRA (Continued)

**LICENSES:**

Licensed Real Estate Broker - State of Florida (BK232449)

State-Certified General Real Estate Appraiser - State of Florida (RZ241)

State-Certified General Appraiser Instructor - State of Florida (GA5069)

State-Certified Real Estate Instructor - State of Florida (ZH1001982)

AQB Certified USPAP Instructor - The Appraisal Foundation (44795)

**CLIENTS SERVED:**

Mr. Sutte has appraised and consulted for a variety of clients, including property owners, investors, attorneys, financial institutions, insurance companies, and federal, state and local government agencies. A partial list of clients served and references are available upon request.

**COURT TESTIMONY:**

Qualified as an expert witness in federal and state courts and before boards of appeal. Testimony in connection with condemnation, deficiency judgments, tax abatements, rate setting, and appraiser ethical conduct. Has served as a Special Magistrate for the Value Adjustment Boards of Brevard, Citrus, Escambia, Hillsborough, Lake, Okaloosa, Orange, Osceola, Pasco, Santa Rosa, Seminole, Volusia and Walton Counties.

**TEACHING EXPERIENCE:**

Membership in the national faculty of the Appraisal Institute since 1972, as an instructor for various real estate courses and seminars. Florida Realtors® Institute faculty member since 1982, as instructor for the Graduate Realtors Institute (GRI) and the Continuing Education Express seminar series. Also served nine years as an adjunct faculty member of the College of Extended Studies at the University of Central Florida.

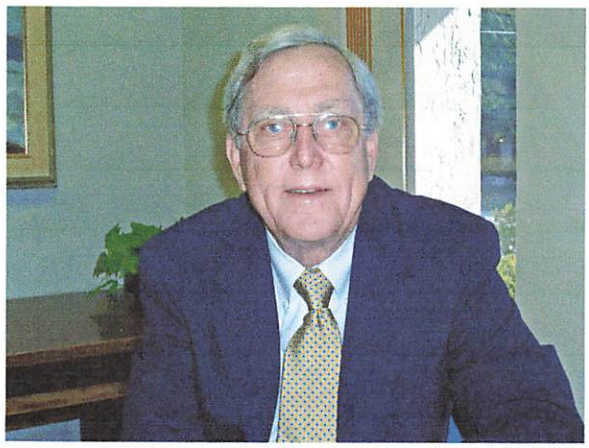


Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

**IMPORTANT EDUCATION INFORMATION**


# rpa
## Real Property Analysts, inc.

2433 Lee Road, Winter Park (Orlando) Florida 32789-1755
(407) 628-0505; (407) 628-0523 FAX
Email: rpa@rpaflorida.com;www.rpaflorida.com

**ROBERT S. SUTTE, CRE, MAI, SRA**

## REAL ESTATE EDUCATION INSTRUCTION

### COURSES

7 Hour National USPAP Update
3 Hour Florida Law Update
15 Hour National USPAP Course
Business Practices and Ethics
Basic Appraisal Principles
Basic Appraisal Procedures
General Applications
Advanced Applications
General Appraiser Market Analysis & Highest and Best Use
Advanced Sales Comparison & Cost Approaches
Advanced Market Analysis and Highest and Best Use
Advanced Concepts & Case Studies
Residential Sales Comparison and Income Approaches
Residential Market Analysis and Highest & Best Use
Residential Site Valuation and Cost Approach
General Appraiser Site Valuation & Cost Approach
General Appraiser Sales Comparison Approach
Yellow Book: Uniform Standards Federal Land Acquisitions

### SEMINARS

Appraising the Appraisal: Appraisal Review-General (7 hours)
Appraising the Appraisal: Appraisal Review-Residential (7 hours)
Appraisal of Local Retail Properties (General) (7 hours)
Litigation Skills for the Appraiser (General) (7 hours)
Marketability Studies: 6 Step Process & Basic Applications (7 hours)
A Lenders Perspective: The Role of the Appraisal in the Lending Process (2 hours)
Spotlight on USPAP: Hypothetical Conditions & Extraordinary Assumptions (2 or 3 hours)
Agreement for Services – Instructions for Use (2 hours)
Appraisal Review (2 hours)
Common Errors and Issues (2 hours)
Confidentiality (2 hours)
Reappraising, Readdressing, Reassigning: What to Do and Why? (2 hours)
Workfiles - Who, What, Where, When, How, and Why? (1 hour)

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Ron DeSantis, Governor

Halsey Beshears, Secretary

dbpr

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

Attachment C

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

**SUTTE, ROBERT SILER**

2433 LEE RD
WINTER PARK FL 32789

**LICENSE NUMBER: RZ241**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

---

**STATE OF FLORIDA**
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

FLORIDA REAL ESTATE APPRAISAL BD
2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

850-487-1395

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you

dbpr STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RZ241 ISSUED: 11/13/2020
CERTIFIED GENERAL APPRAISER
SUTTE, ROBERT SILER

Robert Sutte
Signature

LICENSED UNDER CHAPTER 475, FLORIDA STATUTES
EXPIRATION DATE: NOVEMBER 30, 2022

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# ATTACHMENT D (SUTTE)

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

## Florida Tangible Personal Property (TPP) Experience

Robert Sutte's valuation practice focuses on real property and real property that includes a tangible personal property (TPP) component. Appraisals of properties with a TPP component include hotels, restaurants, manufacturing plants, warehouse facilities, emergency care centers, medical offices, and a number of other property types.

Sutte began as a Florida special magistrate in 1997. During the last 23 years he has served the Value Adjustment Boards in 13 Florida counties. He began also hearing tangible personal property petitions in 2003. During the last 17 years he has served as a TPP special magistrate in 7 Florida counties including Orange, Lake, Citrus, Santa Rosa, Escambia, Okaloosa, and Walton.

Mr. Sutte has heard TPP petitions regarding a variety of commercial – retail property types including supermarkets, big box home and office discount stores, fast food and sit down restaurants, convenience gas stores, and clothing department stores. They were chain stores like Walgreens, Publix, Wal-Mart, Winn-Dixie, Applebee's, Olive Garden, Racetrac and Bealls and independently operated similar establishments.

Other TPP petitions heard involved mining operations and the depletion of natural resources, gas pipeline operations, medical equipment, and manufacturing operations including concrete products and roller coasters.

The following page includes an advisory opinion from the Florida Department of Revenue detailing the qualifications for a Tangible Personal Property special magistrate.

D





**Advisement Letters** | **Property Tax Oversight**

ADV 03-002

Jan 31, 2003

Steven A. Schultz, Miami-Dade County VAB Attorney
25 S.E. Second Avenue, Suite 1135
Miami, Florida 33131

Re: **Value Adjustment Board Special Master Qualifications**

Dear Mr. Schultz:

This letter is in response to your December 4, 2002 memo regarding the qualifications for VAB Tangible Personal Property Special Masters as required by the newly enacted amendments to section 194.035, Florida Statutes, added by chapter 2002-18, Laws of Florida, section 3, effective January 1, 2003. The new amendments provide in relevant part that:

> A special master appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less that 5 years' experience in tangible personal property valuation.

Your question is whether this provision requires that such persons be specifically designated in "tangible personal property". Alternately, you inquire if such a special master can be designated in "real property" so long as he/she is a "designated member of a nationally recognized appraiser's organization" and has the necessary five years' experience in the valuation of personal property.

Based on the plain meaning of the statute, it appears that a special master who is a member of a nationally recognized appraiser's organization and who has 5 years of experience in the valuation of personal property would satisfy the statutory requirements and could be appointed to hear issues regarding the valuation of tangible personal property.

I hope this addresses the points you raised in your memo. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Stephen Keller
Chief Assistant General Counsel
Property Tax Administration

/1217-52963



Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

**ATTACHMENT E: to update August 2021 and provide**

## Florida Department of Revenue

Certificate of Training

**Robert Sutte**

has received

**2020 VAB Real Property Appraiser Special Magistrate Training**

on

08/05/2020

FLORIDA

## Florida Department of Revenue

Certificate of Training

**Robert Sutte**

has received

**2020 VAB Tangible Personal Property Appraiser Special Magistrate Training**

on

08/05/2020

FLORIDA

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

APPRAISAL INSTITUTE

# MEMBERSHIP CERTIFICATE

*This Certifies That*

## *Robert S. Sutte*

*was admitted to membership in the American Institute of Real Estate Appraisers as an* ***MAI Member*** (4421) *on the* 4th *day of* May, 1970 *and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

APPRAISAL INSTITUTE CORPORATE SEAL

PRESIDENT

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP

ATTACHMENT F

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

# ROBERT S. SUTTE

*Real Property Analysts*
*2433 Lee Road • Winter Park, FL 32789-1755*
*(407) 628-0505 • rpa@rpaflorida.com*

**ATTACHMENT G**



Bob has been a Florida Realtors® instructor since 1982. In his other life, he is a professional residential, commercial, and industrial appraiser. He the owner of Real Property Analysts of Orlando and his work is primarily throughout Florida. His experience also includes land use and marketability studies, highest and best use analyses, and economic feasibility studies. He also serves as Special Magistrate for several Florida County value adjustment boards.

Mr. Sutte has served as a real estate appraiser to a wide variety of private and public clients in twenty states and the District of Columbia. His background includes both real property valuation and real estate counseling on the most efficient and profitable solutions to various real estate problems. Mr. Sutte has had training and experience in the field of finance and experience in valuing environmentally sensitive land including salt and fresh water Islands.

Mr. Sutte is a member of the Appraisal Institute (MAI, SRA) and is also a member of the Counselors of Real Estate (CRE). He holds a Bachelor of Science degree in Business Administration from Drake University, Des Moines, Iowa. His real estate teaching experience has included membership in the national faculty of the Appraisal Institute since 1972. Mr. Sutte received the Harold D. Albritton Award from the Appraisal Institute, which was presented in recognition of his outstanding contributions to Real Estate education. He has also conducted various real estate seminars for the Appraisal Institute and Florida Realtors® CE Express Series.

Mr. Sutte also served as a faculty member of the College of Extended Studies at the University of Central Florida from 1982 to 1990. He taught at the Illinois Realtors® Institute beginning in 1975, and he has also been an instructor for the Alabama, Louisiana, Massachusetts, New Hampshire and Rhode Island REALTORS® Institutes.

He holds the following real estate licenses:

- Licensed Real Estate Broker – State of Florida
- State-Certified General Real Estate Appraiser – State of Florida
- State-Certified General Appraiser Instructor – State of Florida
- State-Certified Real Estate Instructor – State of Florida
- AQB Certified USPAP Instructor – The Appraisal Foundation

For more information, please visit: http://www.rpaflorida.com.

FloridaRealtors

## CREDENTIALS

**Education**

» BBA
» Licensed Instructor

**Designation/Certifications**

» CRE®
» MAI
» SRA
» ITI
» ***DBPR Permitted Instructor***

## APPROVED COURSES

**GRI-1**

» Negotiating & Counseling

**GRI-2**

» Investments

**GRI-3**

» Appraising
» Property Management & Common Owne
» Intro to Single-Family Residential Constru
» Land, Environment & PP Rights

***CE Express***

» Working with the Appraiser and the Cons
» Negotiating Skills for Today's RE Prof
» Residential Construction: From the Inside
» How to Make the Most of Your Property Management Business
» Property Management for the RE Practiti
» Single and Multi-Family Investing
» Real Estate Investment Analysis Made E
» Navigating the Maze of Residential Construction
» Florida Appraiser State Law Update
» National USPAP Course Update
» Become Your Market Expert – An Introdu to Industry Data & Analysis
» RPR: Real Time Data, Market Knowledge Informed Consumers

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Hillsborough Petition 2020-1495 **ATTACHMENT H (SUTTE)**

INTRODUCTION

The important subject of this hearing is just value. Florida law dictates that the property appraiser is responsible for presenting relevant and credible (worthy of belief) admissible evidence in support of their determination of just value. See rule 12 D-9.025 (3)(a), F.A.C. Relevant evidence, is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under review. This description means the evidence meets or exceeds the minimum level of relevance necessary to be admitted for consideration. Also, the special magistrate must determine that the evidence presented is admissible. Admissible evidence means evidence that has been admitted into the record for consideration by the special magistrate. See rule 12 D-9.025 (2)(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 the petitioner must prove by a preponderance of the evidence that the property appraiser's just valuation does not represent just value or 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). Under rule 12 D – 9.025(1), F.A.C.

There are eight factors of just valuation established by Section 193. 011, Florida Statute noted above. This Florida law states that 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) Present cash value – willing buyer/seller
2) Highest and best use.
3) Location of property.
4) Quantity or size.
5) Cost of property and present replacement cost of improvements.
6) Condition of property.

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

7) Income of property.
8) Net proceeds of sale.

Florida court decisions have used the terms lawfully, properly, duly, and carefully to describe the standard of care required of property appraisers in considering each of the eight factors. "Just value is to be determined by giving careful consideration to each of the factors contained in section 93. 011 and by giving such weight to a factor as a particular factual situation may justify." See Florida Attorney General's opinion AGO 77-106, September 29, 1977.

After lawfully considering the factors, the property appraiser may discard entirely any factor that is not probative (indicative) of just value under the circumstances, as long as the appraisal methodology used complies with professionally accepted appraisal practices. See Mazourek V. Wal-Mart Stores, 831 So. 2d 85 (Fla. 2002) and Section 194.301, F.S. as amended by Chapter 2009-121, Laws of Florida (House Bill 521). In administrative reviews, the property appraiser is responsible for proving by a preponderance of the evidence that he or she complied with section 193. 011 by properly considering each of the eight factors in developing original just valuations. See subsection 194.301 (1), F.S.

Findings of Fact

Petition 1495 was scheduled to be heard at 11:00 AM on November 12, 2020. Those participating in this hearing were Mr. Mazen Kattih property owner and petitioner (PET). Mr. Jay Skaggs assisted by Ms. Beva Sheehy represented the Honorable Bob Henriquez, CFA, Hillsborough County Property Appraiser (PA). This hearing was under the direction of Mr. William Caban, Supervisor Value Adjustment Board and Ms. Janay Pritchett assisted Mr. Robert Sutte, special magistrate, with the administration of this hearing. All witnesses were sworn to tell the truth the whole truth and nothing, but the truth so help them God.

The subject of this hearing is a detached one-story concrete block single-family residence constructed in 2018. It contains 2666 square feet of finished living area. It is located at 9303 Lisbon St., in Seffner. Mr. Skaggs identified the subject property and reported the tax parcel identification and the estimated values

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

which were $308,936 or $115.88 per square foot of building area including the value of the land.

The property appraisers application of the sales comparison approach included three neighborhood comparable sales which were similar single-family residences. These transactions took place between January 29, 2019 and January 27, 2020.They ranged in usable building area from 2299 to 2526 Square feet. Similar to the subject they were constructed in years 2018 and 2019. The unadjusted sale prices were from $290,000 to $365,000. The prices paid per square foot were from $116.23 to $158.76. The average was $135.97 per square foot and the median was $132.90 per square foot. The Property Appraiser felt that this market evidence supported the fairness and reliability of the estimated subject value of $115.88 per square foot which was slightly below the lower end of the unit price range.

Mr. Kattih provided eight pages of evidence. His only complaint was that the house adjoining his residence was assessed at a much lower value. Mr. Skaggs pointed out that this home was purchased with a "Value Cap "from a prior property which they owned. This was the reason why this assessed value was low and the petitioner accepted this explanation.

The issue here was inequitable assessment. Regarding inequitable assessments among neighboring similar single-family residences, the magistrate believes that properties have different assessments because of different characteristics that comprise the entire property. Neighboring homes must be extremely homogenous in almost all elements of comparison for this to be an acceptable basis for a reduction in assessed value. These neighboring homes must be so similar that they are very similar in total value and unit value i.e. value per square foot of finished living area including the value of the land and the site improvements. A petitioner when using assessed value/market value per property to demonstrate inequitable values is disregarding all other property characteristics, which can include numerous value dissimilarities.

In addition, the assessment of any property other than the subject is immaterial. The Supreme Court of Florida Deltona Corp. V. James Bailey, tax assessor no. 49053 ruled that "A court may not reduce a taxpayer's assessment below 100% on a mere showing that the parcels of some other taxpayers are assessed at

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

lesser amounts. It is only in very limited circumstances that an exception to the general rule can be successfully maintained. Normally, one whose property is not assessed at greater than 100% of its fair market value cannot be permitted to complain even though other and even similar properties are assessed at less than 100%". See 51A Fla. Jur 2d Taxation 943; Deltona Corp. V. Bailey, 336 So. 2d 1163 (Fl. 1976).

Based upon careful consideration of all oral and written evidence provided by both parties, the special magistrate concluded that the preponderance of evidence provided by the property appraiser does establish the presumption of correctness and the current subject assessed value is supported by the property appraisers evidence. Some additional special magistrate conclusions are as follows:

The petitioner did not provide any comparable sales as an indication of market value. No market evidence was provided to successfully dispute the correctness of the property appraisers estimated value. Their assessment was not proven to be incorrect.

The property appraiser's assessment was developed by generally accepted appraisal methods.

The market value of the property is within the discretion of the property appraiser and within a reasonable range of values for the property.

The Property Appraiser lawfully and properly considered the eight criteria enumerated in section 193.011, Florida Statutes.

Conclusions of Law

The Special Magistrate reviewed all evidence presented by the parties. In accordance with Florida Department of Revenue guidelines, the special magistrate determined that the evidence and testimony was relevant and credible to the valuation issue. Thus, the evidence as presented was admitted for consideration in relation to the appropriateness of the subject property assessment.

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

The petitioner did not show, by any oral or written evidence, that the property appraiser's estimation of value does not represent just value. Also, it was not proven that the property appraiser's estimated value is in excess of just value. Therefore, it is recommended that this petition be denied, and the property appraiser's value be upheld.

This decision that relief is denied means that any right the petitioner may have to bring action in circuit court is not impaired

Robert S. Sutte

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

From: **Smith, Katie** Katie.Smith@occompt.com
Subject: Professional Reference for Robert Sutte
Date: May 20, 2020 at 3:02 PM
To: wcbailey@volusia.org
Cc: Robert Sutte rpa@rpaflorida.com

Good Afternoon, Ms. Bailey.

This email is intended to document Robert Sutte's service to the Orange County Valuable Adjustment Board. As background, I served as the VAB Supervisor from 2008 through 2012. I have since served as the Orange County Deputy Clerk of the Board of County Commissioners since 2012. The information provided below has been confirmed by review of the Orange County Value Adjustment Board Organizational Meeting Minutes.

2009 - Appointed to serve as an Alternate Real Property Special Magistrate
2010 - Appointed to serve as an Alternate Real Property Special Magistrate
2016 - Selected to serve as an Appointed Real Property Special Magistrate
2017 - Selected to serve as an Appointed Tangible Personal Property Special Magistrate
2018 - Selected to serve as an Appointed Real Property and Tangible Personal Property Special Magistrate
2019 - Selected to serve as an Appointed Real Property and Tangible Personal Property Special Magistrate

Beginning in 2017, I began tracking Special Magistrate performance data relative to hearings. I can confirm the data shown below to be true:

2017
Hearings Conducted 26
2018
Hearings Conducted 87
2019
Hearings Conducted 195

Mr. Sutte arrives for hearing on time, and his hearings run efficiently and on time as well. Mr. Sutte is a pleasure to work with, and I will say he is very courteous to my staff. I look forward to working with Mr. Sutte again during the 2020 tax cycle.

**Katie Smith, CMC**
**Deputy Clerk**
**Manager, Clerk of the Board Department**
201 S. Rosalind Avenue, Orlando, FL 32801
Phone 407-808-1702 Cell
katie.smith@occompt.com



Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

ATTACHMENT I Reference Letters (Sutte 2 of 2)

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 21, 2020

Ms. Bailey,

I am writing to recommend Robert Sutte for employment with your organization_ Brevard County has had the pleasure of working with Mr. Sutte since 1997. I, personally, have had the pleasure of working with him since 2013.

He has served as a Value Magistrate, and the Alternate Tangible Personal Property Magistrate for us.

Mr. Sutte is always on time, works hard to complete his decisions well before the headline date, is very knowledgeable and informative during his hearings, and has always been available when we needed a Special Magistrate on short notice.

Based on our experience together, I can confidently and without reservation recommend Robert Sutte for a position within your organization.

Sincerely,

Christy Mulligan-Willey
Lead VAB Clerk
400 South Street
Titusville, FL 32780
321-637-2001
Christy.Willey@brevardclerk.us

Attachment: SutteRP_App (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Attachment: Sutte_Letter_8.3.21 (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

Citrus County 2020 Value Adjustment Board August 3, 2021

Attention: Ms. Georgette Tozer, VAB Clerk
110 North Apopka Avenue
Inverness, Florida 34450

Regarding: Robert Sutte, 2020 Special Magistrate

Dear Chair Person Davis, Vice Chair Counts, Commissioner Schlabach , Member Crippen , Member Wahl, Attorney Kosan.

Thank you very much for the invitation to be present at your meeting however our annual Sutte family vacation includes the week of August 2, 2021 on Cape Cod. In my absence, Ms. Tozer kindly offered to submit some comments I would appreciate you considering on August 5, 2021.

My sincere thank you to all six of you for all the valuable time you spent concerning my situation at your May 18, 2021. I reviewed the very lengthy audio –video in detail. Due to the complexity of this year's hearings- recommendation process, especially regarding the necessary Remand Recommendation for the Walgreens petition parcel, I have accepted your fair and reasonable payment of $ 13,395,00 as " Payment in Full ". No further comment concerning compensation.

Regarding my special magistrate services rendered for Tax Cycle 2020, all of my hours billed were legitimate recorded time spent for Citrus VAB direct contract related activities. I openly admit that many times it takes me longer to figure something out and write something then I anticipate but the activities are all directly job-related. I have not, did not and will not charge for time spent regarding corrections or additions to recommendations already submitted.

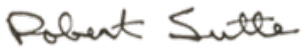
I have learned a lot during my tenure as a special magistrate including the above. I started my special magistrate, then called special master, services in 1997 for Brevard and 2009 for Orange County. (Please see attached two reference letters). Fortunately for me, I was selected to continue to serve both for Tax Cycle 2021. For your Board's consideration, as of today, I am also contractually obligated to continue to serve the Osceola, Seminole, Volusia, Lake, Hillsborough and Polk County VABs.

In addition, if I am fortunate and invited to return to serve Citrus, I will work hard to improve my verbal and narrative communication skills with Attorney Kosan. I feel that I must report, in memory, that over the past many years, I have not had any significant problems communicating with any of the various VAB attorneys I worked with who represented the eight VAB counties

noted above. Also, my requested compensation for hours served was not challenged and was paid.

As closing comment, I have had the privilege and enjoyed working with your Citrus VAB for each of the last five contiguous years, most, if not all with Ms. Tozer. I enjoy visiting and working in Inverness. The above comments-Information is being submitted with the hope that your Board will allow me to work with you for tax cycle 2021. Even at my "older age", I promise to get things done quicker and I definitely will be more sensitive to and detailed about my work-statement time accounting.

Respectfully submitted,



Robert Sutte CRE, MAI, SRA
State-Certified General Appraiser RZ 241
Appraisal Qualifications Board Certified USPAP Instructor

Attachment: Sutte_Letter_8.3.21 (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

From: **Smith, Katie** Katie.Smith@occompt.com
Subject: Professional Reference for Robert Sutte
Date: May 20, 2020 at 3:02 PM
To: wdbailey@volusia.org
Cc: Robert Sutte rpa@rpaflorida.com

Good Afternoon, Ms. Bailey.

This email is intended to document Robert Sutte's service to the Orange County Valuable Adjustment Board. As background, I served as the VAB Supervisor from 2008 through 2012. I have since served as the Orange County Deputy Clerk of the Board of County Commissioners since 2012. The information provided below has been confirmed by review of the Orange County Value Adjustment Board Organizational Meeting Minutes.

2009 - Appointed to serve as an Alternate Real Property Special Magistrate
2010 - Appointed to serve as an Alternate Real Property Special Magistrate
2016 - Selected to serve as an Appointed Real Property Special Magistrate
2017 - Selected to serve as an Appointed Tangible Personal Property Special Magistrate
2018 - Selected to serve as an Appointed Real Property and Tangible Personal Property Special Magistrate
2019 - Selected to serve as an Appointed Real Property and Tangible Personal Property Special Magistrate

Beginning in 2017, I began tracking Special Magistrate performance data relative to hearings. I can confirm the data shown below to be true:

2017
Hearings Conducted 26
2018
Hearings Conducted 87
2019
Hearings Conducted 195

Mr. Sutte arrives for hearing on time, and his hearings run efficiently and on time as well. Mr. Sutte is a pleasure to work with, and I will say he is very courteous to my staff. I look forward to working with Mr. Sutte again during the 2020 tax cycle.

**Katie Smith, CMC**
**Deputy Clerk**
**Manager, Clerk of the Board Department**
201 S. Rosalind Avenue, Orlando, FL 32801
Phone 407-808-1702 Cell
katie.smith@occompt.com



Attachment: Sutte_Reference_Letters (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

ATTACHMENT I Reference Letters (Sutte 2 of 2)

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 21, 2020

Ms. Bailey,

I am writing to recommend Robert Sutte for employment with your organization_ Brevard County has had the pleasure of working with Mr. Sutte since 1997. I, personally, have had the pleasure of working with him since 2013.

He has served as a Value Magistrate, and the Alternate Tangible Personal Property Magistrate for us.

Mr. Sutte is always on time, works hard to complete his decisions well before the headline date, is very knowledgeable and informative during his hearings, and has always been available when we needed a Special Magistrate on short notice.

Based on our experience together, I can confidently and without reservation recommend Robert Sutte for a position within your organization.

Sincerely,

Christy Mulligan-Willey
Lead VAB Clerk
400 South Street
Titusville, FL 32780
321-637-2001
Christy.Willey@brevardclerk.us

Attachment: Sutte_Reference_Letters (15113 : Selection of Special Magistrate(s) for Valuation of Real Estate)

## Georgette Tozer

**From:** lgolicz@tampabay.rr.com
**Sent:** Wednesday, April 14, 2021 4:43 PM
**To:** VAB
**Subject:** [EXTERNAL] RE: VAB TPP Special Magistrate Request for Services and Application
**Attachments:** BRW94533040CA01_001369.pdf; VAB Citrus Petition 94 & 96 Lagoon 9 Hole Golf Course 2020.docx; Larry Golicz Qualifications Updated March 2020.doc

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

**CAUTION:** This email originated from outside of the Clerk's Office. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Madam: Attached find my application to serve as Special Magistrate for Real and Tangible hearings for the VAB of Citrus County. Tangible hearings rate is $175. DOR training certificate will be provided as soon a available.

Thank you for your interest in my services.

Lawrence (Larry) J. Golicz, Ph.D., ASA, MAI

Vista Appraisal Services, Inc.

Experience, Integrity, Service

5738 West Hunters Ridge Circle

Lecanto, FL 34461

352-527-2677

352-287-1903 Cell

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From: "VAB"
To: "VAB"
Cc:
Sent: Tuesday April 13 2021 9:09:14AM
Subject: VAB TPP Special Magistrate Request for Services and Application

**Dear Sir/Madam:**

Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
  - ☑ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: Lawrence J. Golicz, Ph.D., MAI, ASA Email: lgolicz@tampabay.rr.com
Business Name: Vista Appraisal Services, Inc.
Home Address: 5738 West Hunters Ridge Circle, Lecanto, FL 34461
Business Address: same
Phone: Home/ 352-527-2677 Business/ same Cell/ 352-287-1903 Fax: none

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: RZ2860 Valid Thru: 11/22
How many years of experience do you have in the area of real property valuation: 44
How many years of experience do you have in the area of tangible property valuation: 34

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to F.S. § 194.035.*

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. **Do not submit a copy of an appraisal as a writing sample.**

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

See Resume



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

See Resume

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

Extensive experience as a Special Magistrate, 10 years as an Assessor, Expert witness.
See Resume

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | 1978 | 5832 |
| American Society of Appraiser | ASA | 2013 | 7034 |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

Five years with 200 hours of examination clasess, two demonstration reports, final exam, work credit review, and continuing education credit over 1,000 hourse. See resume.

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:

Machinery and equipment for a cement manufacturing plant, 10 years of personal property roll for City of Lake Geneva, mfg. plants for funiture, auto parts, tool and die shops, car dealerships, restaurants retail store fixtures, See Resume



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | All types from modulars to mansions. Apts. Condos, |
| COMMERCIAL REAL PROPERTY | All types from retail, industrial, office, medical, |
| TANGIBLE PROPERTY | machinery and equipment, furnishings, fiixgtures, |
| OTHER (PLEASE SPECIFY) | land fills, quarries, harbors, canals, marinas, power plants. |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

Elks Club of Homosassa

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Forty plus years of desk top software with Microsoft.

13. List any additional information which makes you qualified to serve as a special magistrate:

See Resume



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Lawrence J. Golicz Date: 4/4/21

Signature of Applicant

LAWRENCE J. GOLICZ

Printed Name of Applicant



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

APPRAISAL INSTITUTE

# MEMBERSHIP CERTIFICATE

*This Certifies That*

## *Lawrence J. Golicz*

*was admitted to membership in the American Institute of Real Estate Appraisers as an* ***MAI Member*** (5832) *on the 8th day of May, 1978 and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

PRESIDENT

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP.





Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# American Society of Appraisers

ASA
American Society of Appraisers
**Providing Value Worldwide**

*The Society's Board of Examiners Certifies That*

## *Lawrence J. Golicz*

*Is hereby awarded the designation*

*Accredited Senior Appraiser*

*Real Property / Real Property (All Property Types)*

*and is entitled to use the designation in accordance with the society's bylaws and administration rules.*

*Signed, Sealed and Attested*
*This 14 day of June 2013*

*International Secretary/Treasurer*

*This certificate is the property of the American Society of Appraisers and must be returned to the International Office upon membership termination.*



*International President*

Ron DeSantis, Governor

Halsey Beshears, Secretary

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

## GOLICZ, LAWRENCE JOHN

5738 W HUNTERS RIDGE CIRCLE
LECANTO FL 34461

**LICENSE NUMBER: RZ2860**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Present for Petition 94 and 96 is Petitioner by telephone conference arrangement, Property Tax Professionals, represented by Mr. John McDonald, for Kingwood Crystal River Resort Corporation, and in person with County Appraiser Mr. Herb Mack in company with Mr. Timothy Renard providing testimony at this hearing on November 18, 2020. All are duly sworn. The County Appraiser first provides evidence and testimony after which Petitioner provides a package of assumed evidence on the subject and no testimony, claiming to withhold comment and rebuttal until all parcels under consideration have been heard. This does not eliminate the need for Petitioner to provide specific comments to the subject property's value. As the Petitioner fails to specifically identify for this hearing any evidence in his package regarding this parcel by and of itself, Petitioner fails to show with a preponderance of evidence that the making of the subject assessment did not meet the standards of F.S. 193.011. As such, the Magistrate hears the testimony of the County Appraiser to show his meeting of the standards of appraising as required in by F.S. 193.011

The subject property includes two parcels combined to represent a nine hole executive course called the Lagoon built in 1957. It is tied into the eighteen hole site with access to the Driving Range, Putting Green, Tennis Courts, Restaurant with Beverage Service, Pro Shop, and Maintenance, Offices and Cart Storage Buildings. Located at 9453 West Plantation Lane in Crystal River, the course site contains 60.73 acres zoned CH intense commercial and is contoured, graded and improved with greens, fairways, irrigation, sand traps, water hazards and rough areas including trees, shrubs and bushes along the fairways and cart paths. The course is designed as a par 33. There are no buildings on this site. Sprinkling is provided by pond water. The overall site shape is irregular, level with a high water table and is well contoured for play with good access and shared parking at the 18 hole site. Evidence added by the Petitioner for this analysis indicates that the subject site is fully contaminated with Arsenic to a depth of two feet and for any change in use requiring human habitation, it is assumed it would require a clean-up.

County Property Appraiser presented a cost, market and income approach. County Appraiser notes that the contamination, sourced by fertilizer and pesticides over the years, do not affect the current use of the subject as a golf course. Moreover the water table is not contaminated with soluble arsenic; therefore blooming of contamination to other properties is not indicated in the report. As such the following appraisal reflects its current use, not the County Appraiser's discovery of a proposed conversion of the site, after clean-up, into a quality campground likely sited for over 55 owners of RV's, campers, and single and double wide modular housing, all of which would elevate the value of the land significantly being next to an eighteen hole course. As such County Appraiser remains certain of the following value conclusion as being relevant as used today. All approaches included supporting documentation in accordance with the 8 factors of value per FS 193.011 are considered by the Property Appraiser in the following manner.

1) Present cash value: This is the price a buyer would pay for a fee simple property in a hypothetical sale, after deducting 15% for factor 8 including non realty items and the cost of sale. With arms length sales, the Property Appraiser also provided a value estimate by comparison of recently sold competitive properties of vacant land for the subject. As required by FS 193.011 Factor 8, the value estimate was

Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

adjusted downward for the costs of sale including personal property. Both the cost and income approaches were also adjusted downward for this reason.

2) Highest and best use: County Property Appraiser identified and valued the subject property as a mixed use site improved for recreation as a golf course. As operating, the current use is represented as the highest and best use with other potential uses available as if vacant.

3) Location: The County Property Appraiser reviewed the location of the subject with a map relative to its neighborhood, access and complimentary uses in an area of similarly aged and developed industrial property uses. The subject location was similarly considered in the cost, sales and income approaches.

4) Quantity or size: The County Property Appraiser properly described the size of the subject property by land and building area relative to the cost, sales and income approaches.

5) Cost and present replacement value: The County Property Appraiser provided a detailed cost approach with site improvement costs a replacement cost new and supporting documentation, including land sales.

6) Condition: The County Property Appraiser provided a description of the condition of the subject property, properly taking into account its age relative to market comparables for rents and sales.

7) Income: The County Property Appraiser's income approach for the petitioned property is provided with the pro forma income and expense with capitalization of the net income. Rental data or expenses reflect market data collected and utilized by the County Appraiser, and considered appropriate and adequate supporting documentation for a Just Value conclusion.

8) Net proceeds of sale: The County Property Appraiser adjusted the cost, sales and income approaches with this factor as required by F.S. 193.011.

The County Property Appraiser presented evidence supporting the valuation of this property readily taking into account the declining market conditions for rounds played nationally as well as in Florida and Citrus County, noting a reduction in the current assessment relative to 2019. The Just Value is based upon an adjusted cost approach at $515,482, an adjusted sales approach at $515,482, and an adjusted income approach at $607,538. The County Property Appraiser then concluded upon a Just Value of $516,400, when divided by the two parcels equally, amounts to $258,200 for Petition #94 and $258,200 for Petition #96.

Petitioner failed to present any analysis for an indication of value for the subject. Petitioner's package of evidence, however, does include the details of an environmental study indicating the subject site contamination. Yet this evidence and a collection of articles on going concern valuation, manuals issued by the State of Florida, a list of sold golf courses country wide, and a summarized, not departmentalized operating statement for the entire eleven parcel property, and a one page income approach valuing the subject complex as a whole, does nothing to indicate the value of the subject property.

Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

It is this Magistrate's conclusion that the Petitioner's lack of concern about the detail of the subject property along with a lack of evidence to provide a value for this valuable component property of a large complex of multi-uses indicates, demonstrates a lack of competence and awareness regarding this assessment and a Just Value consideration. As promised, after all of the hearings, Petitioner claimed a loss in value for this course and that the assessment was too high because of the contamination, again without any kind of stigma analysis required for an adjustment. The County Appraiser responds that the subject assessment has been lowered from the previous year for the decline in the golf industry based upon local course information provided by the owners, except for the subject owner, and that the current use is not interrupted. The Petitioner's consultant recommends a cost to clean-up the contamination at plus or minus $900,000 to $1,000,000, which far exceeds the return to the land as used, thus making a clean-up unfeasible and unnecessary for the current use as assessed. The Petitioner's shot gun evidence and lack of detailed analysis and testimony lacks sufficiency, credibility, and suitability for a conclusion of Just Value. As such, Petitioner has failed to provide a preponderance of evidence to overcome the County Property Appraiser's Just Value. The Special Magistrate recommends a denial of this appeal by the Petitioner to the Valuation Adjustment Board.

Per the requirements of F.S. 193.011 and F.S. 194.30, Special Magistrate has found that the County Appraiser has provided sufficient, relevant, and credible evidence to reasonably support the County Appraiser's conclusion of a Just Value for the subject property, including a cost of sale adjustment provided by law in the 8th factor in F.S. 193.011. Petitioner failed to show with a lack of relevant evidence to overcome the property appraiser indication of Just Value per the criteria in F.S. 193.011; therefore, Special Magistrate recommends denial of the relief requested by Petitioner. This decision is being issued in order that any right the Petitioner may have to bring an action in circuit court is not impaired. (Rule 12D-9.021 (6) & (8), F.A.C.)

Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)



Experience, Integrity, Service



LAWRENCE J. GOLICZ, Ph.D., MAI, ASA
President, Vista Appraisal Services, Inc.
**Florida – State Certified General Real Estate Appraiser RZ2860**
**Michigan – State Certified General Real Estate Appraiser 1201000600**
**Updated August 2020**

## HIGHER EDUCATION:

| | | |
|---|---|---|
| Henry Ford Community College<br>Dearborn, Michigan | A.A. | 1962 - 1964 |
| University of Michigan<br>Ann Arbor, Michigan | B.A. | 1964 - 1966 |
| Washington State University<br>Pullman, Washington | M.A. | 1966 - 1968 |
| University of Maine<br>Orono, Maine | Ph.D. | 1968 – 1973 |
| University of Wisconsin<br>Center for Demography and Ecology<br>Madison, Wisconsin<br>(Non-Degree, Training and Dissertation Research) | | 1970 - 1972 |

## HONORS CONFERRED:

Michigan Board of Regents Scholarship, 1964 - 1966, University of Michigan

Phi Alpha Theta (National Honor Society), Washington State University

Graduate School Trustee Scholarship, University of Maine, 1969 - 1972

Assistantships, University of Maine and Washington State University, 1967 - 1970



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Research Training Grantee, Social Science Research Council, New York, 1970 - 1971

Biography, Who's Who in Finance and Industry; Who's Who in the Midwest; Who's Who in the World; Men of Achievement, and Marquis Who's Who 2018.

## ACADEMIC CONTRIBUTIONS

**Founder and Editor**, Talos, a Graduate Student Journal, University of Maine, 1969.
Two Papers Presented, Population Association of America, 1972
On Patterns of Urban Growth and Regional Development in the United States.
Funded Research , The National Archives, Washington D.C., 1971.
Paper Presented on the Design & Development of a Population Estimation Program for the State of Wisconsin, 1972.
Dissertation research and writing at UW w/ IBM 360 On Population Growth of Cities and Economic Value Added (US 1860-1910) A multiple regression analysis of US Census Data.

## PROFESSIONAL DESIGNATIONS & LICENSES

Appraisal Institute
Designated Member MAI, 1978
Society of Real Estate Appraisers (Merged with American Institute of Real Estate Appraisers) Senior Real Property Appraiser SRPA, 1976
State of Michigan
State Certified General Real Estate Appraiser 1201000600
State of Florida
State Certified General Real Estate Appraiser RZ 2860
American Arbitration Association
Real Estate Construction
Federal National Mortgage Association
Appraiser #1110175-Level Two
Resolution Trust Corporation
Approved for Appraising Distressed Real Estate Owned by Savings and Loans in Bankruptcy
American Society of Appraisers, ASA, Senior Real Property Appraiser, 2013

## PAST PROFESSIONAL LICENSES AND CERTIFICATIONS

States of Wisconsin, Ohio, Indiana- Certified General Appraiser



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

State of Wisconsin Real Estate Broker (1973-1990)
State of Wisconsin **Assessor** II (1978-1990)
State of Michigan Real Estate Broker and Appraiser (1990-2002)
State of Wisconsin, Demographer, Department of Administration (1972-73)

## PROFESSIONAL POSITIONS

**Special Magistrate** for Real Estate, Valuation Adjustment Board, Lee County, Florida, 2006-10; Special Magistrate for Real Estate, Clearwater, Pinellas County 2010-19. Special Magistrate for Tangible Personal Property, Value Adjustment Board, Brooksville, Hernando County, Florida, 2008. Special Magistrate for Sumter County for Real Estate and Tangible Personal Property, 2008-2012. Consultant to Citrus County Property Appraiser, 2011-2014, Magistrate for Citrus County 2017, 2019. Special Magistrate for Seminole County, 2018-2019.

**Chair of Executive Committee, Designated Appraiser Coalition (DAC), 2011-2021**. Principle, NAI Tampa Bay Commercial Real Estate Valuation Services, Seminole , Florida, 2009-2010. Senior Appraiser, Herr Valuation Advisors, Inc., Tampa, Florida 2007 to 2008.

Chief Commercial Appraiser, ValueNet Appraisers, Inc. 2005-2007
Sarasota, Florida.
President, Manhattan Appraisal Group, 1992-2004
Detroit, Michigan.
Head, Appraisal Department, Lambrecht Company, 1990-1992
Detroit, Michigan.
President, American Appraisal & Feasibility Corp., 1973-1990
Madison, Wisconsin.
President, Total Realty, Inc. Madison, Wisconsin 1973-1990.

**Assessor**, City of Lake Geneva, Wisconsin, 1980-1990
Assessor, Village of Cambria, Wisconsin, 1980-1990

**Mass Appraisals** for Ad Valorem Taxation, 1978-1985, Town of Windsor, City of Lake Geneva, City of Monona, Town of Berry, Town of Rock, Village of Cambria, City of Monroe all in Wisconsin
Demographer, Department of Administration, State of Wisconsin, 1972-73
Madison, Wisconsin

**Part Time Teacher** Madison Area Technical College, 1973-75
Part Time Teacher, University of Wisconsin School of Business, 1973-74

## APPRAISAL EXPERIENCE:



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Active for forty six years appraising real estate, including mass appraisal, feasibility studies, appraisal of personal property, machinery and equipment, business valuations and valuations dependent on special purpose real estate, in several states in the Midwest with national interstate assignments for shopping centers, recreation properties, manufacturing facilities, and special purpose property.

Appraised commercial, industrial, residential, and agricultural properties of all types, vacant and improved, from dairy farms to subdivision developments to shopping malls to office buildings. Provided feasibility studies for apartment complexes, branch bank locations, clinics, and condominium developments.

Special purpose appraisals include an oil refinery for tangible personal property, an engine plant for real estate, a nuclear power plant for tangible personal property, real estate of the seventh largest power complex in the US, real estate of water and sewer utilities and real property of the major automotive technical centers including the GM Technical Center and the Chrysler Technical Center, foundries, metal stamping facilities, cement plants. real estate for power distribution coops, and plastic molding plants nationwide. Appraised easements of all types including rail corridors, power corridors, and pipeline corridors as well as caves, open pit mines, quarries, harbors and canals, and licensed land-fills.

## PARALLEL EXPERIENCE IN REAL ESTATE:

**Property management** of apartments, office buildings, a warehouse, and residential special care facilities. **Property development** includes construction and management of congregate care residential facilities for physically and mentally handicapped, conversion of a nursing home to assisted living for 110 residents, construction and conversion of three office buildings, a warehouse, and apartments. **Financing experience** involves mortgage brokerage, and acting as financing agent and manager of five real estate partnerships. **Construction experience** includes management of construction for an office building, conversion of a warehouse to a mini warehouse, conversion of a school to offices, conversion of a Bell Telephone Switching Building to offices, conversion of a nursing home to assisted living, and conversion of single family dwellings to handicap code for handicapped residents with special living quarters. Acted as a part time **real estate broker** including leasing, listing, and selling commercial real estate.

**Defended assessments** in circuit court, before the Board of Review, and before the State Supreme Court of Wisconsin as well as the Michigan Tax Tribunal. **Court testimony** and depositions in real estate appraisal also include bankruptcy in federal court, testimony in condemnation proceedings, appraisals and testimony before the IRS.



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Trained and appointed by the American Arbitration Association for **arbitration** on a panel of three for construction claims. Hearing experience includes appointed as a special magistrate for Valuation Adjustment Boards over tax appeals in Florida providing briefs and recommendations for the Board on assessments.

**Teaching** in real estate appraising includes evening instruction for the Madison Area Technical College in real estate, finance, law, planning, appraising and brokerage from 1973 to 1975. Taught Society of Real Estate Appraisal courses for the University of Wisconsin Business School Extension including SREA 101 and 201 courses in residential and income property appraising from 1973-74. Recent courses taught for the ASA include the appraisal of golf courses in 2013-2014 and hotel motel appraising.

Professional contributions in real estate include articles published in the **Appraisal Journal**, and active participation in the Appraisal Institute as a member of its **Board of Directors** and several committees. Served on the chairs for the Wisconsin chapter of the SREA, the Board of Directors of the Wisconsin Chapter of the Appraisal Institute, and served as regional representative for the Michigan chapter of the Appraisal Institute. Represented the Appraisal Institute's **Ethics Committee** for the State of Michigan. Currently serve on the Real Property Committee of the American Society of Appraisers and formerly as a director on the ASA Educational Foundation. Also **served** as a member of Florida's Region X for the Appraisal Institute and as a member of the Appraisal Institutes **Leadership Development and Training Committee as well as a special reviewer for ASA online course developments.** Contributed articles to the American Society of Appraisers E Journal for Real Estate on hotels & motels and served as the editor for the EJournal. Acting as a course reviewer for developing online appraisal courses for the ASA as well as serve on the Education Committee.

Presented papers at the national meetings of the International Association of Assessing Officers, **American Society of Appraisers**, the National Association of Realtors, and the Appraisal Institute Symposia. Appeared as a guest speaker at appraisal chapter meetings, public forums, attorney bar associations, and before the chartered life underwriters. Presented a paper at the **Thai Appraisal Foundation** Conference, Bangkok, Thailand, Valuing Infrastructure, 2007. Presented a paper at the September **2008 Pan Pacific Congress of Real Estate Valuers and Consultants** in Seoul, S. Korea, regarding the valuation of water parks. Co-presented in 2011 an Appraisal Institute sponsored **Webinar** on Fair Value Applications. Presented an Appraisal Institute Webinar in April 2012 on Impairment Valuation. Co-presented a paper on the valuation of power plants for the American Society of Appraiser in July 2012. Presented a paper at the American Society of Appraisers Conference in 2013 on appraising golf courses. Co-presented a session on Insurance Valuation at the Appraisal Institute Conference in 2013. Presented a Power Point on the Cost Approach for Appraising Casinos, ASA Conference, 2015.



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Presented a Power Point of Appraising Big Boxes, 2018.

## EXPERIENCE OUTSIDE OF REAL ESTATE:

**Demographer**, the State of Wisconsin 1972-73
(Developed Population Estimation Program for Revenue Sharing -Upheld by the State Supreme Court in Milwaukee v. State of Wisconsin.)

**Developer, Owner, Operator, Protel Games**, 1983-1988. Developed a chess-like board game named Pharaoh's Quest which was awarded the Parents Choice Seal of Approval for 1983. The game was translated into French and German. Sold over 10,000 copies in US, Canada, and Europe. Designed and implemented game board prototype and production, marketed the game and managed game sales and distribution. Presented a pewter set to the Egyptian Ambassador in Washington D.C. and was granted the privilege of game sales at all King Tut traveling exhibits in the U.S.

**Finance Committee**, Good Shepard Lutheran Church. Contributed to negotiation and sale of excess land for assisted living project sponsored by the Lutheran Brotherhood.

**Member Japanese American Society** of Detroit and Windsor. – Participated in the development of joint cultural and economic interaction between Japanese officials and automotive manufacturers and American businessmen. Awarded 1st Prize for Haiku Poetry Submission to judging panel in Yokohama, Japan.

**Good Will Citizen Ambassador** to Russia and China in People to People Citizen Ambassador Program. Offered advice and organizational frameworks for mass appraisal techniques for ad valorem taxation and for independent fee appraisal. Met with officials of cities and regional government.

**Board of Directors**, Polish American Society, Warren, Michigan. Worked to promote membership, develop budgets, update the by-laws, and assist in the negotiation, sale, and development of excess land with uses that complimented an architecturally significant hall.

**Author,** published a book of poetry on Amazon. Published a children's book on Lulu, A Fish Called Bad Eyes. Currently completing editing for an adult novel and publication.

## SPECIAL APPRAISAL AND REAL ESTATE RELATED COURSES:



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

A.I.R.E.A. & A. I.

Course IA, Principles of Valuation, 1973
Course II, Urban Properties, 1974
Course VI, Industrial Properties, 1975
Course IX, Rural Appraising, 1976
Business Valuation Seminar, 1978
Instructors Seminar, Indiana University, 1980
Feasibility and Highest & Best Use, 1991
Landfills and Their Effect on Value, 1991
Valuation for Litigation, Tufts University, 1990
Professional Standards, USPAP 1986,-90,-93,-98, -05, -07,-08 Current with Updates Per State Licensing.
Highest & Best Use Analysis, 1992
Computer Spreadsheets, 1992
Depreciation Analysis, 1993
Americans with Disabilities Act, 1993
International Appraising, 1993
Easement Valuation, 1994
Valuation of Cellular Towers, 2000
Urban Land institute, Real Estate Forum, 2000
Iowa Curves, Valuation of Fixtures, 2000
Valuing Commercial Vessels, 2000
Highest and Best Use and Market Analysis, 2001
Advanced Sales Comparison and Cost Approach, 2003
Uniform Relocation Assistance Act, 2005
Feasibility, Investment Timing, Option Value 2005
Analyzing Distressed Real Estate, 2005
Appraising Historical and Unique Residences, 2006
Appraising Condominiums and Cooperatives, 2007
Business Practices and Ethics, 2007
Introduction of GIS Applications in Real Estate 2007
Appraising from Blueprints & Specifications 2007
Environmental Pollution and Mold, 2007
Valuing High Value & Historic Homes, 2007
Valuing Infrastructure and Utility Properties, 2007
USPAP Update 2009
Valuation for financial Reporting, 2010
Appraising Distressed Commercial Real Estate 2010
Lease Accounting for Valuation 2011
Loss Prevention Program for Real Estate Appraisers 2011
Central Florida Real Estate Valuation Forum 2011
Case Studies in Appraising Green Residential Buildings, 2011
Overview of the US Hotel Industry 2012
Curriculum Overview-Residential 2012
Curriculum Overview General 2012
Business Practices and Ethics, 2012



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

| | |
|---|---|
| S.R.E.A. | Course 201, Income Property Appraising, 1975<br>R-2 Exam, (Single Family), 1976<br>Course 301, Advanced Appraisal Techniques, 1977<br>Instructors Seminar, Purdue University, 1978 |
| I.A.A.O. | Valuation of Machinery and Equipment, 1982 |
| A.S.A. | Valuation of Machinery and Equipment, Level Two, Seattle, 1991<br>Gas Station Valuation, 2012<br>Power Plant Valuation, 2012<br>Shopping Mall Intangible Value 2012<br>Valuation of Religious Properties, 2013<br>Ad Valorem Mass Appraisal, 2013<br>The Appraisal Spreadsheet: Find the Adjustment 2013<br>Marrying Business and Tangible Assets, 2015<br>Going Concern Valuation 401 2019 |
| | L.I.L.U.P. Computer Systems and Property Valuation, Lincoln Institute for Land Use Policy, 1982 (Designated Master User of Institute Computer Mass Assessing Programs) |
| I.C.S.C. | University of Shopping Centers, Dallas, Texas, 1977 |
| U.W. EXT. | Property Management, 1975<br>Land Use Investment and Analysis, 1974<br>Real Estate Finance, 1976 |
| A.A.A. | Basic Commercial/Construction Arbitrator Training, 1991 |
| W.A.A.O. | Municipal Assessor's Institute, 1978 - 1989 |
| A.S.F.M.R.A. | Environmental Risk Seminar, 1993 |
| I.B.A. | Appraising Closely Held Businesses, 1996 |
| McKissock On Line | 2008-2009 National USPAP Update, 2009<br>Disclosures and Disclaimers, 2009<br>Appraisal Trends, 2009<br>REO and Foreclosures, 2009<br>Odd Properties, 2009<br>Appraising Distressed Commercial Real Estate<br>REO & Foreclosures 2011<br>Mortgage Fraud 2011 |



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

2010-2011 National USPAP Update
Systems Built Housing, 2012
Regression Analysis for Appraisers, 2012
Deriving and Supporting Adjustments, 2012
2012-2013 National USPAP Update
Construction Details & Trends, 2013
7-hour Update USPAP 2012-2013
Michigan Appraisal Law 2013

McKissock Live

Nuts and Bolts of Condo Appraisal 2016
Florida Appraisal Oddities 2016
Exploring Appraiser Liability 2016
Appraising Complex Residential Properties
Florida Appraisal Laws 2016
USPAP UPDATE 2016-2017,2018-2019
Limited Scope Appraisals, 2018
Reviewing Residential Appraisals 2018
Appraising 2-4 Unit Properties 2018
Real Estate Damages After a National Disaster, 2018
USPAP UPDATE 2020-2021
Appraising 2-4 Units 2020
Desktop Appraisals: An Overview,2020
Estate Appraising, 2020
Property Inspection, 2020

Currently meet all Continuing Education Requirements for the Appraisal Institute, the American Society of Appraisers and the State of Michigan, and Florida.

**PURPOSE FOR WHICH APPRAISAL AND FEASIBILITY ASSIGNMENTS HAVE BEEN ACCEPTED:**

Ad Valorem Taxation
Mortgage Financing and Guarantees
Property Acquisition and Disposal
Foreclosure/Bankruptcy
Highest and Best Use/Planning and Land Development
Insurance Value to Replace
Market Analysis for Consumer Demand - Supermarkets, Banks, Clinics
Depreciation for Tax Purposes
Fair Market Value of Book Assets and Impairments
Review of Appraisals for Best Value Indication
Determination of Easement Value
Feasibility of Conversion or Rehabilitation
Condemnation - Voluntary/Jury Trial
Going Concern Valuation (Goodwill, Equipment, Inventory, Real Estate)



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Consulting on Investment Alternatives in Real Estate
Tax Appeal - Boards of Review, Michigan Tax Tribunal
Special Magistrate for a Value Adjustment Boards

## APPRAISALS OF REAL ESTATE INCLUDE THE FOLLOWING

**Residential**: Single family, historical renovations, mansion water front homes, condominiums, apartments, and unique architectural grade and earth homes, including unique locations and adverse conditions including site hazards and stigma.

**Land:** Acreage for dairy and crop farming, cattle raising, horse breeding, orchards, fish farms, and landscaping plats Other large scale uses include open pit mining for limestone, granite and marble and relevant mineral rights for oil and gas leases. Environmental .conservation for deed restrictions for special parcels apply to my experiences as well as numerous residential, commercial, and industrial developments, including special purposes such as landfills, power plants, sewer and water distribution, power corridors, rail lines, and automotive rights of way. And restrictive uses including coastal lands, harbors, water ways, lakes, wetlands, and swamps.

**Commercial:** Office buildings, restaurants, fast food, movie theatres, motels/hotels, resorts, shopping centers, malls, big box retailing, self storage, outlets, free standing store fronts, auto-trailer-rv-modular home dealerships, automotive repair garages, entertainment centers, exercise and athletic facilities, gas stations, drug stores, banks, taverns, including hospitals, clinics, and medical research facilities.

**Industrial:** Metal fabrication, cutting, bending, stamping, welding, tempering, and molding. Assembly, bodies, engines, paint lines automotive parts production, automotive plants, research facilities, manual and automated warehouses, large and small, oil storage facilities, refineries, tool and die shops, tv and radio towers and station facilities, terminals boat, truck, and rail, airport hangers and runway expansions, power plants, water and sewage treatment plants, landfills.

## APPRAISALS OF MACHINERY AND EQUIPMENT, FURNISHINGS AND FIXTURES

Total Oil Refinery, Alma, Michigan - Refinery with 55,000 Barrel/Day capacity. All refinery equipment, machinery, fixtures, furnishings, controls, etc.

Namasco Corp., Roseville, Michigan - Coil Steel Slitting and Blanking Plant 140,000 sf., seven lines, plus all other equipment, furnishings, and fixtures including computers.



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Kelsey Hayes Plant in Fayette, Ohio - Brake Rotor and Brake Assemblies
All furnishings, fixtures, and equipment in a 60,000 sf. plant.

Jervis Webb, South Lyon, Michigan - Consult on Equipment Value for a 180,000 square foot plant for assembly line and conveyor equipment for financing purposes.

Sushi-Iwa, Mazda Corp., Riverview, Michigan - Appraise Japanese Restaurant with all fixtures and furnishings for corporate purposes.

Grant-Durbin, Madison Heights, Michigan - Appraise high speed machinery and equipment, and furnishings and fixtures in a 20,000 sf. facility of an auto parts manufacturer.

CMI, Southfield, Michigan -- Consult with City of Southfield on Value Potential for production line equipment at two separate industrial facilities.

Danse Corporation, Madison Heights -- Appraise plastic injection molds for City of Madison Heights.

Vulcan Rock Cement Plant- Gainesville, FL -- Appraise all plant equipment.

Over the last 34 years the following types of fixtures appraisals were made:

| | |
|---|---|
| Amusement Parks | Hospitals and Clinics |
| Agricultural Implement Dealers | Meat Packing Plants |
| Bowling Alleys | Metal Working, Stamping, and |
| Breweries | Punching Facilities |
| Bulk Oil Facilities | Oil Refinery |
| Plastics Plants | Cement Plants |
| Whey Plants | Engine Plants |
| High Speed | Parts Production |
| Stamping Plants | Car Dealerships |
| Forging Mills | Casting and Mold Foundries |
| Restaurants | Cheese and Dairy Plants |
| Saw Mills | Concrete Batch Plants |
| Trucking Fleets | Concrete Casting |
| Maintenance & Repair Facilities | Educational Institutions |
| Wood Working Plants | Furniture Manufacture |

**CLIENTS**

Clients include federal, state, county and municipal governments, universities, housing authorities, law firms, banks, (in state and out of state), mortgage companies, REO Liquidations by Court Order, insurance companies, investment bankers, manufacturing firms, power companies, investment partnerships, corporate acquisitions, property developers, property owners and operators, estates, partnerships, and dissolutions.



Attachment: Golicz_TPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

## Georgette Tozer

**From:** John Robinson <john@property-specialists.com>
**Sent:** Monday, July 5, 2021 9:20 PM
**To:** VAB
**Subject:** [EXTERNAL] RE: VAB TPP Special Magistrate Request for Services and Application
**Attachments:** Executed 2021 VABSpecialMagistrateApplication_Fillable.pdf

**CAUTION:** This email originated from outside of the Clerk's Office. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I have attached the completed Special Magistrate application for your review and consideration. My requested hourly rate is $130/hour plus any mileage at the standard mileage rate for 2021. Let me know if you have any questions or require any additional information. Please reply to this e-mail to confirm receipt of the required documentation. Thank you!

John Robinson, MAI, AI-GRS, ASA, CCIM
President
Property Investment Specialists, Inc.
204 S. Dillard Street
Winter Garden, FL 34787
Phone: 407-877-9694
Fax: 407-877-8222
Email: john@property-specialists.com
Website: http://www.property-specialists.com/

**From:** VAB <VAB@citrusclerk.org>
**Sent:** Tuesday, April 13, 2021 9:09 AM
**To:** VAB <VAB@citrusclerk.org>
**Subject:** VAB TPP Special Magistrate Request for Services and Application
**Importance:** High

**Dear Sir/Madam:**

**You are cordially invited to apply to serve as a Special Magistrate for the 2021 Citrus County Value Adjustment (VAB) Board. You will find an application attached to this email.**

**We would appreciate receipt of your completed application, a resume, and proof of your membership in the ASA. You will also need to complete the current DOR Training and provide us with your certificate as soon as it becomes available. The deadline for receipt of your application and supporting documents is July 6, 2021. Please submit to VAB@citrusclerk.org.**

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

The Board has not set a standard rate of compensation for TPP magistrates. We invite you to submit your rate schedule and any travel or minimum compensation you require.

Hearing times will be scheduled from 9:00 a.m. until 5:00 p.m.; however, Special Magistrates will be notifiec of any changes to the scheduled hearings as soon as practical.

Thank you for your cooperation and for your willingness to serve the citizens of Citrus County, Florida. We lool forward to receipt of your information and to working with you during the 2021 VAB process.

Should you have questions, please feel free to contact the undersigned.

On behalf of the Citrus County Clerk of the Circuit Court, I appreciate the opportunity to be of service to you.

Thank you.

Regards,

*Georgette Tozer, VAB Clerk*

**Georgette Tozer**
*Deputy Clerk*
Citrus County Clerk of the Circuit Court and Comptroller
(W) (352) 341-7095
110 N Apopka Avenue
Inverness, Florida 34450
Visit us at www.citrusclerk.org

***Please Note:*** *Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications, including your email address, may therefore be subject to public disclosure.*

***Confidentiality Notice:*** *This message and any attachments are for the sole use of the intended recipient(s) and may contain confidential and privileged information that is exempt from public disclosure. Any unauthorized review, use, disclosure, or distribution is prohibited. If you have received this message in error please contact the sender (by phone or reply by electronic mail) and then destroy all copies of the original message.*

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
- ☑ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: John Robinson Email: john@property-specialists.com
Business Name: Property Investment Specialists, Inc.
Home Address: 800 Windergrove Court, Ocoee, FL 34761
Business Address: 204 S. Dillard Street, Winter Garden, FL 34787
Phone: Home/ 407-877-3757 Business/ 407-877-9694 Cell/ 407-399-9818 Fax: 407-877-8222

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: RZ417 Valid Thru: 11/30/22
How many years of experience do you have in the area of real property valuation: 38 years
How many years of experience do you have in the area of tangible property valuation: Approx. 20 years

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

See attached qualifications



Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

See attached qualifications

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.
Have served as a Special Magistrate since 1994 and have been a real estate appraiser since 1984

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI | 1989 | 8135/Acct. 47472 |
| CCIM Institute | CCIM | 1990 | 9080 |
| Appraisal Institute | AI-GRS | 2014 | 8135/Acct. 47472 |
| American Society of Appraisers | ASA | 2020 | 123278 |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:
MAI: 5 years of appraisal experience and successful completion of required courses (7), demonstration appraisal report and comprehensive examination; CCIM: Proof of MAI designation, successful completion of required courses (3), and comprehensive exam; AI-GRS: general state certificatino, successful completion of 2 courses and comprehensive exam; ASA: Proof of MAI designation, Ethics course, 3 references

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:
Have heard tangible VAB cases sporadically over the past approximately 20 years, most recently in 2020



Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | 37 years in Northwest and Central Florida |
| COMMERCIAL REAL PROPERTY | 36 years all property types in Central Florida |
| TANGIBLE PROPERTY | Approximately 20 years of TPP VAB cases |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

Have used Microsoft Word and Excel since 1987 and have used Axia software since 2006

13. List any additional information which makes you qualified to serve as a special magistrate:

Have served as a Special Magistrate since 1994 in Central Florida and have served as a fee appraiser since 1985 in central Florida



Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No
If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

_____ Date: 7/3/21
Signature of Applicant

John Robinson
Printed Name of Applicant



Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Ron DeSantis, Governor

Halsey Beshears, Secretary

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

## ROBINSON, JOHN ALAN

204 S DILLARD ST
WINTER GARDEN FL 34787

**LICENSE NUMBER: RZ417**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

**QUALIFICATIONS OF JOHN A. ROBINSON, MAI, AI-GRS, CCIM, ASA** Page 1
**State-Certified General Real Estate Appraiser #RZ417**

Business Address:
Property Investment Specialists, Inc.
204 S. Dillard Street, Winter Garden, FL 34787
(407) 877-9694 Fax: (407) 877-8222

Residence Address:
800 Windergrove Court
Ocoee, Florida 34761

Education
Auburn University - Auburn, Alabama
BS in Business Administration, Major: Finance, December 1982
Melbourne High School - Melbourne, Florida

Appraisal courses sponsored by IAAO:
Course 300-Fundamentals of Mass Appraisal, Orlando, FL, May 2016
Course 201-Appraisal of Land, Lake Mary, FL, August 2016

Appraisal courses sponsored by The Appraisal Institute:
Course 1A, Part 1 - Real Estate Appraisal Principles, Univ. of North Carolina, July 1984
Course 1A, Part 2 - Basic Valuation Procedures, University of San Diego, June 1985
Course 1B, Part A - Capitalization Theory and Techniques, Orlando, Florida, May 1986
Course 1B, Part B - Capitalization Theory and Techniques, Daytona Beach, Florida, September 1986
Course 2-3 - Standards of Professional Practice, Orlando, Florida, March 1987
Course 2-1 - Case Studies in Real Estate Valuation, Orlando, Florida, May 1987
Course 2-2 - Valuation Analysis & Report Writing, Arizona State Univ., February 1988
Comprehensive Examination, Atlanta, Georgia, August 1988
Course 6 - Computer Assisted Investment Analysis, College Park, Maryland, June 1990
Course II520 - Highest & Best Use and Market Analysis, Orlando, Florida, March 1994
Course 430 - Standards of Professional Practice, Part C, Orlando, Florida, Sept. 1997
Course 430 - Standards of Professional Practice, Part C, Altamonte Springs, FL, Nov. 2002
Condemnation Appraising: Principles & Applications, Destin, FL, April 2009
Review Theory-General, Orlando, FL May 2014

Courses sponsored by the CCIM (Certified Commercial Investment Member) Institute:
Course CI 101 - Financial Analysis for Commercial Real Estate, October 1997
Course CI 201 - Market Analysis for Commercial Investment Real Estate, May 1998
Course CI 104 - Investment Analysis for Commercial Investment Real Estate, May 1999
Comprehensive Examination – Orlando, Florida, November 1999

Courses sponsored by CoreLogic
Marshall & Swift Commercial Cost Approach Certificate, May 2016

Courses sponsored by the American Society of Farm Managers and Rural Appraisers:
Valuation of 'Conservation Easements' & Other Partial Interests in Real Property, September 2009

Appraisal seminars sponsored by The Appraisal Institute (and South Florida Water Management District):
Rate Extraction/Application, July 1989
Impact of Environmental Considerations on Real Estate Appraisals, July 1989
Standards of Professional Practice Update, July 1990
Appraisal Regulations of the Federal Banking Agencies, November 1990
Environmental Concerns, September 1991
Subdivision Analysis, November 1991

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)






Standards of Professional Practice, October 1992
Americans with Disabilities Act, February 1993
Rates, Ratios & Reasonableness, February 1993
Appraisal Review Overview, August 1993
ARGUS Beginning Training, October 1993
Appraising Troubled Properties, November 1993
Limited Appraisal Round Table, June 1994
Uniform Standards of Professional Appraisal Practice Update*, June 1994
(Instructed for Lincoln Graduate Center)
HUD/FHA Training Session, November 1994
Principles of Appraisal Review*, January 1995 (Instructed for Lincoln Graduate Center)
Analyzing Operating Expenses, March 1995
Fair Lending and the Appraiser, June 1995
Farm and Land Appraisal*, June 1995 (Instructed for Lincoln Graduate Center)
The Internet and Appraising, February 1997
Understanding and Using DCF Software: A Comparison of ARGUS, PRO-JECT and
DYNALEASE, December 1997
USPAP Update Core Law For Appraisers, February 1998
Econometrics, June 1999
Public Market for Real Estate, June 1999
General Appraiser USPAP Update, June 1999
Client Satisfaction/Retention/Development, June 1999
Technology Forum, June 1999
Appraising from Blueprints & Specifications, February 2000
Current Appraisal Issues in Florida (South Florida Water Management District), May 2000
Professional Standards USPAP Update/Florida Law for Real Estate Appraisers, August 2000
Florida State Law and USPAP Review for Real Estate Appraisers, April 2002
Appraisers and the Gramm-Leach-Bliley Act, April 2002
Mark-to-Market-The Next FIRREA, April 2002
Current Appraisal Issues in Florida (South Florida Water Management District), May 2002
Internet Appraisal Research and the Florida Appraiser, May 2003
2003 South Florida Water Management District Appraisal Seminar, May 2003
Appraising A Proposed Property, February 2004
Florida Appraiser's State Law Update, March 2004
Course 400 – National USPAP Update Course, March 2004
Uniform Standards for Federal Land Acquisitions, March 2004
2004 South Florida Water Management District Appraisal Seminar, May 2004
Real Estate Finance, Value and Investment Performance, February 2005
2005 South Florida Water Management District Appraisal Seminar, May 2005
Subdivision Valuation: A Comprehensive Guide to Valuing Improved Subdivisions, February 2006
2006 South Florida Water Management District Appraisal Seminar, April 2006
2006 Scope of Work and the New USPAP Requirements Seminar, June 2006
2006 New Technology for the Real Estate Appraiser: Cool Tools Seminar, June 2006
Florida Core Law and National USPAP Update, September 2006
Business Practices and Ethics, May 2007
2007 South Florida Water Management District Appraisal Seminar, May 2007
USPAP Update Course including Florida Law and Supervisor/Trainee Roles & Relationships, April 2008
2008 South Florida Water Management District Appraisal Seminar, May 2008
Course-I400 – National USPAP Update Course, July 2010

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Florida Law and Supervisor/Trainee Roles & Rules, July 2010
Uniform Standards for Federal Land Acquisitions: Yellow Book, February 2011
Appraising the Appraisal, January 2012
Business Practices and Ethics, March 2012
Fundamentals of Separating Real Property, Personal Property and Intangible Business Assets, March 2012
Trial Components: Recipe For Success of Disaster?, August 2012
USPAP Update Course, November 2012
Marketability Studies: The Six-Step Process and Basic Applications, March 2013
Marketability Studies: Advanced Considerations and Applications, March 2013
Front of the House/Back of the House, April 2013
Central Florida Real Estate Forum-The Road to Recovery, September 2013
Critical Thinking in Appraisals, January 2014
Introduction to Land Valuation, April 2014
USPAP Update Course, September 2014
STDB Hands-On Presentation Training Course, August 2015
USPAP Update Course, July 2016
Business Practices and Ethics, March 2017
Central Florida Real Estate Forum, October 2017
Solving Land Valuation Puzzles, February 2018
USPAP Update Course, April 2018
2018 Central Florida Real Estate Forum, October 2018
Evaluating Commercial Leases, February 2019
Supervisory Appraiser/Trainee Appraiser Course, February 2019
2019 Central Florida Real Estate Forum, October 2019
USPAP Update Course, January 2020
Valuation Impacts of COVID-19 webinar, April 2020
The Cost Approach: Unnecessary or Vital to a Healthy Practice?, October 2020

Real Estate Experience

2017-2019 - Assistant Vice President, Appraisal Department, Valley National Bank, Orlando, FL
2015-2017 – Senior Commercial Real Estate Valuation/VAB Advisor Orange County Property Appraiser, Orlando, FL
2000 - President, Property Investment Specialists, Inc., Winter Garden, FL
1994-2015 - Founder and President, Property Valuation & Consulting, Inc., Orlando, FL
1991-1994 - Vice President/Senior Review Appraiser, First Union Corporation, Orlando, FL
1990-1991 - Appraisal Review Officer, Southeast Bank, N.A., Orlando, FL
1986-1990 - Senior Appraiser, SEMCO Services, Inc., Orlando, FL
1985-1986 - Appraiser, Pardue, Heid, Church, Smith & Waller, Inc., Orlando, FL
1983-1985 - Appraisal/Property Manager, Sherrill Realty Company, Pensacola, FL

Appraisal experience includes narrative and form report writing and review of single-family and multi-family residential, agricultural, commercial (office, retail, hotels/motels), industrial, special purpose and vacant land properties. Experience includes providing expert witness testimony.

Publications

"Scope of the Appraisal - A Practical Analysis", *The Appraisal Journal*, January 1992, *The Canadian Appraiser*, Winter 1993

Professional Affiliations and Memberships

Member Appraisal Institute (MAI Number 8135-Account No. 47472)

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Certified Commercial Investment Member (CCIM Number 9080)
Accredited Senior Appraiser, Real Property-American Society of Appraisers (Member ID 123278)
Former Member IAAO (International Association of Assessing Officers), Member ID 10197078
State-Certified General Appraiser, License No. RZ417
Licensed Florida Real Estate Broker/Salesman - Active Status
1991 and 1993 Young Advisory Council - Appraisal Institute
Florida General Appraiser Instructor, License No. GA1000019
Former Instructor for Lincoln Graduate Center, San Antonio, Texas
Approved Instructor for Valencia College Adult Ed. (R.E. Appraisal), Orlando, Florida
Selected as Special Magistrate for Orange County (1994-1996, 1998, 1999, 2001-2007, 2009-2014, and 2018-2019), Seminole County (1997-2000, 2002-2003, 2006, 2010-2011, 2017, 2019 and 2020), Volusia County (1999-2009, 2017, 2019 and 2020), Brevard County (1999-2012, 2014, and 2018), Indian River County (2004-2007), Citrus County (2005, 2006, 2008-2009, 2013, and 2017-2020), Hillsborough County (2008-2014, and 2017-2018, 2020), Pinellas County (2008-2014, and 2017-2018), Lake County (2019, 2020), Osceola County (2014), Escambia County (2012), Polk County (2013-2014 and 2017), Pasco County (2013-2014), Hernando County (2012, 2020), Sarasota County (2017, 2019 and 2020), Alachua County (2017-2018, 2020), Leon County (2019 and 2020), Sumter County (2020) and Okaloosa County (2010-2011, and 2015)

References
Available upon request.

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

APPRAISAL INSTITUTE

# MEMBERSHIP CERTIFICATE

*This Certifies That*

## *John Alan Robinson*

*was admitted to membership in the American Institute of Real Estate Appraisers as an MAI Member (8135) on the22nd day of May, 1989 and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

APPRAISAL INSTITUTE CORPORATE SEAL

PRESIDENT

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP.





Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# Appraisal Institute®

*Professionals Providing Real Estate Solutions*

This Certifies That

*John A. Robinson, MAI*

has been admitted to membership as an

**AI-GRS Member**

in the Appraisal Institute and is
entitled to all the rights and privileges of membership
subject only to the limiting conditions set forth from time to time
in the Bylaws and Regulations of the Appraisal Institute.

In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President, and the Corporate Seal to be hereunto affixed on this *28th* day of *July 2014*

*President*

*This certificate is the property of the Appraisal Institute and must be returned to the Secretary upon termination of membership*

**Commercial Investment**
**Real Estate Institute**

CCIM

*430 N. Michigan Avenue*
*Chicago Illinois 60611.4092*
*Telephone 312.321.4460*
*Facsimile 312.321.4530*

*Affiliated with the*
*NATIONAL ASSOCIATION*
*OF REALTORS®*

November 10, 1999

John A. Robinson, CCIM
Property Valuation and Consultant, Inc
331 Northtland Avenue
Suite B-4
Maitland, FL 32751

Dear John:

***Congratulations on earning your CCIM Designation!***

I sincerely hope that one of your membership goals includes active involvement in our organization. We find that the greatest overall satisfaction is derived from active members who utilize all the services we offer. We cannot effectively serve you as an organization, a networking medium or to have education and career development resource without your active participation. Get involved and feel free to contact me personally with any suggestions, comments or questions you may have about the Institute. Consider getting involved in your local CCIM chapter as well.

The CCIM designation number assigned to you is 9080. You will need this to access the CCIM Web site. Remember, all United States designees are required to be members of National Association of Realtors® (NAR) through a local board or association as either a REALTOR® or Institute Affiliate Member. If you choose Institute Affiliate Membership, simply present a copy of this letter to your local board to certify your CCIM status.

Again, congratulations on this milestone accomplishment in your career, and welcome to the ever-growing roster of CCIM's pledged maintain professional knowledge, expertise, and ethical practice in commercial real estate.

If you have any questions, feel free to contact Cathy Wright, CIREI Designation Supervisor 800/621-7027 ext. 4495.

Sincerely,

W. Duncan Patterson, CCIM
2000 CIREI President

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

*The Society's Board of Examiners Certifies That*

# *John Robinson*

*Is hereby awarded the designation*

*Accredited Senior Appraiser*

*American Society of Appraisers Headquarters - Reston, VA*

*and is entitled to use the designation in accordance with the society's bylaws and administration rules.*

*Signed, Sealed and Attested*
*This 02 day of June 2020*

*International Secretary/Treasurer*

*This certificate is the property of the American Society of Appraisers and must be returned to the International Office upon membership termination.*

*International President*

Findings of Fact

Basic Underlying Facts

1. The property owner (Lowe's Home Center Inc.) was represented by Sabrina Weiss Robinson of Stears Weaver Miller Weissler Alhadeff & Sitterson, P.A. (an agent of the property owner), hereinafter referred to as petitioner. Dexter Dubose represented the Property Appraiser (PA).

2. The property is a freestanding Lowe's building, described as parcel ID# 17-21-31-5TS-0000-0010 and is located at 1155 Vidina Place in Oviedo. The property has 137,836 rentable square feet and was constructed in 2001, situated on 544,201 square feet/12.49 acre. The PA's market value of $9,963,770 reflects $72.29 per square foot of rentable area. The appeal is based on the petitioner's comments that the property has an excessive size as smaller footprints are now being constructed (resulting in functional obsolescence), the PA's estimated market rent is excessive and the PA's comparable sales are smaller and superior to the subject.

3. Evidence was properly exchanged between the PA and the petitioner prior to the hearing in accordance with Rule Chapter 12D-9.020 and 12D-9.025 which implements section 194.011(4), F.S.

4. In accordance with Rule Chapter 12D-9.024, Fla. Adm. Code, the PA first presented evidence to establish the presumption of correctness. Dexter Dubose presented the PA's opening address (Exhibit A-PA evidence) to demonstrate proper consideration of each of the following eight factors cited in Section 193.011, F.S., in developing the just value assessment.

The PA confirmed the TRIM and Before Board Action values noted in the Decision Summary section of this recommendation. The petitioner confirmed the values to be accurate.

5. The petitioner did challenge the PA's presumption with regards to the cost approach being overstated, the comparable sales being superior to the subject with respect to size and the income the property is capable of generating, as previously stated. The petitioner did offer an alternative value opinion of $8,311,552 based on the income approach and presented documentary evidence in advance of the hearing to refute the PA's value.

6. The petitioner disagreed with the PA's determination of just value, based on the evidence submitted as stated in paragraph 2 above.

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

7. The petitioner presented the following documentary evidence to support the petitioner's arguments: cover letter and request for PA evidence; title page; index; property summary including property details; aerial map; property record card/information sheet (with property description information, plat map and land and building values including replacement cost new, permit data and improvement details); architectural site plan; cost analysis with supporting SwiftEstimator report, depreciation comparables and pages from the Appraisal of Real Estate regarding market extraction method; article functional obsolescence; standard methods of measurement resource; chart of smaller Lowe's stores in Florida; table of asking and actual big box rents in Florida; pro forma analysis; market support for cap rate from The Boulder Group, Avison Young, Realty Rates and CBRE investor surveys; Moody's Investors service rating of Lowe's; table of comparable land sales; subject land value table; table of 10 big box sales in Florida; table of 13 big box comparable assessments in the metro Orlando area including Seminole County; Chapter 194.304, Florida Statutes regarding hearing procedures/rules; table of 20 national sales of Target stores; table of 17 national sales of Lowe's stores; table of 6 Florida sales of mostly smaller (than the subject) Lowe's stores (less than 121,000 SF); Addenda/Supplemental Evidence items of relevant retail articles including: retail market conditions (numerous store closings), Lowe's (and their financial struggles related to an acquisition), smaller format stores (examples include Walmart, Target and Barnes & Noble) and e-commerce (and its growth); article on valuation of big box retail (methodologies that are appropriate and pitfalls to avoid); RERC big box study (methodologies to use with problems in using contract rents, sale price declines per unit as the building is larger, sale price declines as the lease term gets shorter, and most emphasis being on sales comparison approach); Florida DOR property tax information bulletin (Florida Department of Revenue (DOR) Property Tax Oversight PTO 11-01 regarding Value Adjustment Board Petitions and the Eighth Criterion); Form DR 493 regarding adjustment made to arrive at assessed value (15%); and portions of 2020 VAB training manual (modules 4 and 6).

The Special Magistrate (SM) reviewed all evidence presented by the petitioner. In accordance with Rule 12D-9.025(1), Fla. Adm. Code (F.A.C.), the SM determined the evidence and testimony was relevant and credible to the valuation issue at hand. Thus, the evidence presented by the petitioner was admitted for consideration in relation to the appropriateness of the subject's valuation.

8. The PA did have questions/comments relating to the petitioner's evidence. The PA's questions/comments included: the subject land value is understated, the comparable sales and rentals are not comparable to the subject (due to inferior characteristics), and the cost approach should be given primary consideration in concluding the subject's value.

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

9. The PA presented the following documentary evidence to support its just valuation determination cited above. The evidence consisted of a street photograph of the subject with limited property information; contents; subject TRIM notice; statement of compliance with Section 193.011, Florida Statutes, professionally accepted mass appraisal standards and the Uniform Standards of Professional Practice; property record card/information sheet (with property description information, land and building values including replacement cost new, building sketch and improvement details); table of 8 comparable land sales in Seminole County from May 2018 to September 2019, ranging in size from 2.44 to 12 acres in Seminole County (that sold from $1,000,000 to $5,200,000 or $8.89/SF to $12.89/SF, averaging $8.85/SF); permit information; e-mail correspondence regarding details of permit costs; table of four Lowe's properties that are being petitioned including property details and just/market values for each property; Orange County Lowe's properties including property details and just/market values for 7 properties; traffic count information for subject; cost approach summary including excerpts from Marshall Valuation Service (MVS); Lowe's 2019 annual report (with statement that property is recorded at cost; income approach worksheet based on a $7/SF NNN market rental rate, 5% vacancy/collection loss rate, 5.8% operating expenses, 7% capitalization rate (indicating a value of $12,152,759); Lowe's annual report (Form 10-K); table of four asking rental rates for big box spaces in central and south Florida (averaging $10.81/SF); table of four asking rental rates for big box spaces in central and northwest Florida from 2019 hearing (averaging $9.65/SF); table of four signed big box rents in Seminole (3) and Miami-Dade (1) counties (averaging $10.53/SF for the Seminole County properties); CoStar underwriting report-retail property revealing two Home Depot properties and one Lowe's property (with reported rental rates of $17/SF-$21/SF) including map and exterior photos; Orlando retail market study from 3Q2019 CBRE and CoStar; management and reserves estimates based on PwC Investor survey; The Boulder Group report of Lowe's property profile and cap rates; 1Q20 PwC national net lease report; table of 15 freestanding retail sales in 2018 and 2019 (averaging $151.86/SF); table of 13 sales nationally (with credit rating of BBB+); CoStar information regarding industrial properties; articles about Amazon and Lowe's and new headquarters in Charlotte; article regarding hardware stores; request for petitioner's evidence; professional qualifications; final statements and certification.

The Special Magistrate (SM) reviewed all evidence presented by the PA. In accordance with Rule 12D-9.025(1), Fla. Adm. Code (F.A.C.), the SM determined the evidence and testimony was relevant and credible to the valuation issue at hand. Thus, the evidence presented by the PA was admitted for consideration in relation to the appropriateness of the subject's valuation.

10. The petitioner did have questions/comments relating to the PA's evidence, pointing out that the cost approach is not an appropriate indicator of value and the sales comparison approach is the best approach to value. Other comments about the PA's evidence include small improved sales rather than sales of properties as large as the subject and the PA's rental rate is too high and not supported by market evidence.

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Ultimate Findings of Fact

Based on the evidence submitted, I find the PA's evidence pertinent to the cost approach with support from the sales comparison and income approach to be persuasive, appropriate and supportive of the market value. However, I find the petitioner's evidence to also be pertinent, particularly regarding the sales comparison and income approaches and supportive of the property being overvalued. The PA presented all three approaches to value with most emphasis on the cost approach while the petitioner presented all three approaches to value with most emphasis on the sales comparison approach. Since the cost approach to value is considered primary to the PA, this analysis will be discussed initially, followed by the sales comparison and income approaches.

The PA identified eight land sales (May 2018 to June 2019), one of which is located in the Oviedo area and all are in Seminole County. All of the sales are qualified and are smaller than the subject's land area and although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. The PA's land value reflects $6.18/SF of usable/upland area ($3,366,177). No adjustments are made to the comparable land sales; however, the PA's comparable land sales range from $7.55/SF to $10.96/SF, averaging $8.85/SF after a 15% cost of sale adjustment.

The petitioner identified seven land sales (December 2017 to April 2019), one of which is located in the Oviedo area and all are in Seminole County. All of the sales are smaller than the subject's land area and although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. The petitioner's land value is $3.33/SF of usable/upland area ($1,812,189) which is reported to be the PA's value; however, that is not the case as previously stated. No adjustments are made to the comparable land sales; however, the petitioner's comparable land sales range from $0.92/SF to $5.44/SF, averaging $3.33/SF after a 15% cost of sale adjustment, significantly lower indications than the PA's sales. Traffic counts are presented, however, and show a wide range, although most are lower than the subject location. Without benefit of more specific information as to tax map, location map and traffic count details, it is difficult to determine which comparables are most similar to the subject site. However, the subject site is located off a major arterial (Red Bug Lake Road) in Seminole County and would command a unit value well above the petitioner's range in unit values from the land sales selected. Upon further review, the petitioner's comparables are inferior in location to the subject; therefore, the PA's land value is considered to be more appropriate than the petitioner's land value based on a preponderance of the evidence.

The PA's depreciated building value of $6,208,012 ($45.73/SF) and extra features value of $389,581 via the CAMA system were added to the land value for the indicated value by the cost approach of

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$9,573,915. Based on the replacement cost new of $7,908,295, the depreciation estimate reflects 21.5%. However, an independent analysis by the Marshall Valuation Service (MVS) resulted in a value by the cost approach of $12,163,889 (reflecting an assessment to cost ratio of 81.91%). The PA's cost approach using MVS is based on a cost replacement cost new of $72/SF with physical depreciation only estimated at 22%. The purpose of the PA's MVS analysis is to show consideration of the 15% cost of sale consideration.

The petitioner's depreciated building and extra features value of $3,127,204 ($23.03/SF) via the Marshall Valuation Service (MVS) were added to the land value for the indicated value by the cost approach of $4,470,313 ($32.93/SF). The petitioner's cost approach is based on a cost replacement cost new of $57.59/SF with physical depreciation only estimated at 40% and functional obsolescence estimated at 20% (based on the older footprint of the subject, which has been reduced by approximately 15% in newer Lowe's and retail big box stores). Primary differences between the PA and petitioner are in the quality rating of the cost new estimate (2.0 or average is used by the petitioner and good is used by the PA in the MVS analysis) and the 60% depreciation used by the petitioner (which includes functional obsolescence) compared with the 22% physical depreciation used by the PA. The petitioner has some valid points regarding the quality rating likely being more representative of average quality than good and the possibility of functional obsolescence in the subject's larger size/building footprint, compared with recent development trends. However, the PA's value via the CAMA system is reasonable and appropriate (and likely includes a conservative land value estimate) although it does not reflect a cost of sale deduction. Based on the petitioner's argument that the cost approach should not be the primary approach to value for a big box retail property like the subject, primary consideration is given to the sales comparison and income approaches.

The PA presented the income approach based on a $7/SF NNN market rental rate (which indicated a value of $12,152,759, or 121.97% of the concluded just/market value with an allowance for any disposition costs or cost of sale). The PA's value is based on a stabilized vacancy/collection loss rate of 5%, operating expense ratio of 5.77% and overall capitalization rate of 7% and these are similar to the estimates used by the petitioner with the differences from the petitioner's analysis being the market rent estimate of $6/SF NNN, slightly lower property expense ratio (5%), slightly higher cap rate (7.5%) and 15% cost of sale used by the petitioner (and indirectly applied by the PA as previously stated). The PA's $7/SF rate is based on 4 big box asking rental rates in Florida (ranging from $7/SF-$15.25/SF, averaging $10.81/SF) and 4 actual big box lease rates ($10.25/SF to $11.12/SF) signed between 2014 and 2018 in Florida (including three in Seminole County averaging $10.53/SF), two Home Depot properties with reported lease rates in Oviedo/Seminole County and additional rent comparables evidence from a 2019 hearing regarding Lowe's. The petitioner's $6/SF rate is based on 10 big box asking rental rates in Florida (ranging from $3/SF to $7.50/SF) and 7 actual big box rental rates in Florida (ranging from $2/SF to $5.50/SF). The PA's comparable rentals are all smaller buildings, although not enough information is presented as to the age of the buildings. The petitioner's comparable rentals are mostly of older

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buildings, although the actual rental rate properties are smaller (with one exception) than the subject (the asking rental rate properties are split between larger and smaller buildings). No adjustments are applied to the rental rates by the PA or petitioner. Based on the petitioner's and PA's evidence, the estimated market rental rate of between $6/SF and $7/SF is reasonable/supported and while the PA's supporting evidence is weakened by the smaller size of the comparables, the $7/SF rate does not appear to be overstated. The cap rate is based on investor surveys via the Boulder Group, RealtyRates.com, CBRE, PwC and Moody's Investor Service credit rating. The evidence does not support a convincing argument that the PA's cap rate of 7% is unreasonable. Secondary consideration is given to the income approach, given the subject is an income producing property.

The PA identified 15 sales (March 2018 to November 2019), five of which are located in Seminole County. Most of the sales are smaller than the subject (with the larger building sales being outside of the state or Seminole County) and although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. The PA's value reflects $72.29/SF of building area. No adjustments are made to the comparable improved sales; however, the PA's comparable improved sales range from $105.57/SF to $247.44/SF, averaging $151.86/SF, or $129.08/SF after a 15% cost of sale adjustment. Additionally, a November 2019 sale of a 135,268 SF Lowe's in Concord, NC (a suburb of Charlotte) sold for $112/SF at a 6.09% capitalization rate. The petitioner identified 10 sales (April 2016 to September 2019), two of which are located in Seminole County. Most of the sales are smaller than the subject (with two of the larger building sales being within Seminole County) and older than the subject (with three exceptions) although limited details are presented (no aerial or location maps), the sales appear to be representative of the subject. No adjustments are made to the comparable improved sales; however, the petitioner's comparable improved sales range from $27/SF to $67/SF, averaging $33/SF, after a 15% cost of sale adjustment. Having some familiarity with the locations of the comparable sales, most of the sales would be considered to be located in an inferior area to the subject and lower traffic counts. Additionally, the petitioner presents 13 assessment comparables of big box retail properties in Seminole County. These properties range from $31.33/SF to $68.16/SF, averaging $60.80/SF. However, all but two of the properties are older than the subject. The petitioner also presented 20 sales of Target stores (June 2014 to July 2017) in the US (including two in Florida) that ranged in unit prices from $14.04/SF to $52.17/SF. However, most of the buildings are older and the sale dates are dated (from July 2017 and older). Finally, the petitioner also presented 17 sales of Lowe's stores (March 2010 to July 2016) in the US (all outside of Florida) that ranged in unit prices from $18/SF to $40/SF. However, most of the buildings are newer but of similar size to the subject and the sale dates are dated (from July 2016 and older). Due to the lack of recent data, the Target and Lowe's sales are given minimal to no weight in making a recommendation. The assessment comps data is a secondary methodology when comparable sales are absent, which they weren't in this case. In comparing the two analyses, although the petitioner's evidence is very informative and relevant to the valuation of the subject with an excellent presentation, it is not convincing enough (given inferior building ages and locations of the comparables analyzed) to conclude that the PA's concluded value via the sales comparison approach is in excess of market value. The PA's just/market value of $72.29/SF lies 44%

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

below the average indication of $129.08/SF after applying a 15% cost of sale adjustment. This approach to value has been given most consideration in the reconciliation to a final value estimate, based on the petitioner's market evidence that indicates this is the primary approach to value for big box retail properties.

Finally, the 15% cost of sale has been applied by the PA based on sale prices to the entire tax roll. However, the PA's value does reflect that the 1st and 8th criterion has been considered in the concluded value. Based on the PA's and petitioner's evidence, the PA's concluded value of $9,963,770 does not exceed its just/market value.

Conclusion of Law

Section 194.301, F.S., provides that the PA's assessment is presumed correct if the PA proves by a preponderance of the evidence that the assessment was arrived at by complying with section 193.011, F.S., any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. However, a taxpayer who challenges an assessment is entitled to a determination by the Value Adjustment Board of the appraisal methodology used in making the assessment. The value of the property must be determined by an appraisal methodology that complies with the criteria of section 193.011, F.S., and professionally accepted appraisal practices.

As SM, I considered all given evidence and testimony discussed at this hearing as noted in the findings of fact. Based on this evidence and testimony, the PA did comply with section 193.011, F.S., meeting the eight legal factors. Accordingly, pursuant to section 194.301, F.S., the PA's assessment is presumed to be correct. The Petitioner did not meet the burden of proving by a preponderance of the evidence that the PA's assessed value did not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property or was arbitrarily or erroneous based on appraisal practices that are different from the appraisal practices generally applied by the PA to comparable property within the same county. Thus, in accordance with section 194.301(2), F.S., the just value of the PA of $9,963,770 is affirmed and the petition is denied.

Attachment: RobinsonTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

rpa
Real Property Analysts, Inc.

2433 Lee Road • Winter Park, Florida 32789-1755
(407) 628-0505 • FAX (407) 628-0523
E-mail: rpa@rpaflorida.com • www.rpaflorida.com

Members: Citrus County Value Adjustment Board June 28, 2021

Attention: Ms. GeorgetteTozer, VAB Clerk
110 North Apopka Avenue
Inverness, Florida 34450

Re: Real Property and Tangible Personal Property Special Magistrate Services

I have had the privilege of serving your VAB for six of the last seven years. My primary responsibility has been real property petitions and periodically I also conducted tangible personal property hearings. I am hopeful to be considered for both this coming text cycle 2021 year. My proposed compensation remains the same. It is $125 per hour excluding travel time and lunch breaks with no reimbursement for business-travel expenses.

Included is my application to serve with additional descriptive information identified as Attachments A to I. Your attention is especially invited to attachment I, which are two recommendation letters from Clerks of the Board for Orange and Brevard Counties.

I have enjoyed visiting Inverness and working with your very capable staff and hope to be invited back. Thank you for your consideration of my application.

Respectfully Submitted,

Robert Sutte

Robert Sutte CRE, MAI, SRA

State-Certified General Appraiser RZ 241

Appraisal Qualifications Board Certified USPAP Instructor

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
- ☑ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: Robert Sutte Email: rpa@rpaflorida.com
Business Name: Real Property Analysts of Orlando
Home Address: 1320 Lakeview Drive, Winter Park , Florida 32789
Business Address: 2433 Lee Road, Winte Park, Florids 32789
Phone: Home/ 407-645-5199 Business/ 407-628-0505 Cell/ 407-388-4616 Fax: None

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant**: Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: ( See attach. C)
General Appraiser License #: RZ 241 Valid Thru: 12-31-22
How many years of experience do you have in the area of real property valuation: 39 ( in Florida)
How many years of experience do you have in the area of tangible property valuation: 17 ( in Florida)

## DOCUMENTATION REQUIRED

***Verification of qualifications will be made prior to consideration of this application, pursuant to* F.S. § 194.035.**

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background

Bachelor of Science Degree, Business Administration , Drake University ( Concentration in Finance)
Please see attachments A and B.
Regarding a writting sample please see Hillsborough VAB Recommended Decision (November 2020)
attachment H ( 5 pages). Regarding Florida Department of Revenue training see attachment E (2 pages)



Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Citrus 2006, 2013, 2014, 2016-2020 ( Both Tangible Personal Property and Real Property), Brevard 1997-2020, Orange 1997-1999, 2002-2011,2016-2019(Both TPP & RP),Lake 2016-2020, Osceola 2026 and 2019, Volusia 2016-2020. Other VAB service Hillsborough,Seminole,Polk, Escambia , Pasco and Santa Rosa.

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

Extensive appraisal experience since relocating here from Boston 1981( attachment A). Extensive teaching experience for the Appraisal Institute and the Florida Realtors ( attachments B & G). Appraisal Qualifications Board Certified Uniform Standards of Professional Appraisal Practice instructor. Recommendation letters from Clerk's of the Board for Orange and Brevard Counties ( attachment I ).

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| Appraisal Institute | MAI, SRA ( See attachment F) | 1970, 1968 | 4421 |
| Counselors of Real Estate | CRE | 1975 | 659 |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

Counselors of Real Estate : Many years of independent counseling for fee compensation. Appraisal Institute: Many courses, examinations and writing 3 demonsration appraisal reports.

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☑ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:

During the last 17 years I have served as a TPP special magistrate in 7 Florida Counties including Citrus, Orange , Lake, Santa Rosa, Escambia, Okaloosa and Walton. For a complete description please see attachment D ( 2 pages).I would be pleased to continue to serve the Citrus VAB regarding both Real Property and Tangible Personal Property petitions if it would be helpful.



Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | See attachments A, B, and G. Various excluding time share. |
| COMMERCIAL REAL PROPERTY | See attachments A, B, and G.Almost all commercial types. |
| TANGIBLE PROPERTY | See attachment D (2 pages). Many types no specialty. |
| OTHER (PLEASE SPECIFY) | Land. All types including fresh and salt water true islands. |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

None

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

None

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

I'm proficient in Microsoft Word, Excel, Power Point and more.I utilize both Mac ( desktop and Laptop) and PC (laptop) hardware. Since 2004, I have used Axia for seven Florida VAB's including Orange, Brevard and Osceola. The Citrus VAB has it's own exclusive petition processing software, which I have used during each of the last five tax cycle years ( 2016 to 2020).

13. List any additional information which makes you qualified to serve as a special magistrate:

In addition to the information provided for number 4, Robert Sutte became a Florida special master ( later called special magistrate) in 1997.During the last 34 years he has served the value adjustment boards in 14 Florida counties.They were Citrus, Orange, Hillsborough,Brevard, Osceola, Volusia, Seminole ,Polk, Pasco, Lake, Santa Rosa, Escambia, Okaloosa , and Walton.



Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Robert Sutte Date: 6/28/2(

Signature of Applicant

ROBERT SUTTE

Printed Name of Applicant



Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

rpa
Real Property Analysts, Inc.

2433 Lee Road • Winter Park, Florida 32789-1755
(407) 628-0505 • FAX (407) 628-0523
E-mail: rpa@rpaflorida.com • www.rpaflorida.com

ATTACHMENT A (SUTTE)

## QUALIFICATIONS OF ROBERT S. SUTTE CRE, MAI, SRA

Since 1962, Mr. Sutte has served as a real estate appraiser and consultant to a wide variety of private and public clients in eighteen states and the District of Columbia. His background includes both real property valuation and real estate counseling on the most efficient and profitable solutions to various real estate problems. Mr. Sutte has had training and experience in the field of finance and experience in designing environmentally acceptable mixed use land development plans.

**RESIDENT OF:** Winter Park, Florida

**EDUCATION:** Bachelor of Science Degree
Business Administration (Concentration in Finance),
Drake University, Des Moines, Iowa

**MEMBER OF:** Counselors of Real Estate (CRE)
Appraisal Institute (MAI, SRA)

**EMPLOYMENT:** Real Property Analysts of Orlando
2433 Lee Road
Winter Park, Florida 32789
(407) 628-0505 ( Direct ) 407-388-4616 ( Mobile )
rpa@rpaflorida.com

**APPRAISAL EXPERIENCE:** Mr. Sutte's appraisal experience includes preparation of market value estimates for use in conjunction with sales, acquisitions, leasing, mortgage lending, condemnation, real estate assessment equalization, charitable donations for conservation purposes and estate settlement. All types of commercial, industrial and residential land and almost all types of improved property have been involved. In many instances, the valuation of encumbered ownerships and the appraisal of leasehold or leased fee interests have been part of the appraisal problem.

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

## ROBERT S. SUTTE, CRE, MAI, SRA (Continued)

A partial list of types of appraisals which have been prepared include:

| | |
|---|---|
| Diminution in Value Studies | Outdoor Advertising Signs |
| Conservation easement encumbrances | Hotels-Motels |
| Most types of land | Banking facilities |
| Salt and freshwater islands | RV/Mobile Home Parks |
| Ocean and Gulf front property | Preparatory schools |
| Silviculture and agriculture land | Radio Transmission Facilities |
| Various types of residential property | Railroad property |
| Commercial and institutional buildings | Convenience stores |
| Shopping centers and retail stores | Warehouses |
| Restaurants | Truck terminals |
| Churches | Manufacturing plants |
| Nursing homes | Special purpose property |

**CONSULTING EXPERIENCE:** Mr. Sutte's consulting experience has encompassed many real estate disciplines. Counseling services rendered have involved guidance on individual property leasing, ownership and development problems. A partial list of types of assignments completed include:

Estimates of marketability and economic feasibility

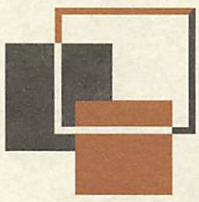
Highest and best and most profitable use analysis

Condominium conversion studies

Land planning and development strategies

Analysis of potential zoning and land use changes

Commercial, retail, hotel, apartment and industrial space rental surveys



rpa
Real Property Analysts, Inc.

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

## ROBERT S. SUTTE, CRE, MAI, SRA (Continued)

**LICENSES:**

Licensed Real Estate Broker - State of Florida (BK232449)

State-Certified General Real Estate Appraiser - State of Florida (RZ241)

State-Certified General Appraiser Instructor - State of Florida (GA5069)

State-Certified Real Estate Instructor - State of Florida (ZH1001982)

AQB Certified USPAP Instructor - The Appraisal Foundation (44795)

**CLIENTS SERVED:**

Mr. Sutte has appraised and consulted for a variety of clients, including property owners, investors, attorneys, financial institutions, insurance companies, and federal, state and local government agencies. A partial list of clients served and references are available upon request.

**COURT TESTIMONY:**

Qualified as an expert witness in federal and state courts and before boards of appeal. Testimony in connection with condemnation, deficiency judgments, tax abatements, rate setting, and appraiser ethical conduct. Has served as a Special Magistrate for the Value Adjustment Boards of Brevard, Citrus, Escambia, Hillsborough, Lake, Okaloosa, Orange, Osceola, Pasco, Santa Rosa, Seminole, Volusia and Walton Counties.

**TEACHING EXPERIENCE:**

Membership in the national faculty of the Appraisal Institute since 1972, as an instructor for various real estate courses and seminars. Florida Realtors® Institute faculty member since 1982, as instructor for the Graduate Realtors Institute (GRI) and the Continuing Education Express seminar series. Also served nine years as an adjunct faculty member of the College of Extended Studies at the University of Central Florida.

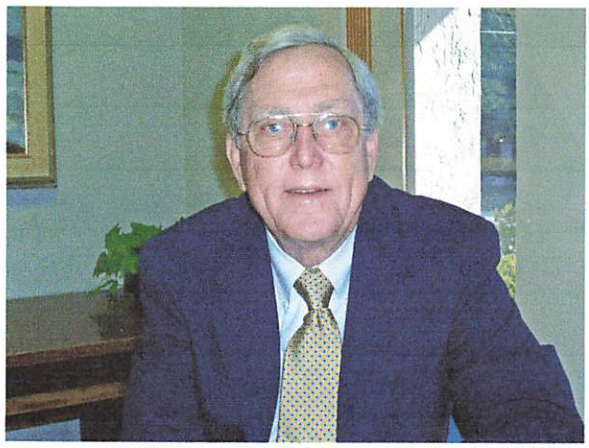


Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

**IMPORTANT EDUCATION INFORMATION**


# rpa
## Real Property Analysts, inc.

2433 Lee Road, Winter Park (Orlando) Florida 32789-1755
(407) 628-0505; (407) 628-0523 FAX
Email: rpa@rpaflorida.com;www.rpaflorida.com

**ROBERT S. SUTTE, CRE, MAI, SRA**

## REAL ESTATE EDUCATION INSTRUCTION

### COURSES

7 Hour National USPAP Update
3 Hour Florida Law Update
15 Hour National USPAP Course
Business Practices and Ethics
Basic Appraisal Principles
Basic Appraisal Procedures
General Applications
Advanced Applications

General Appraiser Market Analysis & Highest and Best Use
Advanced Sales Comparison & Cost Approaches
Advanced Market Analysis and Highest and Best Use
Advanced Concepts & Case Studies
Residential Sales Comparison and Income Approaches
Residential Market Analysis and Highest & Best Use
Residential Site Valuation and Cost Approach
General Appraiser Site Valuation & Cost Approach
General Appraiser Sales Comparison Approach
Yellow Book: Uniform Standards Federal Land Acquisitions

### SEMINARS

Appraising the Appraisal: Appraisal Review-General (7 hours)
Appraising the Appraisal: Appraisal Review-Residential (7 hours)
Appraisal of Local Retail Properties (General) (7 hours)
Litigation Skills for the Appraiser (General) (7 hours)
Marketability Studies: 6 Step Process & Basic Applications (7 hours)
A Lenders Perspective: The Role of the Appraisal in the Lending Process (2 hours)
Spotlight on USPAP: Hypothetical Conditions & Extraordinary Assumptions (2 or 3 hours)
Agreement for Services – Instructions for Use (2 hours)
Appraisal Review (2 hours)
Common Errors and Issues (2 hours)
Confidentiality (2 hours)
Reappraising, Readdressing, Reassigning: What to Do and Why? (2 hours)
Workfiles - Who, What, Where, When, How, and Why? (1 hour)

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Ron DeSantis, Governor

Halsey Beshears, Secretary

dbpr

# STATE OF FLORIDA
# DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

## FLORIDA REAL ESTATE APPRAISAL BD

Attachment C

THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES

**SUTTE, ROBERT SILER**

2433 LEE RD
WINTER PARK FL 32789

**LICENSE NUMBER: RZ241**

**EXPIRATION DATE: NOVEMBER 30, 2022**

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

---

**STATE OF FLORIDA**
**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

FLORIDA REAL ESTATE APPRAISAL BD
2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

850-487-1395

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you

dbpr STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RZ241 ISSUED: 11/13/2020
CERTIFIED GENERAL APPRAISER
SUTTE, ROBERT SILER

Robert Sutte
Signature

LICENSED UNDER CHAPTER 475, FLORIDA STATUTES
EXPIRATION DATE: NOVEMBER 30, 2022

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# ATTACHMENT D (SUTTE)

**Florida Tangible Personal Property (TPP) Experience**

Robert Sutte's valuation practice focuses on real property and real property that includes a tangible personal property (TPP) component. Appraisals of properties with a TPP component include hotels, restaurants, manufacturing plants, warehouse facilities, emergency care centers, medical offices, and a number of other property types.

Sutte began as a Florida special magistrate in 1997. During the last 23 years he has served the Value Adjustment Boards in 13 Florida counties. He began also hearing tangible personal property petitions in 2003. During the last 17 years he has served as a TPP special magistrate in 7 Florida counties including Orange, Lake, Citrus, Santa Rosa, Escambia, Okaloosa, and Walton.

Mr. Sutte has heard TPP petitions regarding a variety of commercial – retail property types including supermarkets, big box home and office discount stores, fast food and sit down restaurants, convenience gas stores, and clothing department stores. They were chain stores like Walgreens, Publix, Wal-Mart, Winn-Dixie, Applebee's, Olive Garden, Racetrac and Bealls and independently operated similar establishments.

Other TPP petitions heard involved mining operations and the depletion of natural resources, gas pipeline operations, medical equipment, and manufacturing operations including concrete products and roller coasters.

The following page includes an advisory opinion from the Florida Department of Revenue detailing the qualifications for a Tangible Personal Property special magistrate.

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)




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**Advisement Letters** | **Property Tax Oversight**

ADV 03-002

Jan 31, 2003

Steven A. Schultz, Miami-Dade County VAB Attorney
25 S.E. Second Avenue, Suite 1135
Miami, Florida 33131

Re: **Value Adjustment Board Special Master Qualifications**

Dear Mr. Schultz:

This letter is in response to your December 4, 2002 memo regarding the qualifications for VAB Tangible Personal Property Special Masters as required by the newly enacted amendments to section 194.035, Florida Statutes, added by chapter 2002-18, Laws of Florida, section 3, effective January 1, 2003. The new amendments provide in relevant part that:

> A special master appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less that 5 years' experience in tangible personal property valuation.

Your question is whether this provision requires that such persons be specifically designated in "tangible personal property". Alternately, you inquire if such a special master can be designated in "real property" so long as he/she is a "designated member of a nationally recognized appraiser's organization" and has the necessary five years' experience in the valuation of personal property.

Based on the plain meaning of the statute, it appears that a special master who is a member of a nationally recognized appraiser's organization and who has 5 years of experience in the valuation of personal property would satisfy the statutory requirements and could be appointed to hear issues regarding the valuation of tangible personal property.

I hope this addresses the points you raised in your memo. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Stephen Keller
Chief Assistant General Counsel
Property Tax Administration

/1217-52963



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Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

**ATTACHMENT E: to update August 2021 and provide**

## Florida Department of Revenue

Certificate of Training

**Robert Sutte**

has received

**2020 VAB Real Property Appraiser Special Magistrate Training**

on

08/05/2020

FLORIDA

## Florida Department of Revenue

Certificate of Training

**Robert Sutte**

has received

**2020 VAB Tangible Personal Property Appraiser Special Magistrate Training**

on

08/05/2020

FLORIDA

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

APPRAISAL INSTITUTE

# MEMBERSHIP CERTIFICATE

*This Certifies That*

## *Robert S. Sutte*

*was admitted to membership in the American Institute of Real Estate Appraisers as an* ***MAI Member*** (4421) *on the* 4th *day of* May, 1970 *and by virtue of the unification of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers has become an*

**MAI Member**

*in the Appraisal Institute and is entitled to all the rights and privileges of membership subject only to the limiting conditions set forth from time to time in the Bylaws and Regulations of the Appraisal Institute.*

*In Witness Whereof, the Board of Directors of the Appraisal Institute has authorized this certificate to be signed in its behalf by the President.*

APPRAISAL INSTITUTE CORPORATE SEAL

PRESIDENT

THIS CERTIFICATE IS THE PROPERTY OF THE APPRAISAL INSTITUTE AND MUST BE RETURNED TO THE SECRETARY UPON TERMINATION OF MEMBERSHIP

ATTACHMENT F

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# ROBERT S. SUTTE

*Real Property Analysts*
*2433 Lee Road • Winter Park, FL 32789-1755*
*(407) 628-0505 • rpa@rpaflorida.com*

**ATTACHMENT G**



Bob has been a Florida Realtors® instructor since 1982. In his other life, he is a professional residential, commercial, and industrial appraiser. He the owner of Real Property Analysts of Orlando and his work is primarily throughout Florida. His experience also includes land use and marketability studies, highest and best use analyses, and economic feasibility studies. He also serves as Special Magistrate for several Florida County value adjustment boards.

Mr. Sutte has served as a real estate appraiser to a wide variety of private and public clients in twenty states and the District of Columbia. His background includes both real property valuation and real estate counseling on the most efficient and profitable solutions to various real estate problems. Mr. Sutte has had training and experience in the field of finance and experience in valuing environmentally sensitive land including salt and fresh water Islands.

Mr. Sutte is a member of the Appraisal Institute (MAI, SRA) and is also a member of the Counselors of Real Estate (CRE). He holds a Bachelor of Science degree in Business Administration from Drake University, Des Moines, Iowa. His real estate teaching experience has included membership in the national faculty of the Appraisal Institute since 1972. Mr. Sutte received the Harold D. Albritton Award from the Appraisal Institute, which was presented in recognition of his outstanding contributions to Real Estate education. He has also conducted various real estate seminars for the Appraisal Institute and Florida Realtors® CE Express Series.

Mr. Sutte also served as a faculty member of the College of Extended Studies at the University of Central Florida from 1982 to 1990. He taught at the Illinois Realtors® Institute beginning in 1975, and he has also been an instructor for the Alabama, Louisiana, Massachusetts, New Hampshire and Rhode Island REALTORS® Institutes.

He holds the following real estate licenses:

- Licensed Real Estate Broker – State of Florida
- State-Certified General Real Estate Appraiser – State of Florida
- State-Certified General Appraiser Instructor – State of Florida
- State-Certified Real Estate Instructor – State of Florida
- AQB Certified USPAP Instructor – The Appraisal Foundation

For more information, please visit: http://www.rpaflorida.com.

## CREDENTIALS

**Education**

» BBA
» Licensed Instructor

**Designation/Certifications**

» CRE®
» MAI
» SRA
» ITI
» ***DBPR Permitted Instructor***

## APPROVED COURSES

**GRI-1**

» Negotiating & Counseling

**GRI-2**

» Investments

**GRI-3**

» Appraising
» Property Management & Common Owne
» Intro to Single-Family Residential Constru
» Land, Environment & PP Rights

***CE Express***

» Working with the Appraiser and the Cons
» Negotiating Skills for Today's RE Prof
» Residential Construction: From the Inside
» How to Make the Most of Your Property Management Business
» Property Management for the RE Practiti
» Single and Multi-Family Investing
» Real Estate Investment Analysis Made E
» Navigating the Maze of Residential Construction
» Florida Appraiser State Law Update
» National USPAP Course Update
» Become Your Market Expert – An Introdu to Industry Data & Analysis
» RPR: Real Time Data, Market Knowledge Informed Consumers

FloridaRealtors

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Hillsborough Petition 2020-1495 **ATTACHMENT H (SUTTE)**

INTRODUCTION

The important subject of this hearing is just value. Florida law dictates that the property appraiser is responsible for presenting relevant and credible (worthy of belief) admissible evidence in support of their determination of just value. See rule 12 D-9.025 (3)(a), F.A.C. Relevant evidence, is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under review. This description means the evidence meets or exceeds the minimum level of relevance necessary to be admitted for consideration. Also, the special magistrate must determine that the evidence presented is admissible. Admissible evidence means evidence that has been admitted into the record for consideration by the special magistrate. See rule 12 D-9.025 (2)(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 the petitioner must prove by a preponderance of the evidence that the property appraiser's just valuation does not represent just value or 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). Under rule 12 D – 9.025(1), F.A.C.

There are eight factors of just valuation established by Section 193. 011, Florida Statute noted above. This Florida law states that 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) Present cash value – willing buyer/seller
2) Highest and best use.
3) Location of property.
4) Quantity or size.
5) Cost of property and present replacement cost of improvements.
6) Condition of property.

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

7) Income of property.
8) Net proceeds of sale.

Florida court decisions have used the terms lawfully, properly, duly, and carefully to describe the standard of care required of property appraisers in considering each of the eight factors. "Just value is to be determined by giving careful consideration to each of the factors contained in section 93. 011 and by giving such weight to a factor as a particular factual situation may justify." See Florida Attorney General's opinion AGO 77-106, September 29, 1977.

After lawfully considering the factors, the property appraiser may discard entirely any factor that is not probative (indicative) of just value under the circumstances, as long as the appraisal methodology used complies with professionally accepted appraisal practices. See Mazourek V. Wal-Mart Stores, 831 So. 2d 85 (Fla. 2002) and Section 194.301, F.S. as amended by Chapter 2009-121, Laws of Florida (House Bill 521). In administrative reviews, the property appraiser is responsible for proving by a preponderance of the evidence that he or she complied with section 193. 011 by properly considering each of the eight factors in developing original just valuations. See subsection 194.301 (1), F.S.

Findings of Fact

Petition 1495 was scheduled to be heard at 11:00 AM on November 12, 2020. Those participating in this hearing were Mr. Mazen Kattih property owner and petitioner (PET). Mr. Jay Skaggs assisted by Ms. Beva Sheehy represented the Honorable Bob Henriquez, CFA, Hillsborough County Property Appraiser (PA). This hearing was under the direction of Mr. William Caban, Supervisor Value Adjustment Board and Ms. Janay Pritchett assisted Mr. Robert Sutte, special magistrate, with the administration of this hearing. All witnesses were sworn to tell the truth the whole truth and nothing, but the truth so help them God.

The subject of this hearing is a detached one-story concrete block single-family residence constructed in 2018. It contains 2666 square feet of finished living area. It is located at 9303 Lisbon St., in Seffner. Mr. Skaggs identified the subject property and reported the tax parcel identification and the estimated values

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

which were $308,936 or $115.88 per square foot of building area including the value of the land.

The property appraisers application of the sales comparison approach included three neighborhood comparable sales which were similar single-family residences. These transactions took place between January 29, 2019 and January 27, 2020.They ranged in usable building area from 2299 to 2526 Square feet. Similar to the subject they were constructed in years 2018 and 2019. The unadjusted sale prices were from $290,000 to $365,000. The prices paid per square foot were from $116.23 to $158.76. The average was $135.97 per square foot and the median was $132.90 per square foot. The Property Appraiser felt that this market evidence supported the fairness and reliability of the estimated subject value of $115.88 per square foot which was slightly below the lower end of the unit price range.

Mr. Kattih provided eight pages of evidence. His only complaint was that the house adjoining his residence was assessed at a much lower value. Mr. Skaggs pointed out that this home was purchased with a "Value Cap "from a prior property which they owned. This was the reason why this assessed value was low and the petitioner accepted this explanation.

The issue here was inequitable assessment. Regarding inequitable assessments among neighboring similar single-family residences, the magistrate believes that properties have different assessments because of different characteristics that comprise the entire property. Neighboring homes must be extremely homogenous in almost all elements of comparison for this to be an acceptable basis for a reduction in assessed value. These neighboring homes must be so similar that they are very similar in total value and unit value i.e. value per square foot of finished living area including the value of the land and the site improvements. A petitioner when using assessed value/market value per property to demonstrate inequitable values is disregarding all other property characteristics, which can include numerous value dissimilarities.

In addition, the assessment of any property other than the subject is immaterial. The Supreme Court of Florida Deltona Corp. V. James Bailey, tax assessor no. 49053 ruled that "A court may not reduce a taxpayer's assessment below 100% on a mere showing that the parcels of some other taxpayers are assessed at

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

lesser amounts. It is only in very limited circumstances that an exception to the general rule can be successfully maintained. Normally, one whose property is not assessed at greater than 100% of its fair market value cannot be permitted to complain even though other and even similar properties are assessed at less than 100%". See 51A Fla. Jur 2d Taxation 943; Deltona Corp. V. Bailey, 336 So. 2d 1163 (Fl. 1976).

Based upon careful consideration of all oral and written evidence provided by both parties, the special magistrate concluded that the preponderance of evidence provided by the property appraiser does establish the presumption of correctness and the current subject assessed value is supported by the property appraisers evidence. Some additional special magistrate conclusions are as follows:

The petitioner did not provide any comparable sales as an indication of market value. No market evidence was provided to successfully dispute the correctness of the property appraisers estimated value. Their assessment was not proven to be incorrect.

The property appraiser's assessment was developed by generally accepted appraisal methods.

The market value of the property is within the discretion of the property appraiser and within a reasonable range of values for the property.

The Property Appraiser lawfully and properly considered the eight criteria enumerated in section 193.011, Florida Statutes.

Conclusions of Law

The Special Magistrate reviewed all evidence presented by the parties. In accordance with Florida Department of Revenue guidelines, the special magistrate determined that the evidence and testimony was relevant and credible to the valuation issue. Thus, the evidence as presented was admitted for consideration in relation to the appropriateness of the subject property assessment.

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

The petitioner did not show, by any oral or written evidence, that the property appraiser's estimation of value does not represent just value. Also, it was not proven that the property appraiser's estimated value is in excess of just value. Therefore, it is recommended that this petition be denied, and the property appraiser's value be upheld.

This decision that relief is denied means that any right the petitioner may have to bring action in circuit court is not impaired

Robert S. Sutte

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

ATTACHMENT I Reference Letters (Sutte 1 of 2)

From: **Smith, Katie** Katie.Smith@occompt.com
Subject: Professional Reference for Robert Sutte
Date: May 20, 2020 at 3:02 PM
To: wcbailey@volusia.org
Cc: Robert Sutte rpa@rpaflorida.com

Good Afternoon, Ms. Bailey.

This email is intended to document Robert Sutte's service to the Orange County Valuable Adjustment Board. As background, I served as the VAB Supervisor from 2008 through 2012. I have since served as the Orange County Deputy Clerk of the Board of County Commissioners since 2012. The information provided below has been confirmed by review of the Orange County Value Adjustment Board Organizational Meeting Minutes.

2009 - Appointed to serve as an Alternate Real Property Special Magistrate
2010 - Appointed to serve as an Alternate Real Property Special Magistrate
2016 - Selected to serve as an Appointed Real Property Special Magistrate
2017 - Selected to serve as an Appointed Tangible Personal Property Special Magistrate
2018 - Selected to serve as an Appointed Real Property and Tangible Personal Property Special Magistrate
2019 - Selected to serve as an Appointed Real Property and Tangible Personal Property Special Magistrate

Beginning in 2017, I began tracking Special Magistrate performance data relative to hearings. I can confirm the data shown below to be true:

2017
Hearings Conducted 26
2018
Hearings Conducted 87
2019
Hearings Conducted 195

Mr. Sutte arrives for hearing on time, and his hearings run efficiently and on time as well. Mr. Sutte is a pleasure to work with, and I will say he is very courteous to my staff. I look forward to working with Mr. Sutte again during the 2020 tax cycle.

**Katie Smith, CMC**
**Deputy Clerk**
**Manager, Clerk of the Board Department**
201 S. Rosalind Avenue, Orlando, FL 32801
Phone 407-808-1702 Cell
katie.smith@occompt.com

PHIL DIAMOND, CPA
COMPTROLLER
ORANGE COUNTY, FLORIDA

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

ATTACHMENT I Reference Letters (Sutte 2 of 2)

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 21, 2020

Ms. Bailey,

I am writing to recommend Robert Sutte for employment with your organization_ Brevard County has had the pleasure of working with Mr. Sutte since 1997. I, personally, have had the pleasure of working with him since 2013.

He has served as a Value Magistrate, and the Alternate Tangible Personal Property Magistrate for us.

Mr. Sutte is always on time, works hard to complete his decisions well before the headline date, is very knowledgeable and informative during his hearings, and has always been available when we needed a Special Magistrate on short notice.

Based on our experience together, I can confidently and without reservation recommend Robert Sutte for a position within your organization.

Sincerely,

Christy Mulligan-Willey
Lead VAB Clerk
400 South Street
Titusville, FL 32780
321-637-2001
Christy.Willey@brevardclerk.us

Attachment: SutteTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Professional Appraisers of Machinery & Equipment

6510 Scott St., Hollywood, Florida 33024 • 954-993-9766
email: allcoastappraisals@gmail.com

ALL COAST APPRAISALS, LLC

April 19, 2021

VAB
Citrus County
Inverness, Florida

My Fee to serve as a Special Magistrate.

$125 an hour with a 4-hour minimum

Mileage $.56 per mile maximum 600 miles

Hotel maximum $120

Respectfully submitted,
All Coast Appraisals. LLC

Edward J. Weinert, ASA
President

Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

Please type or print. If more space is needed, attach additional sheets. *Applicants may supplement their application with a resume. However, a resume cannot be used in lieu of an application.*

Application for:
- ☐ Attorney Special Magistrate
- ☑ Appraiser Special Magistrate for…
- ☐ Real Property and/or ☑ Tangible Personal Property

## APPLICANT INFORMATION

Name: Edward Weinert Email: allcoastappraisals@gmail.com
Business Name: All Coast Appraisals, LLC
Home Address: 6510 Scott St. Hollywood, FL 33024
Business Address: SAME
Phone: Home/ Business/ 9549939766 Cell/ 9549939766 Fax:

## LICENSURE/EXPERIENCE

**Attorney Magistrate Applicant:** Bar Number: _____ Date of Admission: _____
How many years of experience do you have in the area of ad valorem taxation: _____

**Appraiser Magistrate Applicant:** Residential Appraiser License #: _____ Valid Thru: _____
General Appraiser License #: _____ Valid Thru: _____
How many years of experience do you have in the area of real property valuation: _____
How many years of experience do you have in the area of tangible property valuation: 31 years

## DOCUMENTATION REQUIRED

*Verification of qualifications will be made prior to consideration of this application, pursuant to F.S. § 194.035.*

- Copy of license referenced above.
- Documentation to support membership in professional organizations listed in item #5.
- A writing sample, which may consist of an opinion letter or other business-related documentation that contains one or more written pages of original material. If you have served as a special magistrate previously, please submit a recommended decision as your sample. Do not submit a copy of an appraisal as a writing sample.

Prior to conducting hearings, all applicants are required under F.S. § 194.035 to certify completion of the current year training provided by the Department of Revenue. To receive the training, go online to the Department's website at http://floridarevenue.com/property/Pages/VAB_Training.aspx
Return your completion certificate to the VAB clerk at VAB@citrusclerk.org

## QUALIFICATION/EXPERIENCE

1. Educational Background
Fair Lawn H.S. New Jersey
Central Florida College, Ocala, FL



Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
## VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

2. If you currently or previously have served as a special magistrate, please provide the municipality or county and dates served.

Broward 1999 to present

Orange 2017 to present

3. Have you ever been dismissed, terminated or denied appointment as a special magistrate for poor or improper performance? ☑ No ☐ Yes (please explain)

4. List any additional information which makes you qualified to serve as a special magistrate.

I have served from 1999 to present for 13 various VAB in the state of Florida

5. List each organization, recognized by the real estate appraisal industry or the professionals in that field, in which you are currently or have previously been a designated member:

| ORGANIZATION | DESIGNATION | DATE | MEMBER # |
|---|---|---|---|
| American Society Appraisers | ASA | 1/6/1997 | 007552 |
| | | | |
| | | | |
| | | | |
| | | | |

6. List the requirements, including experience and education, necessary to obtain each designation listed above:

special education and 5 years in the field

7. Have you ever been disbarred, suspended or received any other disciplinary action from any organized association, or from the State of Florida? ☐ No ☐ Yes (please explain)

8. If applicable, describe experience you have appraising tangible property:

31 years doing TPP



Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

9. List any experience and/or specialty for the following property types:

| PROPERTY TYPE | EXPERIENCE/SPECIALTY |
|---|---|
| RESIDENTIAL REAL PROPERTY | |
| COMMERCIAL REAL PROPERTY | |
| TANGIBLE PROPERTY | 31 years, eminent domain and medical equipment |
| OTHER (PLEASE SPECIFY) | |

10. List any personal or business relationship you have ever had with any officer or employee of the office of the property appraiser, office of the clerk of the circuit court, office of the county attorney or the value adjustment board of any of the counties to which you are applying:

none

11. List any clubs or organizations you belong to where a possible conflict of interest could occur in a hearing situation. For instance, in a hearing to appeal the denial of an agricultural exemption for bee apiaries, if you are associated with the American Bee Company, this would be a conflict of interest.

none

12. Explain your level of knowledge and experience with computers and list the applications you are familiar with.

I have worked with the AXIA sofeware

13. List any additional information which makes you qualified to serve as a special magistrate:

I have been a special magistrate from 1999 to present



Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# SPECIAL MAGISTRATE APPLICATION
# VALUE ADJUSTMENT BOARD

(APPLICANTS MUST MEET QUALIFICATIONS OUTLINED IN F. S. § 194.035)

## CERTIFICATION

Pursuant to F.S. § 194.035, a person cannot serve as a special magistrate if he/she is an elected or appointed official of a county, a taxing jurisdiction, or the state; is an employee of a county, a taxing jurisdiction, or the state; or in the same tax year that he/she services the Board as a special magistrate, represents a party before the Board in any administrative review of property taxes.

Are you an elected or appointed official of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

Are you an employee of a county, a taxing jurisdiction, or the state? ☐ Yes ☑ No

If yes, please provide details: _____

*The undersigned certifies, under penalty of disqualification from consideration, that each item contained in this application, or any other document furnished by or on behalf of the applicant is true and complete as of the date it bears. The undersigned authorizes the Value Adjustment Board to obtain information from other sources to verify each item contained herein. The undersigned acknowledges that, if selected, he/she will follow all requirements and mandates of law in fulfilling the duties of special magistrate.*

Edward Weinert Date: 4-14-2021

Signature of Applicant

EDWARD WEINERT

Printed Name of Applicant



Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Edward J. Weinert, ASA

| | |
|---|---|
| Employment | President<br>Machinery, Furniture, Fixtures and Equipment Appraiser<br>All Coast Appraisals, LLC<br>6510 Scott Street<br>Hollywood, Florida33024 |
| Professional Designation | ASA, Accredited Senior Appraiser<br>Machinery & Technical Specialties<br>American Society of Appraisers<br>President local chapter ASA (2007-2008) |
| Professional Affiliation | American Society of Appraisers<br>Association of Eminent Domain Professionals<br>International Association of Assessing Officers |
| Experience | Allied Appraisal Services, Inc.<br>Furniture, Fixtures & Equipment Appraiser1990-2010 |
| | Conditioned Air Contractor Unrestricted Georgia |
| | Mechanical Contractor Marion County Class B |
| Education | Central Florida Community College<br>Ocala, Florida Phi Theta Kappa Honors |
| Legal Qualifications | <u>Special Magistrate</u><br>Miami Dade Value Adjustment Board<br>Broward County Value Adjustment Board<br>Orange County Value Adjustment Board<br>Charlotte County Value Adjustment Board<br>Hendry County Value Adjustment Board<br>Hillsborough County Value Adjustment Board<br>Lee County Value Adjustment Board<br>Palm Beach County Value Adjustment Board<br>Seminole County Value Adjustment Board<br>Polk County Value Adjustment Board<br>Volusia County Value Adjustment Board<br>Martin County Value Adjustment Board<br>Sarasota County Value Adjustment Board |
| Expert Witness | Circuit Court Palm Beach County Florida<br>Circuit Court Broward County Florida<br>Valuation Adjustment Board Miami-Dade County Florida |

Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Edward J. Weinert, ASA

Technical Education

**Machinery & Equipment Courses & Seminars**

American Society of Appraisers
Principles of Valuation

| | | |
|---|---|---|
| Machinery & Technical Specialties | #MTS201 | (1994) |
| Machinery & Technical Specialties | #MTS202 | (1994) |
| Machinery & Technical Specialties | #MTS203 | (1995) |
| Machinery & Technical Specialties | #MTS204 | (1996) |
| Advanced Application Cost Approach | #MTS207 | (2001) |
| Appraisers as Expert Witnesses | #ALL303 | (2002) |
| How to Respond to a Subpoena | | (2006) |
| Legal Aspects of Personal Property | | (2011) |
| Legal Aspects of Business Valuation | | (2011) |
| Marketing & Managing the Small Appraisal Office | | (2012) |
| Plastic Industry Machinery | | (2112) |
| Appraising Breweries & Support Equipment | | (2017) |
| Fundamentals of Economic Life Development | | (2017) |
| Residual Value Forecasting | | (2018) |
| Contract Terms for Appraisal Work | | (2018) |

Uniform Standards of Professional Appraisal Practice

Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

Edward J. Weinert, ASA

**Healthcare Valuation Program**

| | |
|---|---|
| WEBHCWG1 Valuation of Healthcare Real Estate & Real Property | (2014) |
| WEBHCG2 Valuation of Healthcare Enterprises & Services | (2014) |
| WEBHCG3 Valuation of Healthcare Tangible Personal Property | (2015) |
| WEBHCWG4 Valuation of Healthcare Intangible Assets & Intellectual Property | (2014) |
| The Four Pillars of HealthCare Industry | (2016) |

**Appraisal Review Courses & Seminars**

| | |
|---|---|
| AR-109 Appraisals in a Paperless Office | (2017) |
| Appraisal Review, Risk, Regulations, & Rewards | (2017) |

**Personal Property Courses & Seminars**

| | |
|---|---|
| Principles of Valuation PP/GJ201AC | (2013) |
| Asian Decorative Arts Identification, Descriptions & Valuation | (2015) |
| Recent Issues Regarding Charitable Contributions | (2020) |

**Business Valuation Property Courses & Seminars**

| | |
|---|---|
| The Impact of TCJA on Cost of Capital Part 1 | (2020) |
| Appraising Real Estate Centered Entities By a Business Appraiser | (2020) |
| Common Flaws in Business Valuation Reports | (2020) |

Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

ASA
American Society of Appraisers
Providing Value Worldwide

# The American Society of Appraisers

Attests that

## Edward J. Weinert Jr.

**Accredited Senior Appraiser**

has successfully participated in the

**Society's mandatory Reaccreditation Program**

and has complied with its continuing education requirements, as set forth in the organization's Constitution, Bylaws and Administrative Rules. Therefore, formal reaccreditation has been granted by the International Board of Governors and will remain valid through

**January 06, 2022**

ASA
Providing Value Worldwide

James A. Hart
Chief Executive Officer

Sr. Manager of Accreditation
and Reaccreditation Services



Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

**Findings of Fact for Petition 2020-03272:**
The subject of the hearing is the Tangible Personal Property (TPP) of 9 Bealls Department Stores with locations in Orange County Florida. A telephonic hearing was conducted rule 12D-9.026 F.A.C. Hearing audio was recorded unde petition 2020-03272.

Property Appraiser (PA)

Representing the PA at the hearing: Karen Ashmeade and Wilma Pool.
The PA discussed how the assessment was developed using the cost approach. Evidence submitted and deemed admissible included Florida Statute Section 193.011-Eight Criteria, DR-405 Instructions, 2020 OCPA TPP Trim Notices, TPP Tax Returns, Account Data Sheets (Property Record Card), Correspondence from Property Appraiser's Office 194.034(1) Florida Statutes, Photos, Present Worth Table, Life Assignment Guide, DOR Life Expectancy Guidelines, 2019 VAB Decision, Darden Final Judgement, Darden Appeal, OCPA Market Study, Statutes and Rules, Covid-19 DOR FAQ, and Rebuttal.

Petitioner/Agent

Representing the petitioner was agent Scott Tyler. Agent was requesting additional economical obsolescence be considered and applied to the value of the TPP associated with the appeal.
Evidence submitted and deemed admissible included, Executive Summary, Purpose of Appeal, Company Profile, Property Description, Personal Property Assessment Process General Guidelines, Depreciation Tables, VAB Hearing Guidelines, Petitioner's Methodology, Market Derived Depreciation Schedules, Age/Life Method, COVID-19 - Economic Obsolescence, General Statements, Reservation of Right Statement of Methodology, and Request for Information.

**Conclusions of Law for Petition 2020-03272:**
Based on the evidence and testimony presented at the hearing, the PA lawfully considered the eight criteria enumerate in Section 193.011 (1)-(8) Florida Statutes. Using the cost approach and DOR Depreciation Schedule which considered normal physical, functional, and economic obsolescence to arrive at just value. DOR Depreciation Schedule is based on Marshall Valuation Service, Depreciation-Fixtures & Equipment which states " These tables wei based on actual cases of sales and mortality to which empirical mathematical curves have been matched".
The PA used three avenues to look for any additional obsolescence. PA has visited the property inspecting and taking photographs. PA did a Market Study although the study was limited in scope and sample size. PA used furniture study with interviews. A local location "Central Florida" is a far Superior indicator of value than a national/world wide indicator of local value. Most of the dealers stated (1) the market has shifted the past few years due to the strength of the economy (particularly Central Florida) and (2) purchasers have been migrating back to the used furniture market. The PA presented sufficient evidence to establish the presumption of correctness.

Petitioner presented an Age/Life Method to Depreciation. Values from the Age/Life Method were not the requested values.
Property Tax Research Services, LLC (PTRS} preformed a Market Derived Depreciation Schedules. Values from this method was requested for additional obsolescence. No representative from PTRS was at the hearing to answer questions concerning their Market Derived Depreciation Schedules.
The petitioner did not present competent, substantial evidence to overcome the presumption of correctness establishec by the PA. Therefore, the petition is DENIED.

Attachment: WeinertTPP_App (15114 : Selection of Special Magistrate(s) for Tangible Personal Property)

# CHAPTER 12D-9
# REQUIREMENTS FOR VALUE ADJUSTMENT BOARD IN ADMINISTRATIVE REVIEWS; UNIFORM RULES FOR PROCEDURE FOR HEARINGS BEFORE VALUE ADJUSTMENT BOARDS

PART I TAXPAYER RIGHTS, INFORMAL CONFERENCE PROCEDURES, DEFINITIONS; COMPOSITION OF THE VALUE ADJUSTMENT BOARD; APPOINTMENT OF THE CLERK; APPOINTMENT OF LEGAL COUNSEL TO THE BOARD; APPOINTMENT OF SPECIAL MAGISTRATES

12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings
12D-9.002 Informal Conference Procedures
12D-9.003 Definitions
12D-9.004 Composition of the Value Adjustment Board
12D-9.005 Duties of the Board
12D-9.006 Clerk of the Value Adjustment Board
12D-9.007 Role of the Clerk of the Value Adjustment Board
12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board
12D-9.009 Role of Legal Counsel to the Board
12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board
12D-9.011 Role of Special Magistrates to the Value Adjustment Board
12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel
12D-9.013 Organizational Meeting of the Value Adjustment Board
12D-9.014 Prehearing Checklist

PART II PETITIONS; REPRESENTATION OF THE TAXPAYER; SCHEDULING AND NOTICE OF A HEARING; EXCHANGE OF EVIDENCE; WITHDRAWN OR SETTLED PETITIONS; HEARING PROCEDURES; DISQUALIFICATION OR RECUSAL; EX PARTE COMMUNICATION PROHIBITION; RECORD OF THE PROCEEDING, PETITIONS ON TRANSFER OF "PORTABILITY" ASSESSMENT DIFFERENCE; REMANDING ASSESSMENTS; RECOMMENDED DECISIONS; CONSIDERATION AND ADOPTION OF RECOMMENDED DECISIONS; FINAL DECISIONS; FURTHER JUDICIAL PROCEEDINGS

12D-9.015 Petition; Form and Filing Fee
12D-9.016 Filing and Service
12D-9.017 Ex Parte Communication Prohibition
12D-9.018 Representation of the Taxpayer
12D-9.019 Scheduling and Notice of a Hearing
12D-9.020 Exchange of Evidence
12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct; Non Appearance; Summary Disposition of Petitions
12D-9.022 Disqualification or Recusal of Special Magistrates or Board Members
12D-9.023 Hearings Before Board or Special Magistrates
12D-9.024 Procedures for Commencement of a Hearing
12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses
12D-9.026 Procedures for Conducting a Hearing by Electronic Media
12D-9.027 Process of Administrative Review
12D-9.028 Petitions on Transfer of "Portability" Assessment Difference
12D-9.029 Procedures for Remanding Value Assessments to the Property Appraiser
12D-9.030 Recommended Decisions
12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews
12D-9.032 Final Decisions
12D-9.033 Further Judicial Proceedings
12D-9.034 Record of the Proceeding

Attachment: 12D-9 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

12D-9.035 Duty of Clerk to Prepare and Transmit Record
12D-9.036 Procedures for Petitions on Denials of Tax Deferrals
PART III UNIFORM CERTIFICATION OF ASSESSMENT ROLLS
12D-9.037 Certification of Assessment Rolls
12D-9.038 Public Notice of Findings and Results of Value Adjustment Board

## PART I
## TAXPAYER RIGHTS; INFORMAL CONFERENCE PROCEDURES; DEFINITIONS; COMPOSITION OF THE VALUE ADJUSTMENT BOARD; APPOINTMENT OF THE CLERK; APPOINTMENT OF LEGAL COUNSEL TO THE BOARD; APPOINTMENT OF SPECIAL MAGISTRATES

**12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings.**

(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,

Attachment: 12D-9 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

(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 non-homestead property.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 193.074, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.301, 195.002, 195.027, 195.084, 196.151, 196.193, 196.194 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.002 Informal Conference Procedures.**

(1) Any taxpayer who objects to the assessment placed on his or her property, including the assessment of homestead property at less than just value, shall have the right to request an informal conference with the property appraiser.

(2) The property appraiser or a member of his or her staff shall confer with the taxpayer regarding the correctness of the assessment.

(3) At the conference, the taxpayer shall present facts that he or she considers supportive of changing the assessment and the property appraiser or his or her representative shall present facts that the property appraiser considers to be supportive of the assessment.

(4) The request for an informal conference is not a prerequisite to administrative or judicial review of property assessments. Requesting or participating in an informal conference does not extend the petition filing deadline. A taxpayer may file a petition while seeking an informal conference in order to preserve his or her right to an administrative hearing.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 213.05 FS. History–New 3-30-10.*

**12D-9.003 Definitions.**

(1) "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."

(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) "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.

(6) "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 this rule chapter.

(7) "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.

(8) "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."

(9) "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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.001, 194.011, 194.013, 194.015, 194.032, 194.034, 195.022 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.004 Composition of the Value Adjustment Board.**

(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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.005 Duties of the Board.**

(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), F.S.; 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:

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.

(b) 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.

(c) The board shall remain in session until its duties are completed concerning all assessment rolls or parts of assessment rolls. The board may temporarily recess, but shall reconvene when necessary to hear petitions, complaints, or appeals and disputes filed

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upon the roll or portion of the roll when approved. The board shall make its decisions timely so that the board clerk may observe the requirement that such decisions shall be issued within 20 calendar days of the last day the board is in session pursuant to Section 194.034, F.S.

(2)(a) Value adjustment boards may have additional internal operating procedures, not rules, that 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 value adjustment board process. The board may publish fee schedules adopted by the board.

(b) 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.

(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. 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. Personnel performing any of the board's duties shall be independent of the property appraiser's and tax collector's office. This section shall not prevent 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. This section shall not prevent the property appraiser from providing data to assist the board clerk with the notice of tax impact.

(3) 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.

(4) 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.

(5) Failure on three occasions with respect to 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 194.011, 194.015, 194.032, 194.034, 194.035, 194.037 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.006 Clerk of the Value Adjustment Board.**

(1) The clerk of the governing body of the county shall be the clerk of the value adjustment board.

(2) The board clerk may delegate the day to day responsibilities for the board to a member of his or her staff, but is ultimately responsible for the operation of the board.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 28.12, 192.001, 194.011, 194.015, 194.032, 213.05 FS. History–New 3-30-10.*

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

(1) It is the board clerk's responsibility to verify through board legal counsel that the value adjustment board meets all of the requirements for the organizational meeting before the board or special magistrates hold hearings. If the board clerk determines that any of the requirements were not met, he or she shall contact the board legal counsel or the chair of the board regarding such deficiencies and cancel any scheduled hearings until such time as the requirements are met.

(2) The board clerk shall make petition forms available to the public upon request.

(3) 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. Alternatively, the property appraiser or the tax collector may obtain the relevant information from the board clerk electronically.

(4) The board clerk shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. 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.

(5) No less than 25 calendar days prior to the day of the petitioner's scheduled appearance before the board, the board clerk must notify the petitioner of the date and time scheduled for the appearance. The board clerk shall simultaneously notify the property appraiser or tax collector.

(6) 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 notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days from the date notification is mailed. Such petition shall be 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.

(7) 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.

(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.

(9) 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. The board clerk shall advise the chair of the board if the board's tentative schedule for holding hearings is insufficient to allow for proper scheduling.

(10) The board clerk shall timely notify the parties of the decisions of the board so that such decisions 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 such decision. Notification of the petitioner must be by first class mail or by electronic means as set forth in Section 194.034(2) or 192.048, F.S. 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. No party shall have access to decisions prior to any other party.

(11) After the value adjustment 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.

(12) 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.

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

(13) 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 any. Making materials available on a website is sufficient; however, provisions shall be made for persons that have hardship. Such materials shall be consistent with Department rules and forms.

(14) The board clerk shall provide notification of appeals or value adjustment board petitions taken with respect to property located within a municipality to the chief executive officer of each municipality as provided in Section 193.116, F.S. The board clerk shall also publish any notice required by Section 196.194, F.S.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.048, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History–New 3-30-10, Amended 6-14-16, 3-13-17, 9-19-17.*

**12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board.**

(1) Each value adjustment board must appoint private legal counsel to assist the board.

(2) This legal counsel must be an attorney in private practice. The use of an attorney employed by government is prohibited. Counsel must have practiced law for over five years and meet the requirements of Section 194.015, F.S.

(3) An attorney may represent more than one value adjustment board.

(4) An attorney may represent a value adjustment board, even if another member of the attorney's law firm represents one of the enumerated parties so long as the representation is not before the value adjustment board.

(5) Legal counsel should avoid conflicts of interest or the appearance of a conflict of interest in their representation.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015 FS. History–New 3-30-10.*

**12D-9.009 Role of Legal Counsel to the Board.**

(1) 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.

(f) Board legal counsel shall review and respond to written complaints alleging noncompliance with the law by the board, special magistrates, board clerk, and the parties. The legal counsel shall send a copy of the complaint along with the response to the department. This section does not refer to routine requests for reconsideration, requests for rescheduling, and pleadings and argument in petitions.

(2) The board legal counsel shall, upon appointment, send his or her contact information, which shall include his or her name, mailing address, telephone number, fax number, and e-mail address, to the department by mail, fax or email to:

Department of Revenue
Property Tax Oversight Program
Attn.: Director
P.O. Box 3000
Tallahassee, FL 32315-3000
Fax Number: (850)488-9482
Email Address: VAB@floridarevenue.com.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS. History–New 3-30-10.*

**12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board.**

(1) In counties with populations of more than 75,000, the value adjustment board shall appoint special magistrates to take testimony and make recommendations on petitions filed with the value adjustment board. Special magistrates shall be selected from a list maintained by the board clerk of qualified individuals who are willing to serve. 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. The process for review of complaints of bias, prejudice, or conflict of interest regarding the actions of a special magistrate shall be as provided in subsection 12D-9.022(4), F.A.C.

(2) In counties with populations of 75,000 or less, the value adjustment board shall have the option of using special magistrates. The department shall make available to such counties a list of qualified special magistrates.

(3) A person does not have to be a resident of the county in which he or she serves as a special magistrate.

(4) 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.

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1. 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 be a member of The Florida Bar, must have at least five years of experience in the area of ad valorem taxation, and must receive training provided by the department. Alternatively, a member of The Florida Bar with at least three years of experience in ad valorem taxation and who has completed board training provided by the department including the examination, may serve as a special magistrate.

2. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser, must have at least five years of experience in real property valuation, and must receive training provided by the department. Alternatively, a state certified real estate appraiser with at least three years of real estate valuation experience and who has completed board training provided by the department including the examination, may serve as a special magistrate. A real property valuation special magistrate must be certified under Chapter 475, Part II, F.S.

a. A Florida certified residential appraiser appointed by the value adjustment board shall only hear petitions on the just valuation of residential real property of one to four residential units and shall not hear petitions on other types of real property.

b. A Florida certified general appraiser appointed by the value adjustment board may hear petitions on the just valuation of any type of real property.

3. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization, must have at least five years of experience in tangible personal property valuation, and must receive training provided by the department. Alternatively, a designated member of a nationally recognized appraiser's organization with at least three years of experience in tangible personal property valuation and who has completed board training provided by the department including the examination, may serve as a special magistrate.

4. All special magistrates shall attend or receive an annual training program provided by the department. Special magistrates substituting two years of experience must show that they have completed the training by taking a written examination provided by the department. A special magistrate must receive or complete any required training prior to holding hearings.

(5)(a) The value adjustment board or board legal counsel must verify a special magistrate's qualifications before appointing the special magistrate.

(b) The selection of a special magistrate must be based solely on the experience and qualification of such magistrate, and must 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 such proceeding. Special magistrates must adhere to Rule 12D-9.022, F.A.C., relating to disqualification or recusal.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.011 Role of Special Magistrates to the Value Adjustment Board.**

(1) 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.

(2) 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.

(3) When the special magistrate determines that the property appraiser did not establish a presumption of correctness, or determines that the property appraiser established a presumption of correctness that is overcome, as provided in Rule 12D-9.027, F.A.C., and the record contains competent substantial evidence for establishing value, an appraiser special magistrate is required to establish a revised value for the petitioned property. In establishing the revised value when authorized by law, the board or special magistrate is not restricted to any specific value offered by the parties.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, 475, Part II FS. History–New 3-30-10.*

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

(1) The department shall provide and conduct training for special magistrates at least once each state fiscal year available in at least five locations throughout the state. Such training shall emphasize:

(a) The law that applies to the administrative review of assessments;

(b) Taxpayer rights in the administrative review process;

(c) The composition and operation of the value adjustment board;

(d) The roles of the board, board clerk, board legal counsel, special magistrates, and the property appraiser or tax collector and their staff;

(e) Procedures for conducting hearings;

(f) Administrative reviews of just valuations, classified use valuations, property classifications, exemptions, and portability assessment differences;

(g) The review, admissibility, and consideration of evidence;

(h) Requirements for written decisions; and,

(i) The department's standard measures of value, including the guidelines for real and tangible personal property.

(2) The training shall be open to the public.

(3) Before any hearings are conducted, in those counties that do not use special magistrates, all members of the board or the board's legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the board clerk.

(4)(a) Each special magistrate that has five years of experience and, in those counties that do not use special magistrates, each board member or the board legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the board clerk.

(b) Each special magistrate that has three years of experience must complete the training including any updated modules and examinations, and receive from the department a certificate of completion, before conducting hearings and shall provide a copy of the certificate of completion of the training and examinations, including any updated modules, to the board clerk.

(5) The department's training is the official training for special magistrates regarding administrative reviews. The board clerk and board legal counsel may provide orientation to the special magistrates relating to local operating or ministerial procedures only. Such orientation meetings shall be open to the public for observation. This does not prevent board legal counsel from giving legal advice; however, to the fullest extent practicable, such legal advice should be in writing and public record. For requirements for decisions specifically based on legal advice see subsection 12D-9.030(6) and paragraph 12D-9.032(1)(b), F.A.C.

(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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 195.084, 213.05, 475, Part II FS. History–New 3-30-10.*

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

(1) The board shall annually hold one or more organizational meetings, at least one of which shall meet the requirements of this section. The board shall hold this organizational meeting prior to the holding of value adjustment board hearings. 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. At one organizational meeting the board shall:

(a) Introduce the members of the board and provide contact information;

(b) Introduce the board clerk or any designee of the board clerk and provide the board clerk's contact information;

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

(d) Appoint or ratify special magistrates, if the board will be using them for that year;

(e) 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;

(f) 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;

(g) 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;

(h) Discuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the board. Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions or rules of the department. 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;

(i) 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;

(j) Make available to the public, special magistrates and board members, Rules 12D-51.001, 12D-51.002 and 12D-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;

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

(l) 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.

(2) The board shall announce the tentative schedule for the value adjustment board taking into consideration the number of petitions filed, the possibility of the need to reschedule and the requirement that the board stay in session until all petitions have been heard.

(3) The board may hold additional meetings for the purpose of addressing administrative matters.

*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 3-30-10.*

**12D-9.014 Prehearing Checklist.**

(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;

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(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).

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

## PART II
## PETITIONS; REPRESENTATION OF THE TAXPAYER; SCHEDULING AND NOTICE OF A HEARING; EXCHANGE OF EVIDENCE; WITHDRAWN OR SETTLED PETITIONS; HEARING PROCEDURES; DISQUALIFICATION OR RECUSAL; EX PARTE COMMUNICATION PROHIBITION; RECORD OF THE PROCEEDING; PETITIONS ON TRANSFER OF "PORTABILITY" ASSESSMENT DIFFERENCE; REMANDING ASSESSMENTS; RECOMMENDED DECISIONS; CONSIDERATION AND ADOPTION OF RECOMMENDED DECISIONS; FINAL DECISIONS; FURTHER JUDICIAL PROCEEDINGS

**12D-9.015 Petition; Form and Filing Fee.**

(1)(a) For the purpose of requesting a hearing before the value adjustment board, the department prescribes Form DR-486. The Form DR-486 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(b) In accordance with Section 194.011(3), F.S., the department is required to prescribe petition forms. The department will not approve any local version of this form that contains substantive content that varies from the department's prescribed form. Any requests under Section 195.022, F.S., or approval from the department to use forms for petitions that are not identical to the department's form shall be by written board action or by written and signed request from the board chair or board legal counsel.

(2) Content of Petition. Petition forms as adopted or approved by the department shall contain the following elements so that when filed with the board clerk they shall:

(a) Describe the property by parcel number;

(b) Be sworn by the petitioner;

(c) State the approximate time anticipated by the petitioner for presenting and arguing his or her petition before the board or special magistrate to be considered by the board clerk as provided in subsection 12D-9.019(1), F.A.C., and may provide dates of nonavailability for scheduling purposes if applicable;

(d) Contain a space for the petitioner to indicate on the petition form that he or she does not wish to be present and argue the petition before the board or special magistrate but would like to have their evidence considered without an appearance;

(e) 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;

(f)1. 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,

2. 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,

3. 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 sworn 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; and,

4. 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., 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.

(g) If the petition indicates that the taxpayer has authorized a compensated representative, who is not acting as a licensed or certified professional listed in paragraph 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; and,

(h) 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.

(i) Contain a space for the petitioner to indicate if the property is four or less residential units; or other property type; provided the board clerk shall accept the petition even if this space is not filled in; and,

(j) Contain a statement that a tangible personal property assessment may not be contested unless a return required by Section 193.052, F.S., is timely filed.

(3) 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 value adjustment board proceeding, including any appeals to circuit court of a board decision by the property appraiser or tax collector.

(4) The petition form shall provide notice to the petitioner of his or her right to an informal conference with the property appraiser and that such conference is not a prerequisite to filing a petition nor does it alter the time frame for filing a timely petition.

(5) The department, the board clerk, and the property appraiser or tax collector shall make available to petitioners the blank petition form adopted or approved by the department. The department prescribes the Form DR-486 series, for this purpose, incorporated in Rule 12D-16.002, F.A.C., by reference.

(6) If the taxpayer or representative's name, address, telephone, or similar contact information on the petition changes after filing the petition and before the hearing, the taxpayer or representative shall notify the board clerk in writing.

(7) Filing Fees. By resolution of the value adjustment board, a petition shall be accompanied by a filing fee to be paid to the board clerk in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal covered by the petition and subject to appeal. The resolution may include arrangements for petitioners to pay filing fees by credit card.

(a) Other than fees required for late filed applications under Sections 193.155(8)(j) and 196.011(8), F.S., only a single filing fee shall be charged to any particular parcel of real property or tangible personal property account, despite the existence of multiple issues or hearings pertaining to such parcels or accounts.

(b) No filing fee shall be required with respect to an appeal from the disapproval of a timely filed application for homestead exemption or from the denial of a tax deferral.

(c) For joint petitions filed pursuant to Section 194.011(3)(e), (f), or (g), F.S., a single filing fee shall be charged. Such fee shall be calculated as the cost of the time required for the special magistrate in hearing the joint petition and shall not exceed $5 per parcel or account, for each additional parcel or account included in the petition, in addition to any filing fee for the petition. Said fee is to be proportionately paid by affected property owners.

(d) The value adjustment board or its designee shall waive the filing fee with respect to a petition filed by a taxpayer who demonstrates at the time of the filing by submitting with the petition documentation issued by the Department of Children and Families that the petitioner is currently an eligible recipient of temporary assistance under Chapter 414, F.S.

(e) All filing fees shall be paid to the board clerk at the time of filing. Any petition not accompanied by the required filing fee will be deemed incomplete.

(8) An owner of contiguous, undeveloped parcels may file a single joint petition if the property appraiser determines such parcels are substantially similar in nature. A condominium association, cooperative association, or any homeowners' association as defined in Section 723.075, F.S., 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 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. An owner of multiple tangible personal property accounts may file a single joint petition if the property appraiser determines that the tangible personal property accounts are substantially similar in nature. The property appraiser shall provide the petitioner with such determination upon request by the petitioner. The petitioner must obtain the determination from the property appraiser prior to filing the petition and must file the determination provided and completed by the property appraiser with the petition. An incorporated attached list of parcels or accounts by parcel number or account number, with an indication on the petition form showing a joint petition, shall be sufficient to signify a joint petition.

(9) Persons Authorized to Sign and File Petitions. The following persons may sign and file petitions with the value adjustment board.

(a) The taxpayer may sign and file a petition.

(b) 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.

(c) 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.

(d) 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.

(10)(a) 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.

(b) 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.

(11) 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 this rule chapter.

(12)(a) 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. If an incomplete petition is received, the board clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days. Such completed petition shall be timely if completed and filed within the time frame provided in the board clerk's notice.

(b) 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.

(c) 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.

(13) Timely Filing of Petitions. Petitions related to valuation issues may be filed, and must be accepted by the board clerk, at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes. Other petitions may be filed as follows:

(a) With respect to issues involving the denial of an exemption on or before the 30th day following the mailing of the written notification of the denial of the exemption on or before July 1 of the year for which the application was filed;

(b) With respect to issues involving the denial of an agricultural classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the agricultural classification on or before July 1 of the year for which the application was filed;

(c) With respect to issues involving the denial of a high-water recharge classification application on or before the 30th day following the mailing of the notification in writing of the denial of the high-water recharge classification on or before July 1 of the year for which the application was filed;

(d) With respect to issues involving the denial of a historic property used for commercial or certain nonprofit purposes classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the classification on or before July 1 of the year for which the application was filed;

(e) With respect to issues involving the denial of a tax deferral, on or before the 30th day following the mailing of the notification in writing of the denial of the deferral application;

(f) With respect to exemption or classification claims relating to an exemption or classification that is not reflected on the notice of property taxes, including late filed exemption claims, on or before the 25th day following the mailing of the notice of proposed property taxes, or on or before the 30th day following the mailing of the written notification of the denial of the exemption or classification, whichever date is later; and,

(g) With respect to penalties imposed for filing incorrect information relating to tax deferrals for homestead, for recreational and commercial working waterfronts or for affordable rental housing properties, within 30 days after the penalties are imposed.

(14) Late Filed Petitions.

(a) The board may not extend the time for filing a petition. The board is not authorized to set and publish a deadline for late filed petitions. 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 the petitioner has demonstrated good cause justifying consideration and that the delay will not, in fact, be harmful to the performance of board functions in the taxing process. “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.

(b) The board clerk shall accept but not schedule for hearing a petition submitted to the board after the statutory deadline has expired, and 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. 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 such decision.

(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.

(d) The board is authorized to, but need not, require good cause hearings before good cause determinations are made. 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. 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.

(e) 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.

(f) A person who files a petition may timely file an action in circuit court to preserve the right to proceed in circuit court. (Sections 193.155(8)(l), 194.036, 194.171(2) and 196.151, F.S.).

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(15) Acknowledgement of Timely Filed Petitions. The board clerk shall accept all completed petitions, as defined by statute and subsection (2), of this rule. Upon receipt of a completed and filed petition, the board clerk shall provide to the petitioner an acknowledgment of receipt of such petition and shall provide to the property appraiser or tax collector a copy of the petition.

(16) 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.

(17) The board clerk shall send the notice of hearing such that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. 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.

(18) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.155, 194.011, 194.013, 194.032, 194.034, 194.036, 195.022, 196.151, 197.2425 FS. History–New 3-30-10, Amended 11-1-12, 6-14-16, 3-13-17, 9-19-17.*

**12D-9.016 Filing and Service.**

(1) 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.

(2)(a) 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 filed the next regular business day.

(b) 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 filed the next regular business day.

(c) Any document that is required to be filed, served, provided or made available may be filed, served, provided or made available electronically, if the board and the board clerk make such resources available, and no party is prejudiced.

(d) Local procedure may supersede provisions regarding the number of copies that must be provided.

(3) 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. When a document is filed that does not clearly indicate it has been provided to the other party, the board clerk, board legal counsel, board members and special magistrates shall inform the party of the requirement to provide to every party or shall exercise care to ensure that a copy is provided to every party, and that no ex parte communication occurs.

(4) 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.

*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, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.017 Ex Parte Communication Prohibition.**

(1)(a) No participant, including the petitioner, the property appraiser, the board 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 party shall communicate with a member of the board or the special magistrate regarding the issues in the case without the other party being present or without providing a copy of any written communication to the other party.

(b) 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. 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.

(2) Any attempt by the property appraiser, tax collector, taxpayer or taxpayer's representative to provide information or discuss issues regarding a petition without the presence of the opposing party before or after the hearing, with a member of the board or the special magistrate shall be immediately placed on the record by the board member or special magistrate.

(3) The ex parte communication shall not be considered by the board or the special magistrate unless all parties have been notified about the ex parte communication, and no party objects, and all parties have an opportunity during the hearing to cross-examine, object, or otherwise address the communication.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.018 Representation of the Taxpayer.**

(1) A taxpayer has the right, at the taxpayer's own expense, to be represented before the board by a person described in subsection (3), below. The taxpayer's representative may present testimony and other evidence in support of the petition.

(2) 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.

(3) Subject to the petition filing requirements set forth in this rule chapter, a taxpayer may be represented before the board by one of the persons described in this subsection.

(a)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.

3. If the taxpayer has authorized an employee or professional, listed in this subsection, 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.

(b) 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, 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, 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.

(c) 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.

(4) 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.

*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 FS. History–New 3-30-10, Amended 9-19-17*

**12D-9.019 Scheduling and Notice of a Hearing.**

(1)(a) The board clerk shall prepare a schedule of appearances before the board or special magistrates based on timely filed petitions, and shall notify each petitioner of the scheduled time of appearance. The board clerk shall simultaneously notify the property appraiser or tax collector. 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.

(b) When scheduling hearings, the board clerk shall consider:

1. The anticipated amount of time if indicated on the petition,

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2. The experience of the petitioner,

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

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

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

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

(c) 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.

(d) 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.

(e) 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 this rule. This hearing is subject to the single time reschedule for good cause as provided in this rule. 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.

(2) No hearing shall be scheduled related to valuation issues prior to completion by the governing body of each taxing authority of the public hearing on the tentative budget and proposed millage rate.

(3)(a) The notice of hearing before the value adjustment board 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, 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. The Form DR-486 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. The notice of hearing form shall meet the requirements of this section and shall be subject to approval by the department. The department provides Form DR-481 as a format for the form of such notice. Form DR-481, Value Adjustment Board – Notice of Hearing, is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(b) The notice shall include these 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.

(4) 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 subsection, the term "good cause" is defined in Section 194.032(2)(a), F.S.

(a) 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.

(b) 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.

(c) 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.

(d) If the board or a board designee determines that the request demonstrates good cause, the request will be granted.

(e) 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.

(f) 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.

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

(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.

(i) 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.

(j) 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.

(k) 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.

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

(m) 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.

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

(5) If a hearing is rescheduled by a party, the board clerk must notify the petitioner of the rescheduled time in the manner referenced in subsection (3), 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.

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

(7)(a) If a petitioner's hearing does not commence as scheduled, the board clerk is authorized to reschedule the hearing.

(b) 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. The board clerk is authorized to find that a reasonable time 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. If his or her petition has not been heard within a reasonable time, the petitioner may request to be heard immediately. If the board clerk finds a reasonable time has elapsed and petitioner is not heard, the board clerk shall reschedule the petitioner's hearing. A reasonable time must not exceed two hours. After two hours, the petitioner has the right to inform the board chairperson, or the clerk as board designee, that he or she intends to leave. If the petitioner chooses to leave, the petitioner must first inform the board chairperson or clerk that he or she intends to leave. The clerk must not list the petitioner as a no show. If the hearing does not commence within two hours and the petitioner leaves, the clerk must reschedule the hearing.

(c) A rescheduling under this subsection is not a request by a party to reschedule as provided in subsection (4).

(d) A petitioner is not required to wait any length of time as a prerequisite to filing an action in circuit court.

(8) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 195.022 FS. History–New 3-30-10, Amended 9-26-11, 6-14-16, Section 15, Chapter 2016-128, Laws of Florida, 7-1-16, 3-13-17, 9-19-17.*

**12D-9.020 Exchange of Evidence.**

(1)(a)1. At least 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.

2. 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.

(b) A petitioner's noncompliance with paragraph (1)(a), 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.

(c) A petitioner's noncompliance with paragraph (1)(a), does not authorize a value adjustment board or special magistrate to exclude the petitioner's evidence. However, 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. 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. These requirements are more specifically described in subsection (8), of this rule, and in paragraphs 12D-9.025(4)(a) and (f), F.A.C.

(2)(a) If the property appraiser receives the petitioner's documentation as described in paragraph (1)(a), 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. The evidence list must contain the current property record card. There is no specific form or format required for the petitioner's written request.

(b) 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.

(3)(a) If the petitioner does not provide the information to the property appraiser described in paragraph (1)(a), the property appraiser need not provide the information to the petitioner as described in subsection (2).

(b) If the property appraiser does not provide the information to the petitioner within the time required by paragraph (2)(b), the hearing shall be rescheduled to allow the petitioner additional time to review the property appraiser's evidence.

(4) By agreement of the parties the evidence exchanged under this rule section shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. The petitioner and property appraiser may agree to a different timing and method of exchange. "Provided" means received by the party not later than the time frame provided in this rule section. 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. The property appraiser shall provide the information at the address listed on the petition form for the petitioner.

(5) Level of detail on evidence summaries: The summaries of evidence to be presented by witnesses for the petitioner and the property appraiser under this rule section 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.

(6) Hearing procedures: Neither the board nor the special magistrate shall take any general action regarding compliance with this section, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with this section, and shall be taken at a scheduled hearing and based on evidence presented at such hearing. "General action" means a prearranged course of conduct not based on evidence received in a specific case at a scheduled hearing on a petition.

(7) A property appraiser shall not use at a hearing evidence that was not supplied to the petitioner as required. 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.

(8) No petitioner may present for consideration, nor may a board or special magistrate accept for consideration, testimony or

Attachment: 12D-9 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

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. 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. 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 they were provided a reasonable time before the hearing, as described in paragraph 12D-9.025(4)(f), 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 this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

(9) As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence. 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. The basis for any ruling on admissibility of evidence must be reflected in the record.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 195.022 FS. History–New 3-30-10, Amended 6-14-16, 4-10-18.*

**12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct; Non-Appearance; Summary Disposition of Petitions.**

(1) A petitioner may withdraw a petition prior to the scheduled hearing. Form DR-485WI is prescribed by the department for such purpose; however, other written or electronic means may be used. Form DR-485WI is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. Form DR-485WI shall indicate the reason for the withdrawal as one of the following:

(a) Petitioner agrees with the determination of the property appraiser or tax collector;

(b) Petitioner and property appraiser or tax collector have reached a settlement of the issues;

(c) 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

(d) Other specified reason.

(2) 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.

(3) 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 issue the petitioner a notice granting said exemption, classification, portability assessment difference transfer, or deferral and shall 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 acknowledgement and there shall be no further proceeding on the matter acknowledged as correct.

(4) If parties do not file a notice of withdrawal or notice of acknowledgement 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. If a petition is withdrawn or acknowledged as correct under subsection (1), (2) or (3), or settlement is reached and filed by the parties, at any time before a recommended decision or final board decision is issued, the board, special magistrate or clerk need not issue such decision. The board clerk shall list and report all withdrawals, settlements, acknowledgements of correctness as withdrawn or settled petitions. Settled petitions shall include those acknowledged as correct by the property appraiser or tax collector.

(5) For all withdrawn or settled petitions, a special magistrate shall not produce a recommended decision and the board shall not produce a final decision.

(6) 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 not commence or proceed with the hearing and shall produce a decision or recommended decision as described in this section. If the petitioner makes a good cause request before the decision, if no special magistrate is used, or recommended decision, if a special magistrate is used, is issued, the board or board designee shall rule on the good cause request before determining that the decision or recommended decision should be set aside and that the hearing should be rescheduled, or that the board or special magistrate should issue the decision or recommended decision.

(7) When a petitioner does not appear by the commencement of a scheduled hearing and a good cause request is pending, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

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(a) If the board or board designee finds good cause for the petitioner's failure to appear, the board clerk shall reschedule the hearing.

(b) 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.

(8) Decisions issued under subsection (6) or (7) shall not be treated as withdrawn or settled petitions and shall contain:

(a) A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and,

(b) 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.

(9) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://dor.myflorida.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 194.034, 195.027(1) FS. Law Implemented 193.155, 194.011, 194.032, 194.037, 213.05 FS. History–New 3-30-10.*

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

(1) If either the petitioner or the property appraiser communicates a reasonable belief that a special magistrate does not possess the statutory qualifications in accordance with Sections 194.035 and 475.611(1)(h) and (i), F.S., to conduct a particular proceeding, the basis for that belief shall be included in the record of the proceeding or submitted prior to the hearing in writing to the board legal counsel.

(2)(a) 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.

(b) Upon review, if the board or its legal counsel 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, or, if a hearing was already held, the recommended decision will be forwarded to the board in accordance with these rules.

(3) 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.

(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.

(b) 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. A special magistrate who recuses himself or herself shall close the hearing on the record and notify the board clerk of the recusal. Upon a board member's recusal, the hearing shall go forward if there is a quorum. 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.

(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, 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.

(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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 213.05, 475.611, FS. History–New 3-30-10.*

**12D-9.023 Hearings Before Board or Special Magistrates.**

(1) 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 of the value adjustment board. The board clerk shall perform his or her duties in a manner to avoid the appearance of a conflict of interest. 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.

(2) 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. 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.024 Procedures for Commencement of a Hearing.**

(1) If all parties are present and the petition is not withdrawn or settled, a hearing on the petition shall commence.

(2) The hearing shall be open to the public.

(3) 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.

(4) 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.

(5) 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:

(a) States the board or special magistrate is an independent, impartial, and unbiased hearing body or officer, as applicable;

(b) 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;

(c) States the hearing will be conducted in an orderly, fair, and unbiased manner;

(d) 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,

(e) 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.

(6) 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.

(7) After the opening statement, and clarification of any questions with the parties, the board or special magistrate shall proceed with the hearing. The property appraiser shall indicate for the record his or her determination of just value, classified use value, tax exemption, property classification, or "portability" assessment difference, or deferral or penalties. Under subsection 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. The property appraiser shall present evidence on this issue first.

(8) 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. 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.

(9)(a) 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 subsection 12D-9.021(6), F.A.C., 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. Requirements specific to hearings on such petitions are set forth in subsection 12D-9.028(6), F.A.C., 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.

(b) 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. 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.

(10) 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. 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. If the petitioner elects to have the hearing rescheduled, the board clerk shall reschedule the hearing. 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.

(11) 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses.**

(1) As part of administrative reviews, the board or special magistrate must:

(a) Review the evidence presented by the parties;

(b) Determine whether the evidence presented is admissible;

(c) Admit the evidence that is admissible, and identify the evidence presented to indicate that it is admitted or not admitted; and,

(d) Consider the admitted evidence.

(2)(a) In these rules, the term "admitted evidence" means evidence that has been admitted into the record for consideration by the board or special magistrate. Board and special magistrate proceedings are not controlled by strict rules of evidence and procedure. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(b) 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. 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.

(c) Rebuttal evidence is relevant evidence used solely to disprove or contradict the original evidence presented by an opposing party.

(d) As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence. 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. The basis for any ruling on admissibility of evidence must be reflected in the record. The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.

(3)(a) 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. The property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination.

(b) Under Section 194.301, F.S., "preponderance of the evidence" is the standard of proof that applies in assessment challenges.

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The "clear and convincing evidence" standard of proof no longer applies, starting with 2009 assessments. 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.

(4)(a) 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. The petitioner may still present evidence if he or she does not participate in the evidence exchange. 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. These requirements are more specifically described in paragraph (f), below.

(b) 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.

(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. This requirement 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. Requirements specific to hearings on such petitions are set forth in subsection 12D-9.028(6), F.A.C., 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.

(d) 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. 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.

(e) 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. 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.

(f)1. 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. 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 Rule 12D-9.020, F.A.C., and, if provided to the property appraiser less than fifteen (15) days before the hearing, shall be considered timely if the board or special magistrate determines they were provided a reasonable time before the hearing. 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 this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser. For purposes of this rule and Rule 12D-9.020, F.A.C., reasonableness shall be assumed if the property appraiser does not object. 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. 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.

2. 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. 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.

(5) When testimony is presented at a hearing, each party shall have the right to cross-examine any witness.

(6)(a) 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. 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. 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.

(b) 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.

(c) 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.

(7)(a) 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. Upon agreement of the parties, the board clerk is authorized to make an electronic representation of evidence that is difficult to store or maintain.

(b) 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. When asking questions, the board or special magistrate shall not show bias for or against any party or witness. 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.

(c) Representatives of interested municipalities may be heard as provided in Section 193.116, F.S.

(8) 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. 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.

(a) 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.

(b) 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 to a time as scheduled and noticed by the board clerk.

(9) 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. 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.

(10) For purposes of reporting board action on decisions and on the notice of tax impact, the value as reflected on the initial roll shall mean the property appraiser's determination 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 the special magistrate. See Rule 12D-9.038, F.A.C.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.092, 194.011, 194.032, 194.034 FS. History–New 3-30-10, Amended 6-14-16, 9-19-17.*

**12D-9.026 Procedures for Conducting a Hearing by Electronic Media.**

(1) Hearings conducted by electronic media shall occur only under the conditions set forth in this rule section.

(a) The board must approve and have available the necessary equipment and procedures.

(b) The special magistrate, if one is used, must agree in each case to the electronic hearing.

(c) The board must reasonably accommodate parties that have hardship or lack necessary equipment or ability to access equipment. The board must provide a physical location at which a party may appear, if requested.

(2) 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.

(3) Consistent with board equipment and procedures:

(a) Any party may request to appear at a hearing before a board or special magistrate, using telephonic or other electronic media. 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. 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.

(b) 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. 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.

(4) Such hearings 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.035, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.027 Process of Administrative Review.**

(1) This section sets forth the sequence of general procedural steps for administrative reviews. This order of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. The board or special magistrate shall follow this general sequence in order to fulfill the procedural requirements of Section 194.301, F.S. The following subsections set forth the steps for administrative reviews of:

(a) Just valuations in subsection (2);

(b) Classified use valuations, and assessed valuations of limited increase property, in subsection (3); and,

(c) Exemptions, classifications, and portability assessment transfers in subsection (4).

(2) In administrative reviews of the just valuation of property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's just valuation methodology is appropriate. The 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)1. In administrative reviews of just valuations, if the property appraiser establishes a presumption of correctness, 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.

2. If one or both of the conditions in subparagraph (b)1., above, are determined to exist, the property appraiser's presumption of correctness is overcome.

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 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 shall 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 shall remand the assessment to the property appraiser with appropriate directions for establishing just value.

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

(3) In administrative reviews of the classified use valuation of property or administrative reviews of the assessed valuation of limited increase property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Identify the statutory criteria that apply to the classified use valuation of the property or to the assessed valuation of limited increase property, as applicable.

(b) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's classified use or assessed valuation methodology is appropriate. The presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's valuation methodology complies with the statutory criteria that apply to the classified use valuation or assessed valuation, as applicable, of the petitioned property.

(c)1. In administrative reviews of classified use valuations, if the property appraiser establishes a presumption of correctness, 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 classified use valuation practices that are different from the classified use valuation practices generally applied by the property appraiser to comparable property of the same property classification within the same county.

2. If one or both of the conditions in subparagraph (c)1., above, are determined to exist, the property appraiser's presumption of correctness is overcome.

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 presumption of correctness is not overcome as described in subparagraph (c)1., above, the assessment stands.

(d)1. In administrative reviews of assessed valuations of limited increase property, if the property appraiser establishes a presumption of correctness, 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 assessed valuation practices that are different from the assessed valuation practices generally applied by the property appraiser to comparable property within the same county.

2. If one or both of the conditions in subparagraph (d)1., above, are determined to exist, the property appraiser's presumption of correctness is overcome.

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 assessed value which cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned 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.

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

(4) In administrative reviews of exemptions, classifications, and portability assessment transfers, the board or special magistrate shall follow this sequence of general procedural steps:

(a) In the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid and shall:

Attachment: 12D-9 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

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.,

4. If the denial is found to be valid, proceed with steps in paragraphs (b) through (g), below.

(b) Consider the admitted evidence presented by the parties.

(c) Identify the particular exemption, property classification, or portability assessment transfer issue that is the subject of the petition.

(d) Identify the statutory criteria that apply to the particular exemption, property classification, or portability assessment difference transfer that was identified as the issue under administrative review.

(e) 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.

(f) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption, classification, or portability assessment transfer should be granted because all of the applicable statutory criteria are satisfied. Where necessary and where the context will permit in these rules, the term "statutory criteria" includes any constitutional criteria that do not require implementation by legislation.

(5) "Standard of proof" means the level of proof needed by the board or special magistrate to reach a particular conclusion. The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence."

(6) When applied to evidence, the term "sufficient" is a test of adequacy. Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. 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. The board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the standard of proof that applies to the issue under consideration. 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.084, 195.096, 196.011, 196.151, 196.193, 197.122, 213.05 FS. History–New 3-30-10.*

**12D-9.028 Petitions on Transfer of "Portability" Assessment Difference.**

(1) This rule section applies to the review of denials of assessment limitation difference transfers or of 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 this rule.

(2) A petitioner may file a petition with the value adjustment board, in the county where the new homestead is located, to petition either a denial of a transfer or the amount of the transfer, on Form DR-486PORT. Form DR-486PORT is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. Such petition must be filed at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes as provided in Section 194.011, F.S. If only a part of a transfer of assessment increase differential is granted, the notice of proposed property taxes shall function as notice of the taxpayer's right to appeal to the board.

(3) The petitioner may petition to the board the decision of the property appraiser refusing to allow the transfer of an assessment difference, and the board shall review the application and evidence presented to the property appraiser upon which the petitioner based the claim and shall hear the petitioner on behalf of his or her right to such assessment. Such petition shall be heard by an attorney special magistrate if the board uses special magistrates.

Attachment: 12D-9 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

(4) This subsection will apply to value adjustment board proceedings in a county in which the previous homestead is located. Any petitioner desiring to appeal the action of a property appraiser in a county in which the previous homestead is located must so designate on Form DR-486PORT.

(5) If the petitioner does not agree with the amount of the assessment limitation difference for which the petitioner qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the petitioner qualifies to transfer any assessment limitation difference, upon the petitioner filing a petition to the value adjustment board in the county where the new homestead property is located, the board clerk in that county shall, upon receiving the petition, send a notice using Form DR-486XCO, to the board clerk in the county where the previous homestead was located, which shall reconvene if it has already adjourned. Form DR-486XCO is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C.

(6)(a) If a cross county petition is filed as described in subsection (5), such notice operates as a timely petition and creates an appeal to the value adjustment board in the county where the previous homestead was located on all issues surrounding the previous assessment differential for the taxpayer involved. However, the petitioner may not petition to have the just, assessed, or taxable value of the previous homestead changed.

(b) The board clerk in the county where the previous homestead was located shall set the petition for hearing and notify the petitioner, the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located, and the value adjustment board in that county, and shall hear the petition.

(c) The board clerk in the county in which the previous homestead was located must note and file the petition from the county in which the new homestead is located. No filing fee is required. The board clerk shall notify each petitioner of the scheduled time of appearance. The notice shall be in writing and delivered by regular or certified U.S. mail, or personal delivery, or delivered in the manner requested by the petitioner on Form DR-486PORT, 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. 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.

(d) Such petition shall be heard by an attorney special magistrate if the value adjustment board in the county where the previous homestead was located uses special magistrates. The petitioner may attend such hearing and present evidence, but need not do so. If the petitioner does not appear at the hearing, the hearing shall go forward. The board or special magistrate shall obtain the petition file from the board clerk. The board or special magistrate shall consider deeds, property appraiser records that do not violate confidentiality requirements, and other documents that are admissible evidence. The petitioner may submit a written statement for review and consideration by the board or special magistrate explaining why the "portability" assessment difference should be granted based on applications and other documents and records submitted by the petitioner.

(e) The value adjustment board in the county where the previous homestead was located shall issue a decision and the board clerk shall send a copy of the decision to the board clerk in the county where the new homestead is located.

(f) In hearing the petition in the county where the new homestead is located, that value adjustment board shall consider the decision of the value adjustment board in the county where the previous homestead was located on the issues pertaining to the previous homestead and on the amount of any assessment reduction for which the petitioner qualifies. The value adjustment board in the county where the new homestead is located may not hold its hearing until it has received the decision from the value adjustment board in the county where the previous homestead was located.

(7) This rule does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

(8) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://dor.myflorida.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.029 Procedures for Remanding Value Assessments to the Property Appraiser.**

(1) The board or appraiser special magistrate shall remand a value assessment to the property appraiser when the board or special magistrate has concluded that:

(a) 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,

(b) 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.

(2) 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.

(3) The board shall remand an assessment to the property appraiser for a classified use valuation when the board:

(a) Has concluded that a property classification will be granted; and,

(b) Has concluded that the record does not contain the competent substantial evidence necessary for the board to establish classified use value.

(4) The board or special magistrate shall, on the appropriate decision form from the Form DR-485 series, 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 subsection (9). The Form DR-485 series is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C.

(5) 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. 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. When the value adjustment board remands an assessment to the property appraiser, the board retains authority to make a final decision on the petition in accordance with law.

(6) For remanding an assessment to the property appraiser, the board or special magistrate shall produce a written remand decision which shall include appropriate directions to the property appraiser.

(7) 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. 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 Form DR-486, Petition to the Value Adjustment Board Request for Hearing. Form DR-486 is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(8)(a) 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.

(b) 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.

(9)(a) 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 taxpayer on Form DR-486, and shall send a copy to the board or special magistrate. The board clerk shall retain, as part of the petition file, the property appraiser's written remand review. Together with the petitioner's copy of the written remand review, the board clerk shall send to the petitioner a copy of this rule subsection.

(b) 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. 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 such scheduled appearance, as described in subsection 12D-9.019(3), 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. Such 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.

The petition shall be treated and listed as board action for purposes of the notice required by Rule 12D-9.038, F.A.C.

(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. Also, the board or special magistrate may consider evidence admitted at the original hearing.

(10) 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.

(11) In no case shall a board or special magistrate remand to the property appraiser an exemption, "portability" assessment difference transfer, or property classification determination.

(12) Copies of all evidence shall remain with the board clerk and be available during the remand process.

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

(14) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 194.301 FS. History–New 3-30-10, Amended 9-19-17*

**12D-9.030 Recommended Decisions.**

(1) 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. Conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, findings of fact must identify the corresponding admitted evidence, or lack thereof. Each recommended 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 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. After producing a recommended decision, the special magistrate shall provide it to the board clerk.

(2) 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, and if the board clerk:

(a) 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; or

(b) 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.

(3) 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. 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. Value adjustment 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.

(4) 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. The Form DR-485 series is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C. All recommended decisions of special magistrates, and all forms used for the recommended decisions, must contain the following required elements:

(a) Findings of fact;

(b) Conclusions of law; and,

(c) Reasons for upholding or overturning the determination of the property appraiser.

(5) As used in this section, 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.

(6) 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. If not in writing, such advice shall be documented within the findings of fact and conclusions of law.

(7) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 194.035, 195.022 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews.**

(1) All recommended decisions shall comply with Sections 194.301, 194.034(2) and 194.035(1), F.S. 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.

(2) 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. If the board holds further hearing for such consideration, the board clerk shall send notice of the hearing to the parties. Any notice of hearing shall be in the same form as specified in subsection 12D-9.019(3), F.A.C., but need not include items specified in subparagraphs 6. through 9., of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination. Adoption of recommended decisions need not include a review of the underlying record.

(3) If the board determines that a recommended decision meets the requirements of subsection (1), the board shall adopt the recommended decision. When a recommended decision is adopted and rendered by the board, it becomes final.

(4) If the board determines that a recommended decision does not comply with the requirements of subsection (1), the board shall proceed as follows:

(a) 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 subsection (1).

(b) The board may direct a special magistrate to produce a recommended decision that complies with subsection (1) based on, if necessary, a review of the entire record.

(c) The board shall retain any recommended decisions and all other records of actions under this rule section.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.032, 194.034, 194.035, 194.301 FS. History–New 3-30-10, Amended 6-14-16.*

**12D-9.032 Final Decisions.**

(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. Conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, findings of fact must identify the corresponding admitted evidence, or lack thereof. 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 board may adopt the special magistrate's recommended decision as the decision of the board incorporating the recommended decision, using a postcard or similar notice. The board shall ensure regular and timely approval of recommended decisions.

(b) 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. If not in writing, such advice shall be documented within the findings of fact and conclusions of law.

(2) A final decision of the board shall state the just, assessed, taxable, and exempt value, for the county both before and after board action. Board action shall not include changes made as a result of action by the property appraiser. 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.

(3) 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.

(4) 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. Notice of the final decision may be made by providing a copy of the decision. The board shall issue all final decisions within 20 calendar days of the last day the board is in session pursuant to Section

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194.034, F.S.

(5) 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. The Form DR-485 series is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C. 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. Before using any form to notify petitioners of the final decision, the board shall submit the proposed form to the department for approval. The board shall not use a form to notify the petitioner unless the department has approved the form. 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:

(a) Findings of fact;

(b) Conclusions of law; and,

(c) Reasons for upholding or overturning the determination of the property appraiser.

(6)(a) 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. No such communication shall be furnished to the board or a special magistrate unless a copy is immediately furnished to all parties. A party may waive notification or furnishing of copies under this subsection.

(b) The board legal counsel shall respond to such communication and may advise the board concerning any action the board should take concerning the communication.

(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.

(d) 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.

(7) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.033 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, F.S.

*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, 194.036, 195.022, 213.05 FS. History–New 3-30-10.*

**12D-9.034 Record of the Proceeding.**

(1) The board clerk shall maintain a record of the proceeding. The record shall consist of:

(a) The petition;

(b) All filed documents, including all tangible exhibits and documentary evidence presented, whether or not admitted into evidence; and,

(c) Meeting minutes and a verbatim record of the hearing.

(2) The verbatim record of the hearing may be kept by any electronic means which is easily retrieved and copied. 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. In counties that do not use special magistrates, the board clerk shall accurately and completely preserve the verbatim record during the hearing. At the conclusion of each hearing, the board clerk shall retain the verbatim record as part of the petition file.

(3) 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.

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

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*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.035 Duty of Clerk to Prepare and Transmit Record.**

(1) When a change in the tax roll made by the board becomes subject to review by the Circuit Court pursuant to Section 194.036(1)(c), F.S., it shall be the duty of the board clerk, when requested, to prepare the record for review. The record shall consist of a copy of each paper, including the petition and each exhibit in the proceeding together with a copy of the board's decision and written findings of fact and conclusions of law. The board clerk shall transmit to the Court this record, and the board clerk's certification of the record which shall be in the following form:

Certification of Record

I hereby certify that the attached record, consisting of sequentially numbered pages one through _____, consists of true copies of all papers, exhibits, and the Board's findings of fact and conclusions of law, in the proceeding before the _____ County Value Adjustment Board upon petition numbered _____ filed by _____.

_____
Clerk of Value Adjustment Board
By: _____
Deputy Clerk

Should the verbatim transcript be prepared other than by a court reporter, the board clerk shall also make the following certification:

CERTIFICATION OF VERBATIM TRANSCRIPT

I hereby certify that the attached verbatim transcript consisting of sequentially numbered pages _____ through _____ is an accurate and true transcript of the hearing held on _____ in the proceeding before the County Value Adjustment Board petition numbered _____ filed by:

_____
Clerk of Value Adjustment Board
By: _____
Deputy Clerk

(2) The board clerk shall provide the petitioner and property appraiser, upon their request, a copy of the record at no more than actual cost.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 213.05 FS. History–New 3-30-10.*

**12D-9.036 Procedures for Petitions on Denials of Tax Deferrals.**

(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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 197.2425, 197.301, 213.05 FS. History–New 3-30-10, Amended 11-1-12.*

**PART III**
**UNIFORM CERTIFICATION OF ASSESSMENT ROLLS**

**12D-9.037 Certification of Assessment Rolls.**

(1)(a) When the tax rolls have been extended pursuant to Section 197.323, F.S., the initial certification of the value adjustment board shall be made on Form DR-488P. Form DR-488P is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C.

(b) 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. The certification shall be on the form prescribed by the department referenced in subsection (2) of this rule. 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.

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(2) The form shall include a certification signed by the board chair, on behalf of the entire board, on Form DR-488, adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C., designated for this purpose, that all requirements in Chapter 194, F.S., and department rules, were met as follows:

(a) 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.;

(b) The qualifications of special magistrates were verified, including whether special magistrates completed the department's training;

(c) 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;

(d) All petitions considered were either timely filed, or good cause was found for late filing after proper review by the board or its designee;

(e) All board meetings were duly noticed pursuant to Section 286.011, F.S., and were held in accordance with law;

(f) No ex parte communications were considered unless all parties were notified and allowed to rebut;

(g) All petitions were reviewed and considered as required by law unless withdrawn or settled as defined in this rule chapter;

(h) All decisions contain required findings of fact and conclusions of law in compliance with Chapter 194, F.S., and this rule chapter;

(i) The board allowed opportunity for public comment at the meeting at which special magistrate recommended decisions were considered and adopted;

(j) All board members and the board's legal counsel have read this certification and a copy of the statement in subsection (1) is attached; and,

(k) All complaints of noncompliance with Part I, Chapter 194, F.S., or this rule chapter called to the board's attention have been appropriately addressed to conform with the provisions of Part I, Chapter 194, F.S., and this rule chapter.

(3) The board shall provide a signed original of the certification required under this rule section to the department before publication of the notice of the findings and results of the board required by Section 194.037, F.S. See Form DR-529, Notice Tax Impact of Value Adjustment Board.

(4) Copies of the forms incorporated in Section 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://dor.myflorida.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.038 Public Notice of Findings and Results of Value Adjustment Board.**

(1) 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. Such notice shall be published to permit filing within the timeframe in subsections 12D-17.004(1) and (2), F.A.C., where provided. 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. This section shall not prevent the property appraiser from providing data to assist the board clerk with the notice of tax impact. The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice." The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board, incorporated by reference in Rule 12D-16.002, F.A.C.

(2) The size of the notice shall be at least a quarter page size advertisement of a standard or tabloid size newspaper. The newspaper notice shall include all of the above information and no change shall be made in the format or content without department approval. The notice shall be published in a part of the paper where legal notices and classified ads are not published.

(3) The notice of the findings and results of the value adjustment board shall be published in a newspaper of paid general circulation within the county. It shall be the specific intent of the publication of notice to reach the largest segment of the total county population. 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.

(4) The headline of the notice shall be set in a type no smaller than 18 point and shall read "TAX IMPACT OF VALUE ADJUSTMENT BOARD."

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(5) It shall be the duty of the board clerk to insure publication of the notice after the board has heard all petitions, complaints, appeals, and disputes.

(6) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://dor.myflorida.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 50, 194.032, 194.034, 194.037, 213.05 FS. History–New 3-30-10.*

# CHAPTER 12D-10
# VALUE ADJUSTMENT BOARD


12D-10.001 Composition of Value Adjustment Board (Repealed)
12D-10.002 Appointment and Employment of Special Magistrates (Repealed)
12D-10.003 Powers, Authority, Duties and Functions of Value Adjustment Board
12D-10.004 Receipt of Taxpayer's Petition to Be Acknowledged (Repealed)
12D-10.0044 Uniform Procedures for Hearings; Procedures for Information and Evidence Exchange Between the Petitioner and Property Appraiser, Consistent with Section 194.032, F.S.; Organizational Meeting; Uniform Procedures to be Available to Petitioners (Repealed)
12D-10.005 Duty of Clerk to Prepare and Transmit Record (Repealed)
12D-10.006 Public Notice of Findings and Results of Value Adjustment Board (Repealed)


**12D-10.001 Composition of Value Adjustment Board.**

*Rulemaking Authority 195.027(1), 213.06(1) FS. Law Implemented 194.015, 213.05 FS. History–New 10-12-76, Formerly 12D-10.01, Amended 12-31-98, Repealed 3-30-10.*

**12D-10.002 Appointment and Employment of Special Magistrates.**

*Rulemaking Authority 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.034, 194.035, 213.05 FS. History–New 10-12-76, Formerly 12D-10.02, Repealed 3-30-10.*

**12D-10.003 Powers, Authority, Duties and Functions of Value Adjustment Board.**

(1) The board has no power to fix the original valuation of property for ad valorem tax purposes or to grant an exemption not authorized by law and the board is bound by the same standards as the county property appraiser in determining values and the granting of exemptions. The board has no power to grant relief either by adjustment of the value of a property or by the granting of an exemption on the basis of hardship of a particular taxpayer. The board, in determining the valuation of a specific property, shall not consider the ultimate amount of tax required.

(2) 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).

(3) Every decision of the board must contain specific and detailed findings of fact which shall include both ultimate findings of fact and basic and underlying findings of fact. Each basic and underlying finding must be properly annotated to its supporting evidence. For purposes of these rules, the following are defined to mean:

(a) An ultimate finding is a determination of fact. An ultimate finding is usually expressed in the language of a statutory standard and must be supported by and flow rationally from adequate basic and underlying findings.

(b) Basic and underlying findings are those findings on which the ultimate findings rest and which are supported by evidence. Basic and underlying findings are more detailed than the ultimate findings but less detailed than a summary of the evidence.

(c) Reasons are those clearly stated grounds upon which the board or property appraiser acted.

*Rulemaking Authority 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History–New 10-12-76, Amended 11-10-77, 9-30-82, Formerly 12D-10.03, Amended 12-31-98, 3-30-10.*

**12D-10.004 Receipt of Taxpayer’s Petition to Be Acknowledged.**

*Rulemaking Authority 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 195.022, 200.069, 213.05 FS. History–New 10-12-76, Formerly 12D-10.04, Amended 1-11-94, 12-28-95, 12-31-98, 1-20-03, 12-30-04, Repealed 3-30-10.*

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**12D-10.0044 Uniform Procedures for Hearings; Procedures for Information and Evidence Exchange Between the Petitioner and Property Appraiser, Consistent with Section 194.032, F.S.; Organizational Meeting; Uniform Procedures to be Available to Petitioners.**

*Rulemaking Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 195.022, 200.069, 213.05 FS. History–New 4-4-04, Amended 12-30-04, Repealed 3-30-10.*

**12D-10.005 Duty of Clerk to Prepare and Transmit Record.**

*Rulemaking Authority 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 213.05 FS. History–New 10-12-76, Amended 11-10-77, Formerly 12D-10.05, Repealed 3-30-10.*

**12D-10.006 Public Notice of Findings and Results of Value Adjustment Board.**

*Rulemaking Authority 195.027(1), 213.06(1) FS. Law Implemented 50, 194.032, 194.034, 194.037, 213.05 FS. History–New 2-12-81, Formerly 12D-10.06, Repealed 3-30-10.*

Attachment: 12D-10 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

**12D-51.001 Classified Use Real Property Guidelines, Standard Assessment Procedures and Standard Measures of Value, Agricultural Guidelines.**

Pursuant to Section 195.062, F.S., these guidelines are adopted in general conformity with the procedures set forth in Section 120.54, F.S., but shall not have the force and effect of rules and are to be used only to assist property appraisers in the assessment of agricultural property as provided by Section 195.002, F.S. Copies of these guidelines may be obtained from the Department of Revenue, Property Tax Oversight Program, P.O. Box 3000, Tallahassee, Florida 32315-3000.

*Rulemaking Authority 195.027(1), 195.032, 213.06(1) FS. Law Implemented 193.461, 195.032, 195.062, 213.05 FS. History–New 12-30-82, Formerly 12D-51.01.*

Attachment: 12D-51.001 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

**12D-51.002 Standard Measures of Value: Tangible Personal Property Appraisal Guidelines.**

Pursuant to Section 195.062, F.S., these guidelines are adopted in general conformity with the procedures set forth in Section 120.54, F.S., but shall not have the force and effect of rules. These guidelines are to be used only to assist property appraisers in the assessment of tangible personal property as provided by Section 195.002, F.S. These guidelines supersede any previous tangible personal property appraisal guidelines and are entitled:

Standard Measures of Value:

Tangible Personal Property

Appraisal Guidelines Rev. 12/97

Copies of these guidelines may be obtained from the Department of Revenue, Property Tax Oversight Program, P.O. Box 3000, Tallahassee, Florida 32315-3000 and may be found on the Internet at http://dor.myflorida.com/dor/property/.

*Rulemaking Authority 195.027(1), 195.032, 213.06(1) FS. Law Implemented 195.032, 195.062, 213.05 FS. History–New 12-30-97.*

Attachment: 12D-51.002 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

**12D-51.003 Florida Real Property Appraisal Guidelines.**

Pursuant to Section 195.062, F.S., this rule shall give notice that these guidelines are available from the address given below. These guidelines do not have the force and effect of rules. These guidelines are entitled:

Florida Real Property Appraisal Guidelines Rev. 11/26/02.

Copies of these guidelines may be obtained from the Department of Revenue, Property Tax Oversight Program, P.O. Box 3000, Tallahassee, Florida 32315-3000 and may be found on the Internet at http://dor.myflorida.com/dor/property/.

*Rulemaking Authority 195.027(1), 195.032, 213.06(1) FS. Law Implemented 195.032, 195.062, 213.05 FS. History–New 12-30-02.*

Attachment: 12D-51.003 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

Select Year: 2020 Go

# The 2020 Florida Statutes

Title XIV
TAXATION AND FINANCE

Chapter 192
TAXATION: GENERAL PROVISIONS

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# TITLE XIV

## TAXATION AND FINANCE

## CHAPTER 192
## TAXATION: GENERAL PROVISIONS

192.001 Definitions.
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192.102 Payment of property appraisers' and collectors' commissions.
192.105 Unlawful disclosure of federal tax information; penalty.
192.115 Performance review panel.
192.123 Notification of veteran's guardian.

**192.001 Definitions.**—All definitions set out in chapters 1 and 200 that are applicable to this chapter are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes:

(1) "Ad valorem tax" means a tax based upon the assessed value of property. The term "property tax" may be used interchangeably with the term "ad valorem tax."

(2) "Assessed value of property" means an annual determination of:

(a) The just or fair market value of an item or property;

(b) The value of property as limited by Art. VII of the State Constitution; or

(c) The value of property in a classified use or at a fractional value if the property is assessed solely on the basis of character or use or at a specified percentage of its value under Art. VII of the State Constitution.

(3) "County property appraiser" means the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied. He or she shall also be referred to in these statutes as the "property appraiser" or "appraiser."

(4) "County tax collector" means the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.

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

(6) "Extend on the tax roll" means the arithmetic computation whereby the millage is converted to a decimal number representing one one-thousandth of a dollar and then multiplied by the taxable value of the property to determine the tax on such property.

(7) "Governing body" means any board, commission, council, or individual acting as the executive head of a unit of local government.

(8) "Homestead" means that property described in s. 6(a), Art. VII of the State Constitution.

(9) "Levy" means the imposition of a tax, stated in terms of "millage," against all appropriately located property by a governmental body authorized by law to impose ad valorem taxes.

(10) "Mill" means one one-thousandth of a United States dollar. "Millage" may apply to a single levy of taxes or to the cumulative of all levies.

(11) "Personal property," for the purposes of ad valorem taxation, shall be divided into four categories as follows:

(a) "Household goods" means wearing apparel, furniture, appliances, and other items ordinarily found in the home and used for the comfort of the owner and his or her family. Household goods are not held for commercial purposes or resale.

(b) "Intangible personal property" means money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

(c)1. "Inventory" means only those chattels consisting of items commonly referred to as goods, wares, and merchandise (as well as inventory) which are held for sale or lease to customers in the ordinary course of business. Supplies and raw materials shall be considered to be inventory only to the extent that they are acquired for sale or lease to customers in the ordinary course of business or will physically become a part of merchandise intended for sale or lease to customers in the ordinary course of business. Partially finished products which when completed will be held for sale or lease to customers in the ordinary course of business shall be deemed items of inventory. All livestock shall be considered inventory. Items of inventory held for lease to customers in the ordinary course of business, rather than for sale, shall be deemed inventory only prior to the initial lease of such items. For the purposes of this section, fuels used in the production of electricity shall be considered inventory.

2. "Inventory" also means 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 subparagraph may not be considered in determining whether property that is not construction and agricultural equipment weighing 1,000 pounds or more that is returned under a rent-to-purchase option is inventory under subparagraph 1.

(d) "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. Inventory and household goods are expressly excluded from this definition.

(12) "Real property" means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.

(13) "Taxpayer" means the person or other legal entity in whose name property is assessed, including an agent of a timeshare period titleholder.

(14) "Fee timeshare real property" means the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property.

(15) "Timeshare period titleholder" means the purchaser of a timeshare period sold as a fee interest in real property, whether organized under chapter 718 or chapter 721.

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(16) "Taxable value" means the assessed value of property minus the amount of any applicable exemption provided under s. 3 or s. 6, Art. VII of the State Constitution and chapter 196.

(17) "Floating structure" means a floating barge-like entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term "floating structure" includes, but is not limited to, each entity used as a residence, place of business, office, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in s. 327.02. Incidental movement upon water shall not, in and of itself, preclude an entity from classification as a floating structure. A floating structure is expressly included as a type of tangible personal property.

(18) "Complete submission of the rolls" includes, but is not limited to, accurate tabular summaries of valuations as prescribed by department rule; an electronic copy of the real property assessment roll including for each parcel total value of improvements, land value, the recorded selling prices, other ownership transfer data required for an assessment roll under s. 193.114, the value of any improvement made to the parcel in the 12 months preceding the valuation date, the type and amount of any exemption granted, and such other information as may be required by department rule; an accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by department rule; an electronic copy of the tangible personal property assessment roll, including for each entry a unique account number and such other information as may be required by department rule; and an accurate tabular summary of per-acre land valuations used for each class of agricultural property in preparing the assessment roll, as prescribed by department rule.

(19) "Computer software" means any information, program, or routine, or any set of one or more programs, routines, or collections of information used or intended for use to convey information or to cause one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the definition provided in this subsection, the term includes operating and applications programs and all related documentation. Computer software does not include embedded software that resides permanently in the internal memory of a computer or computer-related peripheral equipment and that is not removable without terminating the operation of the computer or equipment. Computer software constitutes personal property only to the extent of the value of the unmounted or uninstalled medium on or in which the information, program, or routine is stored or transmitted, and, after installation or mounting by any person, computer software does not increase the value of the computer or computer-related peripheral equipment, or any combination thereof. Notwithstanding any other provision of law, this subsection applies to the 1997 and subsequent tax rolls and to any assessment in an administrative or judicial action pending on June 1, 1997.

**History.**—s. 1, ch. 70-243; s. 1, ch. 77-102; s. 4, ch. 79-334; s. 56, ch. 80-274; s. 2, ch. 81-308; ss. 53, 63, 73, ch. 82-226; s. 1, ch. 82-388; s. 12, ch. 83-204; s. 52, ch. 83-217; s. 1, ch. 84-371; s. 9, ch. 94-241; s. 61, ch. 94-353; s. 1461, ch. 95-147; s. 1, ch. 97-294; s. 2, ch. 98-342; s. 31, ch. 2001-60; s. 20, ch. 2010-5; s. 1, ch. 2012-193; s. 2, ch. 2017-36.

**Note.**—Consolidation of provisions of former ss. 192.031, 192.041, 192.052, 192.064.

**192.0105 Taxpayer rights.**—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

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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.

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(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, 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).

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(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.

**192.011 All property to be assessed.**—The property appraiser shall assess all property located within the county, except inventory, whether such property is taxable, wholly or partially exempt, or subject to classification reflecting a value less than its just value at its present highest and best use. Extension on the tax rolls shall be made according to regulation promulgated by the department in order properly to reflect the general law. Streets, roads, and highways which have been dedicated to or otherwise acquired by a municipality, a county, or a state agency may be assessed, but need not be.

**History.**—s. 1, ch. 4322, 1895; GS 428; s. 1, ch. 5596, 1907; RGS 694; CGL 893; ss. 1, 2, ch. 69-55; s. 2, ch. 70-243; s. 1, ch. 77-102; s. 3, ch. 81-308; s. 966, ch. 95-147.

**Note.**—Former s. 192.01.

**192.032 Situs of property for assessment purposes.**—All property shall be assessed according to its situs as follows:

(1) Real property, in that county in which it is located and in that taxing jurisdiction in which it may be located.

(2) All tangible personal property which is not immune under the state or federal constitutions from ad valorem taxation, in that county and taxing jurisdiction in which it is physically present on January 1 of each year unless such property has been physically present in another county of this state at any time during the preceding 12-month period, in which case the provisions of subsection (3) apply. Additionally, tangible personal property brought into the state after January 1 and before April 1 of any year shall be taxable for that year if the property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year. However, tangible personal property physically present in the state on or after January 1 for temporary purposes only, which property is in the state for 30 days or less, shall not be subject to assessment. This subsection does not apply to goods in transit as described in subsection (4) or supersede the provisions of s. 193.085(4).

(3) If more than one county of this state assesses the same tangible personal property in the same assessment year, resolution of such multicounty dispute shall be governed by the following provisions:

(a) Tangible personal property which was physically present in one county of this state on January 1, but present in another county of this state at any time during the preceding year, shall be assessed in the county and taxing jurisdiction where it was habitually located or typically present. All tangible personal property which is removed from one county in this state to another county after January 1 of any year shall be subject to taxation

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for that year in the county where located on January 1; except that this subsection does not apply to tangible personal property located in a county on January 1 on a temporary or transitory basis if such property is included in the tax return being filed in the county in this state where such tangible personal property is habitually located or typically present.

(b) For purposes of this subsection, an item of tangible personal property is "habitually located or typically present" in the county where it is generally kept for use or storage or where it is consistently returned for use or storage. For purposes of this subsection, an item of tangible personal property is located in a county on a "temporary or transitory basis" if it is located in that county for a short duration or limited utilization with an intention to remove it to another county where it is usually used or stored.

(4)(a) Personal property manufactured or produced outside this state and brought into this state only for transshipment out of the United States, or manufactured or produced outside the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business is considered goods-in-transit and shall not be deemed to have acquired a taxable situs within a county even though the property is temporarily halted or stored within the state.

(b) The term "goods-in-transit" implies that the personal property manufactured or produced outside this state and brought into this state has not been diverted to domestic use and has not reached its final destination, which may be evidenced by the fact that the individual unit packaging device utilized in the shipping of the specific personal property has not been opened except for inspection, storage, or other process utilized in the transportation of the personal property.

(c) Personal property transshipped into this state and subjected in this state to a subsequent manufacturing process or used in this state in the production of other personal property is not goods-in-transit. Breaking in bulk, labeling, packaging, relabeling, or repacking of such property solely for its inspection, storage, or transportation to its final destination outside the state shall not be considered to be a manufacturing process or the production of other personal property within the meaning of this subsection. However, such storage shall not exceed 180 days.

(5)(a) Notwithstanding the provisions of subsection (2), personal property used as a marine cargo container in the conduct of foreign or interstate commerce shall not be deemed to have acquired a taxable situs within a county when the property is temporarily halted or stored within the state for a period not exceeding 180 days.

(b) "Marine cargo container" means a nondisposable receptacle which is of a permanent character, strong enough to be suitable for repeated use; which is specifically designed to facilitate the carriage of goods by one or more modes of transport, one of which shall be by ocean vessel, without intermediate reloading; and which is fitted with devices permitting its ready handling, particularly in the transfer from one transport mode to another. The term "marine cargo container" includes a container when carried on a chassis but does not include a vehicle or packaging.

(6) Notwithstanding any other provision of this section, tangible personal property used in traveling shows such as carnivals, ice shows, or circuses shall be deemed to be physically present or habitually located or typically present only to the extent the value of such property is multiplied by a fraction, the numerator of which is the number of days such property is present in Florida during the taxable year and the denominator of which is the number of days in the taxable year. However, railroad property of such traveling shows shall be taxable under s. 193.085(4)(b) and not under this section.

**History.**—s. 3, ch. 70-243; s. 1, ch. 77-102; s. 1, ch. 77-305; s. 1, ch. 78-269; s. 5, ch. 79-334; s. 85, ch. 79-400; s. 9, ch. 81-308; s. 17, ch. 82-208; s. 75, ch. 82-226; s. 1, ch. 88-83; s. 4, ch. 2006-312.

**Note.**—Consolidation of provisions of former ss. 193.022, 193.034, 196.0011.

**192.037 Fee timeshare real property; taxes and assessments; escrow.**—

(1) For the purposes of ad valorem taxation and special assessments, the managing entity responsible for operating and maintaining fee timeshare real property shall be considered the taxpayer as an agent of the timeshare period titleholder.

(2) Fee timeshare real property shall be listed on the assessment rolls as a single entry for each timeshare development. The assessed value of each timeshare development shall be the value of the combined individual

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timeshare periods or timeshare estates contained therein.

(3) The property appraiser shall annually notify the managing entity of the proportions to be used in allocating the valuation, taxes, and special assessments on timeshare property among the various timeshare periods. Such notice shall be provided on or before the mailing of notices pursuant to s. 194.011. Ad valorem taxes and special assessments shall be allocated by the managing entity based upon the proportions provided by the property appraiser pursuant to this subsection.

(4) All rights and privileges afforded property owners by chapter 194 with respect to contesting or appealing assessments shall apply both to the managing entity responsible for operating and maintaining the timesharing plan and to each person having a fee interest in a timeshare unit or timeshare period.

(5) The managing entity, as an agent of the timeshare period titleholders, shall collect and remit the taxes and special assessments due on the fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.

(6)(a) Funds received by a managing entity or its successors or assigns from timeshare titleholders for ad valorem taxes or special assessments shall be placed in escrow as provided in this section for release as provided herein.

(b) If the managing entity is a condominium association subject to the provisions of chapter 718 or a cooperative association subject to the provisions of chapter 719, the control of which has been turned over to owners other than the developer, the escrow account must be maintained by the association; otherwise, the escrow account must be placed with an independent escrow agent, who shall comply with the provisions of chapter 721 relating to escrow agents.

(c) The principal of such escrow account shall be paid only to the tax collector of the county in which the timeshare development is located or to his or her deputy.

(d) Interest earned upon any sum of money placed in escrow under the provisions of this section shall be paid to the managing entity or its successors or assigns for the benefit of the owners of timeshare units; however, no interest may be paid unless all taxes on the timeshare development have been paid.

(e) On or before May 1 of each year, a statement of receipts and disbursements of the escrow account must be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, which may enforce this paragraph pursuant to s. 721.26. This statement must appropriately show the amount of principal and interest in such account.

(f) Any managing entity or escrow agent who intentionally fails to comply with this subsection concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional violation of this section.

(7) The tax collector shall accept only full payment of the taxes and special assessments due on the timeshare development.

(8) The managing entity shall have a lien pursuant to s. 718.121 or s. 721.16 on the timeshare periods for the taxes and special assessments.

(9) All provisions of law relating to enforcement and collection of delinquent taxes shall be administered with respect to the timeshare development as a whole and the managing entity as an agent of the timeshare period titleholders; if, however, an application is made pursuant to s. 197.502, the timeshare period titleholders shall receive the protections afforded by chapter 197.

(10) In making his or her assessment of timeshare real property, the property appraiser shall look first to the resale market.

(11) If there is an inadequate number of resales to provide a basis for arriving at value conclusions, then the property appraiser shall deduct from the original purchase price “usual and reasonable fees and costs of the sale.” For purposes of this subsection, “usual and reasonable fees and costs of the sale” for timeshare real property shall include all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit

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owner or user to participate in an exchange network of resorts. For timeshare real property, such "usual and reasonable fees and costs of the sale" shall be presumed to be 50 percent of the original purchase price; provided, however, such presumption shall be rebuttable.

(12) Subsections (10) and (11) apply to fee and non-fee timeshare real property.

**History.**—s. 54, ch. 82-226; s. 28, ch. 83-264; s. 204, ch. 85-342; s. 1, ch. 86-300; s. 15, ch. 88-216; s. 12, ch. 91-236; s. 10, ch. 94-218; s. 1462, ch. 95-147; s. 11, ch. 2008-240.

**192.042 Date of assessment.**—All property shall be assessed according to its just value as follows:

(1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

(2) Tangible personal property, on January 1, except construction work in progress shall have no value placed thereon until substantially completed as defined in s. 192.001(11)(d).

**History.**—s. 4, ch. 70-243; s. 57, ch. 80-274; s. 9, ch. 81-308; s. 5, ch. 2006-312.

**192.047 Date of filing.**—

(1) For the purposes of ad valorem tax administration, the date of an official United States Postal Service or commercial mail delivery service postmark on an application for exemption, an application for special assessment classification, or a return filed by mail is considered the date of filing the application or return.

(2) When the deadline for filing an ad valorem tax application or return falls on a Saturday, Sunday, or legal holiday, the filing period shall extend through the next working day immediately following such Saturday, Sunday, or legal holiday.

**History.**—s. 1, ch. 78-185; s. 1, ch. 2013-72.

**192.048 Electronic transmission.**—

(1) Subject to subsection (2), the following documents may be transmitted electronically rather than by regular mail:

(a) The notice of proposed property taxes required under s. 200.069.

(b) The tax exemption renewal application required under s. 196.011(6)(a).

(c) The tax exemption renewal application required under s. 196.011(6)(b).

(d) A notification of an intent to deny a tax exemption required under s. 196.011(9)(e).

(e) The decision of the value adjustment board required under s. 194.034(2).

(2) Electronic transmission pursuant to this section is authorized only under the following conditions, as applicable:

(a) The recipient consents in writing to receive the document electronically.

(b) On the form used to obtain the recipient's written consent, the sender must include a statement in substantially the following form and in a font equal to or greater than the font used for the text requesting the recipient's consent:

NOTICE: Under Florida law, e-mail addresses are public records. By consenting to communicate with this office electronically, your e-mail address will be released in response to any applicable public records request.

(c) Before sending a document electronically, the sender verifies the recipient's address by sending an electronic transmission to the recipient and receiving an affirmative response from the recipient verifying that the recipient's address is correct.

(d) If a document is returned as undeliverable, the sender must send the document by regular mail, as required by law.

(e) Documents sent pursuant to this section comply with the same timing and form requirements as if the documents were sent by regular mail.

(f) The sender renews the consent and verification requirements every 5 years.

**History.**—s. 2, ch. 2013-72; s. 5, ch. 2013-192.

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**192.053 Lien for unpaid taxes.**—A lien for all taxes, penalties, and interest shall attach to any property upon which a lien is imposed by law on the date of assessment and shall continue in full force and effect until discharged by payment as provided in chapter 197 or until barred under chapter 95.

**History.**—s. 3, ch. 4322, 1895; GS 430; s. 3, ch. 5596, 1907; RGS 696; CGL 896; s. 1, ch. 18297, 1937; ss. 1, 2, ch. 69-55; s. 5, ch. 70-243; s. 30, ch. 74-382.

**Note.**—Former ss. 192.04, 192.021.

**192.071 Administration of oaths.**—For the purpose of administering the provisions of this law or of any other duties pertaining to the proper administration of the duties of the office of property appraiser, or of the filing of applications for tax exemptions as required by law, the property appraisers or their lawful deputies may administer oaths and attest same in the same manner and with the same effect as other persons authorized by law to administer oaths by the laws of the state.

**History.**—s. 9, ch. 17060, 1935; CGL 1936 Supp. 897(10); ss. 1, 2, ch. 69-55; s. 6, ch. 70-243; s. 1, ch. 77-102.

**Note.**—Former s. 192.20.

**192.091 Commissions of property appraisers and tax collectors.**—

(1)(a) The budget of the property appraiser's office, as approved by the Department of Revenue, shall be the basis upon which the several tax authorities of each county, except municipalities and the district school board, shall be billed by the property appraiser for services rendered. Each such taxing authority shall be billed an amount that bears the same proportion to the total amount of the budget as its share of ad valorem taxes bore to the total levied for the preceding year. All municipal and school district taxes shall be considered as taxes levied by the county for purposes of this computation.

(b) Payments shall be made quarterly by each such taxing authority. The property appraiser shall notify the various taxing authorities of his or her estimated budget requirements and billings thereon at the same time as his or her budget request is submitted to the Department of Revenue pursuant to s. 195.087 and at the time the property appraiser receives final approval of the budget by the department.

(2) The tax collectors of the several counties of the state shall be entitled to receive, upon the amount of all real and tangible personal property taxes and special assessments collected and remitted, the following commissions:

(a) On the county tax:

1. Ten percent on the first $100,000;

2. Five percent on the next $100,000;

3. Three percent on the balance up to the amount of taxes collected and remitted on an assessed valuation of $50 million; and

4. Two percent on the balance.

(b) On collections on behalf of each taxing district and special assessment district:

1.a. Three percent on the amount of taxes collected and remitted on an assessed valuation of $50 million; and

b. Two percent on the balance; and

2. Actual costs of collection, not to exceed 2 percent, on the amount of special assessments collected and remitted.

For the purposes of this subsection, the commissions on the amount of taxes collected from the nonvoted school millage, and on the amount of additional taxes that would be collected for school districts if the exemptions applicable to homestead property for school district taxation were the same as exemptions applicable for all other ad valorem taxation, shall be paid by the board of county commissioners.

(3) In computing the amount of taxes levied on an assessed valuation of $50 million for the purposes of this section the valuation of nonexempt property and the taxes levied thereon shall be taken first.

(4) The commissions for collecting taxes assessed for or levied by the state shall be audited, allowed, and paid by the Chief Financial Officer as other warrants are paid; and commissions for collecting the county taxes shall be audited and paid by the boards of county commissioners of the several counties of this state. The commissions for collecting all special school district taxes shall be audited by the school board of each respective district and taken

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out of the funds of the respective special school district under its control and allowed and paid to the tax collectors for collecting such taxes; and the commissions for collecting all other district taxes, whether special or not, shall be audited and paid by the governing board or commission having charge of the financial obligations of such district. All commissions for collecting special tax district taxes shall be paid at the time and in the manner now, or as may hereafter be, provided for the payment of the commissions for the collection of county taxes. All amounts paid as compensation to any tax collector under the provisions of this or any other law shall be a part of the general income or compensation of such officer for the year in which received, and nothing contained in this section shall be held or construed to affect or increase the maximum salary as now provided by law for any such officer.

(5) The provisions of this section shall not apply to commissions on drainage district or drainage subdistrict taxes.

(6) If any property appraiser or tax collector in the state is receiving compensation for expenses in conducting his or her office or by way of salary pursuant to any act of the Legislature other than the general law fixing compensation of property appraisers, such property appraiser or tax collector may file a declaration in writing with the board of county commissioners of his or her county electing to come under the provisions of this section, and thereupon such property appraiser or tax collector shall be paid compensation in accordance with the provisions hereof, and shall not be entitled to the benefit of the said special or local act. If such property appraiser or tax collector does not so elect, he or she shall continue to be paid such compensation as may now be provided by law for such property appraiser or tax collector.

**History.**—s. 67, ch. 4322, 1895; ss. 11, 12, ch. 4515, 1897; s. 5, ch. 4885, 1901; GS 594, 595; ss. 63, 64, ch. 5596, 1907; RGS 797, 801; CGL 1028, 1033; s. 1, ch. 17876, 1937; CGL 1940 Supp. 1036(14); ss. 1, 1A, ch. 20936, 1941; ss. 1, 2, ch. 21918, 1943; s. 1, ch. 67-558; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 6, ch. 70-243; s. 1, ch. 70-246; s. 8, ch. 73-172; s. 1, ch. 74-234; s. 1, ch. 77-102; s. 7, ch. 79-332; s. 8, ch. 81-284; s. 53, ch. 83-217; s. 218, ch. 85-342; s. 1, ch. 91-295; s. 967, ch. 95-147; s. 2, ch. 96-397; s. 172, ch. 2003-261; s. 6, ch. 2006-312.

**Note.**—Former s. 193.65.

### 192.102 Payment of property appraisers' and collectors' commissions.—

(1) The board of county commissioners and school board of each county shall advance and pay to the county tax collector of each such county, at the first meeting of such board each month from October through July of each year, on demand of the county tax collector, an amount equal to one-twelfth of the commissions on the county taxes levied on the county tax roll for the preceding year and one-twelfth of the commissions on county occupational and beverage licenses paid to the tax collector in the preceding fiscal year. To demand the first advance under this section, each tax collector shall submit to the board of county commissioners a statement showing the calculation of the commissions on which the amount of each advance is to be based.

(2) On or before November 1 of each year, each tax collector who has received advances under the provisions of this section shall make an accounting to the board of county commissioners and the school board, and any adjustments necessary shall be made so that the total advances and commissions paid by the board of county commissioners and the school board shall be the amount of commissions earned. At no time within the year shall there be paid by the board of county commissioners and the school board more than the total advances due to that date or the commissions earned to that date, whichever is the greater. Nothing contained herein shall be construed to abrogate any law providing a salary for the tax collector or require the tax collector to accept the benefits of this section.

(3) The Chief Financial Officer shall issue to each of the county property appraisers and collectors of taxes, on the first Monday of January, April, July, and October, on demand of such county property appraisers and collectors of taxes after approval by the Department of Revenue, and shall pay, his or her warrant for an amount equal to one-fourth of four-fifths of the total amount of commissions received by such county property appraisers and collectors of taxes or their predecessors in office from the state during and for the preceding year, and the balance of the commissions earned by such county property appraiser and collector of taxes, respectively, during each year, over and above the amount of such installment payments herein provided for, shall be payable when a report of

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errors and double assessments is approved by the county commissioners and a copy thereof filed with the Department of Revenue.

**History.**—s. 7, ch. 70-243; s. 22, ch. 73-172; s. 1, ch. 74-234; s. 1, ch. 77-102; s. 968, ch. 95-147; s. 3, ch. 96-397; s. 173, ch. 2003-261.

**Note.**—Consolidation of provisions of former ss. 192.101, 192.114, 192.122.

**192.105 Unlawful disclosure of federal tax information; penalty.**—

(1) It is unlawful for any person to divulge or make known federal tax information obtained pursuant to 26 U.S.C. s. 6103, except in accordance with a proper judicial order or as otherwise provided by law for use in the administration of the tax laws of this state, and such information is confidential and exempt from the provisions of s. 119.07(1).

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 78-160; s. 20, ch. 88-119; s. 37, ch. 90-360; s. 232, ch. 91-224; s. 48, ch. 96-406.

**192.115 Performance review panel.**—If there occurs within any 4-year period the final disapproval of all or any part of a county roll pursuant to s. 193.1142 for 2 separate years, the Governor shall appoint a three-member performance review panel. Such panel shall investigate the circumstances surrounding the disapprovals and the general performance of the property appraiser. If the panel finds unsatisfactory performance, the property appraiser shall be ineligible for the designation and special qualification salary provided in s. 145.10(2). Within not less than 12 months, the property appraiser may requalify therefor, provided he or she successfully recompletes the courses and examinations applicable to new candidates.

**History.**—s. 22, ch. 80-274; s. 6, ch. 82-208; ss. 20, 80, ch. 82-226; s. 969, ch. 95-147.

**192.123 Notification of veteran's guardian.**—Upon the receipt of a copy of letters of guardianship issued pursuant to s. 744.638, the property appraiser and tax collector shall provide the guardian with every notice required under chapters 192-197 which would otherwise be provided the ward.

**History.**—s. 20, ch. 84-62.

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# The 2020 Florida Statutes

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Chapter 193
ASSESSMENTS

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## CHAPTER 193
## ASSESSMENTS

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### PART I
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**193.011 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.

**History.**—s. 1, ch. 63-250; s. 1, ch. 67-167; ss. 1, 2, ch. 69-55; s. 13, ch. 69-216; s. 8, ch. 70-243; s. 20, ch. 74-234; s. 1, ch. 77-102; s. 1, ch. 77-363; s. 6, ch. 79-334; s. 1, ch. 88-101; s. 1, ch. 93-132; s. 1, ch. 97-117; s. 1, ch. 2008-197.

**Note.**—Former s. 193.021.

**193.015 Additional specific factor; effect of issuance or denial of permit to dredge, fill, or construct in state waters to their landward extent.**—

(1) If the Department of Environmental Protection issues or denies a permit to dredge, fill, or otherwise construct in or on waters of the state, as defined in chapter 403, to their landward extent as determined under [1]s. 403.817(2), the property appraiser is expressly directed to consider the effect of that issuance or denial on the

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value of the property and any limitation that the issuance or denial may impose on the highest and best use of the property to its landward extent.

(2) The Department of Environmental Protection shall provide the property appraiser of each county in which such property is situated a copy of any final agency action relating to an application for such a permit.

(3) The provisions of subsection (1) do not apply if:

(a) The property owner had no reasonable basis for expecting approval of the application for permit; or

(b) The application for permit was denied because of an incomplete filing, failure to meet an applicable deadline, or failure to comply with administrative or procedural requirements.

**History.**—s. 3, ch. 84-79; s. 42, ch. 94-356.

[1]**Note.**—Repealed by s. 14, ch. 94-122.

**193.016 Property appraiser's assessment; effect of determinations by value adjustment board.**—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.

**History.**—s. 2, ch. 2000-262.

**193.017 Low-income housing tax credit.**—Property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation, as authorized by s. 420.5099, shall be assessed under s. 193.011 and, consistent with s. 420.5099(5) and (6), pursuant to this section.

(1) The tax credits granted and the financing generated by the tax credits may not be considered as income to the property.

(2) The actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser.

(3) Any costs paid for by tax credits and costs paid for by additional financing proceeds received under chapter 420 may not be included in the valuation of the property.

(4) If an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement, and any recorded amendment or supplement thereto, shall be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

**History.**—s. 6, ch. 2004-349.

**193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.**—

(1) As used in this section, the term "community land trust" means a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership.

(2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.

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(3) In arriving at just valuation under s. 193.011, a structural improvement, condominium parcel, or cooperative parcel providing affordable housing on land owned by a community land trust, and the land owned by a community land trust that is subject to a 99-year or longer ground lease, shall be assessed using the following criteria:

(a) The amount a willing purchaser would pay a willing seller for the land is limited to an amount commensurate with the terms of the ground lease that restricts the use of the land to the provision of affordable housing in perpetuity.

(b) The amount a willing purchaser would pay a willing seller for resale-restricted improvements, condominium parcels, or cooperative parcels is limited to the amount determined by the formula in the ground lease.

(c) If the ground lease and all amendments and supplements thereto, or a memorandum documenting how such lease and amendments or supplements restrict the price at which the improvements, condominium parcels, or cooperative parcels may be sold, is recorded in the official public records of the county in which the leased land is located, the recorded lease and any amendments and supplements, or the recorded memorandum, shall be deemed a land use regulation during the term of the lease as amended or supplemented.

**History.**—s. 16, ch. 2009-96; s. 2, ch. 2011-15; s. 35, ch. 2020-27.

**[1]193.019 Hospitals; community benefit reporting.**—

(1) As used in this section, the term:

(a) "Applicant" means the owner of property for which an exemption is being sought under ss. 196.196 and 196.197 for hospital property.

(b) "County net community benefit expense" is that portion of the net community benefit expense reported by an applicant on its most recently filed Internal Revenue Service Form 990, Schedule H:

1. Attributable to those services and activities provided or performed in a county; and

2. Attributed to the county from another county. An applicant may attribute up to 100 percent of its net community benefit expense to any county or counties in this state. The county net community benefit expense of a county must be reduced by any net community benefit expense that is attributed to another county.

(c) "Department" means the Department of Revenue.

(d) "Hospital" has the same meaning as in s. 196.012(8).

(2) By January 15 of each year, a 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.

(3) By January 15 of each year, an applicant shall submit to the department:

(a) A copy of the applicant's most recently filed Internal Revenue Service Form 990, Schedule H.

(b) A schedule displaying:

1. The county net community benefit expense attributed to each county in this state in which properties are located pursuant to subparagraph (1)(b)1.;

2. The county net community benefit expense attributed to each county in this state in which properties are located pursuant to subparagraph (1)(b)2.;

3. The portion of net community benefit expense reported by the applicant on its most recently filed Internal Revenue Service Form 990, Schedule H, attributable to those services and activities provided or performed outside of this state; and

4. The sum of amounts provided under subparagraphs 1., 2., and 3., which must equal the total net community benefit expense reported by the applicant on its most recently filed Internal Revenue Service Form 990, Schedule H.

(c) A statement signed by the applicant's chief executive officer and an independent certified public accountant that, upon each person's reasonable knowledge and belief, the statement of the Florida total of the county net community benefit expense is true and correct.

(4) The department must determine whether the county net community benefit expense attributed to an applicant's property located in a county equals or exceeds the tax reductions resulting from the exemptions

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described in subsection (2) for that county.

(5) In any second consecutive year the department determines that an applicant's county net community benefit expense does not equal or exceed the tax reductions resulting from the exemptions described in subsection (2), the department shall notify the respective property appraiser by March 15 to limit the exemption under ss. 196.196 and 196.197 for the current year in the property appraiser's county by multiplying it by the ratio of the net community benefit expense to the tax reductions resulting from the exemptions described in subsection (2).

(6) The department shall publish the data collected pursuant to this section for each applicant from a county property appraiser, including the net community benefit expense reported in the Internal Revenue Service Form 990, Schedule H.

(7) The department may adopt rules to administer this section, including the adoption of necessary forms.

**History.**—s. 2, ch. 2020-10.

[1]**Note.**—Effective January 1, 2022.

**193.023 Duties of the property appraiser in making assessments.**—

(1) The property appraiser shall complete his or her assessment of the value of all property no later than July 1 of each year, except that the department may for good cause shown extend the time for completion of assessment of all property.

(2) In making his or her assessment of the value of real property, the property appraiser is required to physically inspect the property at least once every 5 years. Where geographically suitable, and at the discretion of the property appraiser, the property appraiser may use image technology in lieu of physical inspection to ensure that the tax roll meets all the requirements of law. The Department of Revenue shall establish minimum standards for the use of image technology consistent with standards developed by professionally recognized sources for mass appraisal of real property. However, the property appraiser shall physically inspect any parcel of taxable or state-owned real property upon the request of the taxpayer or owner.

(3) In revaluating property in accordance with constitutional and statutory requirements, the property appraiser may adjust the assessed value placed on any parcel or group of parcels based on mass data collected, on ratio studies prepared by an agency authorized by law, or pursuant to regulations of the Department of Revenue.

(4) In making his or her assessment of leasehold interests in property serving the unit owners of a condominium or cooperative subject to a lease, including property subject to a recreational lease, the property appraiser shall assess the property at its fair market value without regard to the income derived from the lease.

(5) In assessing any parcel of a condominium or any parcel of any other residential development having common elements appurtenant to the parcels, if such common elements are owned by the condominium association or owned jointly by the owners of the parcels, the assessment shall apply to the parcel and its fractional or proportionate share of the appurtenant common elements.

(6) In making assessments of cooperative parcels, the property appraiser shall use the method required by s. 719.114.

**History.**—s. 9, ch. 70-243; s. 1, ch. 72-290; s. 5, ch. 76-222; s. 1, ch. 77-102; s. 2, ch. 84-261; s. 14, ch. 86-300; s. 1, ch. 88-216; s. 5, ch. 91-223; s. 970, ch. 95-147; s. 1, ch. 2006-36; s. 1, ch. 2009-135; ss. 1, 10, ch. 2010-280; SJR 8-A, 2010 Special Session A.

**193.0235 Ad valorem taxes and non-ad valorem assessments against subdivision property.**—

(1) Ad valorem taxes and non-ad valorem assessments shall be assessed against the lots within a platted residential subdivision and not upon the subdivision property as a whole. An ad valorem tax or non-ad valorem assessment, including a tax or assessment imposed by a county, municipality, special district, or water management district, may not be assessed separately against common elements utilized exclusively for the benefit of lot owners within the subdivision, regardless of ownership. The value of each parcel of land that is or has been part of a platted subdivision and that is designated on the plat or the approved site plan as a common element for the exclusive benefit of lot owners shall, regardless of ownership, be prorated by the property appraiser and included in the assessment of all the lots within the subdivision which constitute inventory for the developer and are intended to be conveyed or have been conveyed into private ownership for the exclusive benefit of lot owners within the subdivision.

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(2) As used in this section, the term "common element" includes:

(a) Subdivision property not included within lots constituting inventory for the developer which are intended to be conveyed or have been conveyed into private ownership.

(b) An easement through the subdivision property, not including the property described in paragraph (a), which has been dedicated to the public or retained for the benefit of the subdivision.

(c) Any other part of the subdivision which has been designated on the plat or is required to be designated on the site plan as a drainage pond, or detention or retention pond, for the exclusive benefit of the subdivision.

(d) Property located within the same county as the subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

**History.**—s. 4, ch. 2003-284; s. 1, ch. 2015-221.

**193.0237 Assessment of multiple parcel buildings.**—

(1) As used in this section, the term:

(a) "Multiple parcel building" means a building, other than a building consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

(b) "Parcel" means a portion of a multiple parcel building which is identified in a recorded instrument by a legal description that is sufficient for record ownership and conveyance by deed separately from any other portion of the building.

(c) "Recorded instrument" means a declaration, covenant, easement, deed, plat, agreement, or other legal instrument, other than a lease, mortgage, or lien, which describes one or more parcels in a multiple parcel building and which is recorded in the public records of the county where the multiple parcel building is located.

(2) The value of land upon which a multiple parcel building is located, regardless of ownership, may not be separately assessed and must be allocated among and included in the just value of all the parcels in the multiple parcel building as provided in subsection (3).

(3) The property appraiser, for assessment purposes, must allocate all of the just value of the land among the parcels in a multiple parcel building in the same proportion that the just value of the improvements in each parcel bears to the total just value of all the improvements in the entire multiple parcel building.

(4) A condominium, timeshare, or cooperative may be created within a parcel in a multiple parcel building. Any land value allocated to the just value of a parcel containing a condominium must be further allocated among the condominium units in that parcel in the manner required in s. 193.023(5). Any land value allocated to the just value of a parcel containing a cooperative must be further allocated among the cooperative units in that parcel in the manner required in s. 719.114.

(5) Each parcel in a multiple parcel building must be assigned a separate tax folio number. However, if a condominium or cooperative is created within any such parcel, a separate tax folio number must be assigned to each condominium unit or cooperative unit, rather than to the parcel in which it was created.

(6) All provisions of a recorded instrument affecting a parcel in a multiple parcel building, which parcel has been sold for taxes or special assessments, survive and are enforceable after the issuance of a tax deed or master's deed, or upon foreclosure of an assessment, a certificate or lien, a tax deed, a tax certificate, or a tax lien, to the same extent that such provisions would be enforceable against a voluntary grantee of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(7) This section applies to any land on which a multiple parcel building is substantially completed as of January 1 of the respective assessment year. This section applies to assessments beginning in the 2018 calendar year.

**History.**—s. 8, ch. 2018-118.

**193.024 Deputy property appraisers.**—Property appraisers may appoint deputies to act in their behalf in carrying out the duties prescribed by law.

**History.**—s. 2, ch. 80-366.

**193.052 Preparation and serving of returns.**—

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(1) The following returns shall be filed:

(a) Tangible personal property; and

(b) Property specifically required to be returned by other provisions in this title.

(2) No return shall be required for real property the ownership of which is reflected in instruments recorded in the public records of the county in which the property is located, unless otherwise required in this title. In order for land to be considered for agricultural classification under s. 193.461 or high-water recharge classification under s. 193.625, an application for classification must be filed on or before March 1 of each year with the property appraiser of the county in which the land is located, except as provided in s. 193.461(3)(a). The application must state that the lands on January 1 of that year were used primarily for bona fide commercial agricultural or high-water recharge purposes.

(3) A return for the above types of property shall be filed in each county which is the situs of such property, as set out under s. 192.032.

(4) All returns shall be completed by the taxpayer in such a way as to correctly reflect the owner's estimate of the value of property owned or otherwise taxable to him or her and covered by such return. All forms used for returns shall be prescribed by the department and delivered to the property appraisers for distribution to the taxpayers.

(5) Property appraisers may distribute returns in whatever way they feel most appropriate. However, as a minimum requirement, the property appraiser shall requisition, and the department shall distribute, forms in a timely manner so that each property appraiser can and shall make them available in his or her office no later than the first working day of the calendar year.

(6) The department shall promulgate the necessary regulations to ensure that all railroad and utility property is properly returned in the appropriate county. However, the evaluating or assessing of utility property in each county shall be the duty of the property appraiser.

(7) A property appraiser may accept a tangible personal property tax return in a form initiated through an electronic data interchange. The department shall prescribe by rule the format and instructions necessary for such filing to ensure that all property is properly listed. The acceptable method of transfer, the method, form, and content of the electronic data interchange, the method by which the taxpayer will be provided with an acknowledgment, and the duties of the property appraiser with respect to such filing shall be prescribed by the department. The department's rules shall provide: a uniform format for all counties; that the format shall resemble form DR-405 as closely as possible; and that adequate safeguards for verification of taxpayers' identities are established to avoid filing by unauthorized persons.

**History.**—s. 11, ch. 70-243; s. 1, ch. 72-370; s. 1, ch. 73-228; s. 20, ch. 73-334; s. 6, ch. 76-234; s. 1, ch. 77-102; s. 45, ch. 77-104; s. 7, ch. 79-334; s. 9, ch. 81-308; s. 75, ch. 82-226; s. 1, ch. 84-106; ss. 28, 221, ch. 85-342; s. 63, ch. 89-356; s. 971, ch. 95-147; s. 2, ch. 95-404; s. 3, ch. 96-204; s. 33, ch. 99-208.

**Note.**—Consolidation of provisions of former ss. 193.113, 193.121, 193.203, 193.211, 193.231-193.261, 193.272, 193.281-193.311.

**193.062 Dates for filing returns.**—All returns shall be filed according to the following schedule:

(1) Tangible personal property—April 1.

(2) Real property—when required by specific provision of general law.

(3) Railroad, railroad terminal, private car and freight line and equipment company property—April 1.

(4) All other returns and applications not otherwise specified by specific provision of general law—April 1.

**History.**—s. 12, ch. 70-243; s. 45, ch. 77-104; s. 8, ch. 79-334; s. 9, ch. 81-308.

**Note.**—Consolidation of provisions of former ss. 193.203, 193.211.

**193.063 Extension of date for filing tangible personal property tax returns.**—The property appraiser shall grant an extension for the filing of a tangible personal property tax return for 30 days and may, at her or his discretion, grant an additional extension for the filing of a tangible personal property tax return for up to 15 additional days. A request for extension must be made in time for the property appraiser to consider the request and act on it before the regular due date of the return. However, a property appraiser may not require that a request for extension be made more than 10 days before the due date of the return. A request for extension, at

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the option of the property appraiser, shall include any or all of the following: the name of the taxable entity, the tax identification number of the taxable entity, and the reason a discretionary extension should be granted.

**History.**—s. 1, ch. 94-98; s. 1463, ch. 95-147; s. 2, ch. 99-239.

**193.072 Penalties for improper or late filing of returns and for failure to file returns.**—

(1) The following penalties shall apply:

(a) For failure to file a return—25 percent of the total tax levied against the property for each year that no return is filed.

(b) For filing returns after the due date—5 percent of the total tax levied against the property covered by that return for each year, for each month, or portion thereof, that a return is filed after the due date, but not to exceed 25 percent of the total tax.

(c) For property unlisted on the return—15 percent of the tax attributable to the omitted property.

(d) For incomplete returns by railroad and railroad terminal companies and private car and freight line and equipment companies—2 percent of the assessed value, not to exceed 10 percent thereof, shall be added to the values apportioned to the counties for each month or fraction thereof in which the return is incomplete; however, the return shall not be deemed incomplete until 15 days after notice of incompleteness is provided to the taxpayer.

(2) Penalties listed in this section shall be determined upon the total of all ad valorem personal property taxes, penalties and interest levied on the property, and such penalties shall be a lien on the property.

(3) Failure to file a return, or to otherwise properly submit all property for taxation, shall in no regard relieve any taxpayer of any requirement to pay all taxes assessed against him or her promptly.

(4) For good cause shown, and upon finding that such unlisting or late filing of returns was not intentional or made with the intent to evade or illegally avoid the payment of lawful taxes, the property appraiser or, in the case of properties valued by the Department of Revenue, the executive director may reduce or waive any of said penalties.

**History.**—s. 13, ch. 70-243; s. 1, ch. 77-102; s. 9, ch. 79-334; s. 972, ch. 95-147.

**Note.**—Consolidation of provisions of former ss. 193.203, 193.222, 199.321.

**193.073 Erroneous returns; estimate of assessment when no return filed.**—

(1)(a) Upon discovery that an erroneous or incomplete statement of personal property has been filed by a taxpayer or that all the property of a taxpayer has not been returned for taxation, the property appraiser shall mail a notice informing the taxpayer that an erroneous or incomplete statement of personal property has been filed. Such notice shall be mailed at any time before the mailing of the notice required in s. 200.069. The taxpayer has 30 days after the date the notice is mailed to provide the property appraiser with a complete return listing all property for taxation.

(b) If the property is personal property and is discovered before April 1, the property appraiser shall make an assessment in triplicate. After attaching the affidavit and warrant required by law, the property appraiser shall dispose of the additional assessment roll in the same manner as provided by law.

(c) If the property is personal property and is discovered on or after April 1, or is real property discovered at any time, the property shall be added to the assessment roll then in preparation.

(2) If no tangible personal property tax return has been filed as required by law, including any extension which may have been granted for the filing of the return, the property appraiser is authorized to estimate from the best information available the assessment of the tangible personal property of a taxpayer who has not properly and timely filed his or her tax return. Such assessment shall be deemed to be prima facie correct, may be included on the tax roll, and taxes may be extended therefor on the tax roll in the same manner as for all other taxes.

**History.**—s. 38, ch. 4322, 1895; s. 5, ch. 4515, 1897; GS 538; s. 37, ch. 5596, 1907; RGS 737; CGL 945; s. 8, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 2, ch. 72-268; s. 1, ch. 77-102; s. 2, ch. 94-98; s. 1464, ch. 95-147; s. 2, ch. 2016-128.

**Note.**—Former s. 193.37; s. 197.031.

**193.074 Confidentiality of returns.**—All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property

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appraiser, the clerk of the circuit court, the department, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the provisions of s. 119.07(1).

**History.**—s. 10, ch. 79-334; s. 2, ch. 86-300; s. 21, ch. 88-119; s. 38, ch. 90-360; s. 16, ch. 93-132; s. 49, ch. 96-406; s. 47, ch. 2001-266; s. 11, ch. 2009-21.

**193.075 Mobile homes and recreational vehicles.**—

(1) A mobile home shall be taxed as real property if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed. A mobile home shall be considered permanently affixed if it is tied down and connected to the normal and usual utilities. However, this provision does not apply to a mobile home, or any appurtenance thereto, that is being held for display by a licensed mobile home dealer or a licensed mobile home manufacturer and that is not rented or occupied. A mobile home that is taxed as real property shall be issued an "RP" series sticker as provided in s. 320.0815.

(2) A mobile home that is not taxed as real property shall have a current license plate properly affixed as provided in s. 320.08(11). Any such mobile home without a current license plate properly affixed shall be presumed to be tangible personal property.

(3) A recreational vehicle shall be taxed as real property if the owner of the recreational vehicle is also the owner of the land on which the vehicle is permanently affixed. A recreational vehicle shall be considered permanently affixed if it is connected to the normal and usual utilities and if it is tied down or it is attached or affixed in such a way that it cannot be removed without material or substantial damage to the recreational vehicle. Except when the mode of attachment or affixation is such that the recreational vehicle cannot be removed without material or substantial damage to the recreational vehicle or the real property, the intent of the owner to make the recreational vehicle permanently affixed shall be determinative. A recreational vehicle that is taxed as real property must be issued an "RP" series sticker as provided in s. 320.0815.

(4) A recreational vehicle that is not taxed as real property must have a current license plate properly affixed as provided in s. 320.08(9). Any such recreational vehicle without a current license plate properly affixed is presumed to be tangible personal property.

**History.**—s. 2, ch. 74-234; s. 10, ch. 88-216; s. 1, ch. 91-241; s. 6, ch. 93-132; s. 30, ch. 94-353; s. 3, ch. 95-404; s. 1, ch. 98-139.

**193.077 Notice of new, rebuilt, or expanded property.**—

(1) The property appraiser shall accept notices on or before April 1 of the year in which the new or additional real or personal property acquired to establish a new business or facilitate a business expansion or restoration is first subject to assessment. The notice shall be filed, on a form prescribed by the department, by any business seeking to qualify for an enterprise zone property tax credit as a new or expanded business pursuant to s. 220.182(4).

(2) Upon determining that the real or tangible personal property described in the notice is in fact to be incorporated into a new, expanded, or rebuilt business, the property appraiser shall so affirm and certify on the face of the notice and shall provide a copy thereof to the new or expanded business and to the department.

(3) Within 10 days of extension or recertification of the assessment rolls pursuant to s. 193.122, whichever is later, the property appraiser shall forward to the department a list of all property of new businesses and property separately assessed as expansion-related or rebuilt property pursuant to s. 193.085(5)(a). The list shall include the name and address of the business to which the property is assessed, the assessed value of the property, the total taxes levied against the property, the identifying number for the property as shown on the assessment roll, and a description of the property.

(4) This section expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

**History.**—ss. 4, 10, ch. 80-248; s. 5, ch. 83-204; s. 25, ch. 84-356; s. 63, ch. 94-136; s. 25, ch. 2000-210; s. 14, ch. 2005-287.

**193.085 Listing all property.**—

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(1) The property appraiser shall ensure that all real property within his or her county is listed and valued on the real property assessment roll. Streets, roads, and highways which have been dedicated to or otherwise acquired by a municipality, county, or state agency need not, but may, be listed.

(2) The department shall promulgate such regulations and shall make available maps and mapping materials as it deems necessary to ensure that all real property within the state is listed and valued on the real property assessment rolls of the respective counties. In addition, individual property appraisers may use such other maps and materials as they deem expedient to accomplish the purpose of this section.

(3)(a) All forms of local government, special taxing districts, multicounty districts, and municipalities shall provide written annual notification to the several property appraisers of any and all real property owned by any of them so that ownership of all such property will be properly listed.

(b) Whenever real property is listed on the real property assessment rolls of the respective counties in the name of the State of Florida or any of its agencies, the listing shall not be changed in the absence of a recorded deed executed by the State of Florida or the state agency in whose name the property is listed. If, in preparing the assessment rolls, the several property appraisers within the state become aware of the existence of a recorded deed not executed by the state and purporting to convey real property listed on the assessment rolls as state-owned, the property appraiser shall immediately forward a copy of the recorded deed to the state agency in whose name the property is listed.

(4) The department shall promulgate such rules as are necessary to ensure that all railroad property of all types is properly listed in the appropriate county and shall submit the county railroad property assessments to the respective county property appraisers not later than June 1 in each year. However, in those counties in which railroad assessments are not completed by the department by June 1, for millage certification purposes, the property appraiser may utilize the prior year's values for such property.

(a) All railroad and railroad terminal companies maintaining tracks or other fixed assets in the state and subject to assessment under the unit-rule method of valuation shall make an annual return to the Department of Revenue. Such returns shall be filed on or before April 1 and shall be subject to the penalties provided in s. 193.072. The department shall make an annual assessment of all operating property of every description owned by or leased to such companies. Such assessment shall be apportioned to each county, based upon actual situs and, in the case of property not having situs in a particular county, shall be apportioned based upon track miles. Operating property shall include all property owned or leased to such company, including right-of-way presently in use by the company, track, switches, bridges, rolling stock, and other property directly related to the operation of the railroad. Nonoperating property shall include that portion of office buildings not used for operating purposes, property owned but not directly used for the operation of the railroad, and any other property that is not used for operating purposes. The department shall promulgate rules necessary to ensure that all operating property is properly valued, apportioned, and returned to the appropriate county, including rules governing the form and content of returns. The evaluation and assessment of utility property shall be the duty of the property appraiser.

(b)1. All private car and freight line and equipment companies operating rolling stock in Florida shall make an annual return to the Department of Revenue. The department shall make an annual determination of the average number of cars habitually present in Florida for each company and shall assess the just value thereof.

2. The department shall promulgate rules respecting the methods of determining the average number of cars habitually present in Florida, the form and content of returns, and such other rules as are necessary to ensure that the property of such companies is properly returned, valued, and apportioned to the state.

3. For purposes of this paragraph, "operating rolling stock in Florida" means having ownership of rolling stock which enters Florida.

4. The department shall apportion the assessed value of such property to the local taxing jurisdiction based upon the number of track miles and the location of mainline track of the respective railroads over which the rolling stock has been operated in the preceding year in each taxing jurisdiction. The situs for taxation of such property shall be according to the apportionment.

(c) The values determined by the department pursuant to this subsection shall be certified to the property appraisers when such values have been finalized by the department. Prior to finalizing the values to be certified to

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the property appraisers, the department shall provide an affected taxpayer a notice of a proposed assessment and an opportunity for informal conference before the executive director's designee. A property appraiser shall certify to the tax collector for collection the value as certified by the Department of Revenue.

(d) Returns and information from returns required to be made pursuant to this subsection may be shared pursuant to any formal agreement for the mutual exchange of information with another state.

(e) In any action challenging final assessed values certified by the department under this subsection, venue is in Leon County.

(5)(a) Beginning in the year in which a notice of new, rebuilt, or expanded property is accepted and certified pursuant to s. 193.077 and for the 4 years immediately thereafter, the property appraiser shall separately assess the prior existing property and the expansion-related or rebuilt property, if any, of each business having submitted said notice pursuant to s. 220.182(4). The listing of expansion-related or rebuilt property on an assessment roll shall immediately follow the listing of prior existing property for each expanded business. However, beginning with the first assessment roll following receipt of a notice from the department that a business has been disallowed an enterprise zone property tax credit, the property appraiser shall singly list the property of such business.

(b) This subsection expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

**History.**—s. 14, ch. 70-243; s. 2, ch. 73-228; s. 2, ch. 74-234; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 2, ch. 78-269; s. 11, ch. 79-334; s. 9, ch. 80-77; ss. 5, 10, ch. 80-248; s. 26, ch. 84-356; s. 6, ch. 89-174; s. 2, ch. 91-295; s. 64, ch. 94-136; s. 31, ch. 94-353; s. 1465, ch. 95-147; s. 24, ch. 2000-210; s. 15, ch. 2005-287; ss. 2, 10, ch. 2010-280; SJR 8-A, 2010 Special Session A.

**Note.**—Consolidation of provisions of former ss. 193.051, 193.061, 193.071, 193.113, 193.131, 193.272, 193.281.

**193.092 Assessment of property for back taxes.**—

(1) When it shall appear that any ad valorem tax might have been lawfully assessed or collected upon any property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of 3 years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized shall make the assessment of taxes upon such property in addition to the assessment of such property for the current year, and shall assess the same separately for such property as may have escaped taxation at and upon the basis of valuation applied to such property for the year or years in which it escaped taxation, noting distinctly the year when such property escaped taxation and such assessment shall have the same force and effect as it would have had if it had been made in the year in which the property shall have escaped taxation, and taxes shall be levied and collected thereon in like manner and together with taxes for the current year in which the assessment is made. But no property shall be assessed for more than 3 years' arrears of taxation, and all property so escaping taxation shall be subject to such taxation to be assessed in whomsoever's hands or possession the same may be found, except that property acquired by a bona fide purchaser who was without knowledge of the escaped taxation shall not be subject to assessment for taxes for any time prior to the time of such purchase, but it is the duty of the property appraiser making such assessment to serve upon the previous owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county. Any property owned by such previous owner which is situated in this state is subject to the lien of such assessment in the same manner as a recorded judgment. Before any such lien may be recorded, the owner so notified must be given 30 days to pay the taxes, penalties, and interest. Once recorded, such lien may be recorded in any county in this state and shall constitute a lien on any property of such person in such county in the same manner as a recorded judgment, and may be enforced by the tax collector using all remedies pertaining to same; provided, that the county property appraiser shall not assess any lot or parcel of land certified or sold to the state for any previous years unless such lot or parcel of lands so certified or sold shall be included in the list furnished by the Chief Financial Officer to the county property appraiser as provided by law; provided, if real or personal property be assessed for taxes, and because of litigation delay ensues and the assessment be held invalid the taxing authorities, may reassess such property within the time herein provided after the termination of such litigation; provided further, that personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same. As used in this subsection, the

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term “bona fide purchaser” means a purchaser for value, in good faith, before certification of such assessment of back taxes to the tax collector for collection.

(2) This section applies to property of every class and kind upon which ad valorem tax is assessable by any state or county authority under the laws of the state.

(3) Notwithstanding subsection (2), the provisions of this section requiring the retroactive assessment and collection of ad valorem taxes shall not apply if:

(a) The owner of a building, structure, or other improvement to land that has not been previously assessed complied with all necessary permitting requirements when the improvement was completed; or

(b) The owner of real property that has not been previously assessed voluntarily discloses to the property appraiser the existence of such property before January 1 of the year the property is first assessed. The disclosure must be made on a form provided by the property appraiser.

**History.**—s. 24, ch. 4322, 1895; s. 1, ch. 4663, 1899; GS 524; s. 22, ch. 5596, 1907; RGS 722; ss. 1, 2, ch. 9180, 1923; CGL 924-926; ss. 1, 2, ch. 69-55; s. 15, ch. 70-243; s. 1, ch. 77-102; s. 9, ch. 2002-18; s. 174, ch. 2003-261; s. 1, ch. 2010-66.

**Note.**—Former ss. 193.23, 193.151.

**193.102 Lands subject to tax sale certificates; assessments; taxes not extended.**—

(1) All lands against which the state holds any tax sale certificate or other lien for delinquent taxes assessed for the year 1940 or prior years shall be assessed for the year 1941 and subsequent years in like manner and to the same effect as if no taxes against such lands were delinquent. Should the taxes on such lands not be paid as required by law, such lands shall be sold or the title thereto shall become vested in the county, in like manner and to the same effect as other lands upon which taxes are delinquent are sold or the title to which becomes vested in the county under this law. Such lands upon which tax certificates have been issued to this state, when sold by the county for delinquent taxes, may be redeemed in the manner prescribed by this law; provided, that all tax certificates held by the state on such lands shall be redeemed at the same time, and the clerk of the circuit court shall disburse the money as provided by law. After the title to any such lands against which the state holds tax certificates becomes vested in the county as provided by this law, the county may sell such lands in the same manner as provided in s. 197.592, and the clerk of the circuit court shall distribute the proceeds from the sale of such lands by the board of county commissioners in proportion to the interest of the state, the several taxing units, and the funds of such units, as may be calculated by the clerk.

(2) The property appraisers, in making up their assessment rolls, shall place thereon the lands upon which taxes have been sold to the county, enter their valuation of the same on the roll, and extend the taxes upon such lands.

**History.**—s. 16, ch. 4322, 1895; GS 512; s. 13, ch. 5596, 1907; s. 1, ch. 6158, 1911; RGS 712, 769; CGL 914, 984; ss. 4, 23, ch. 20722, 1941; ss. 3½, 10, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 16, ch. 70-243; s. 32, ch. 73-332; s. 5, ch. 75-103; s. 1, ch. 77-102; s. 1, ch. 77-174; ss. 205, 221, ch. 85-342.

**Note.**—Former ss. 193.16, 193.171, 193.63, 193.181.

**193.114 Preparation of assessment rolls.**—

(1) Each property appraiser shall prepare the following assessment rolls:

(a) Real property assessment roll.

(b) Tangible personal property assessment roll. This roll shall include taxable household goods and all other taxable tangible personal property.

(2) The real property assessment roll shall include:

(a) The just value.

(b) The school district assessed value.

(c) The nonschool district assessed value.

(d) The difference between just value and school district and nonschool district assessed value for each statutory provision resulting in such difference.

(e) The school taxable value.

(f) The nonschool taxable value.

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(g) The amount of each exemption or discount causing a difference between assessed and taxable value.

(h) The value of new construction.

(i) The value of any deletion from the property causing a reduction in just value.

(j) Land characteristics, including the land use code, land value, type and number of land units, land square footage, and a code indicating a combination or splitting of parcels in the previous year.

(k) Improvement characteristics, including improvement quality, construction class, effective year built, actual year built, total living or usable area, number of buildings, number of residential units, value of special features, and a code indicating the type of special feature.

(l) The market area code, according to department guidelines.

(m) The neighborhood code, if used by the property appraiser.

(n) The recorded selling price, ownership transfer date, and official record book and page number or clerk instrument number for each deed or other instrument transferring ownership of real property and recorded or otherwise discovered during the period beginning 1 year before the assessment date and up to the date the assessment roll is submitted to the department. The assessment roll shall also include the basis for qualification or disqualification of a transfer as an arms-length transaction. A decision qualifying or disqualifying a transfer of property as an arms-length transaction must be recorded on the assessment roll within 3 months after the date that the deed or other transfer instrument is recorded or otherwise discovered. If, subsequent to the initial decision qualifying or disqualifying a transfer of property, the property appraiser obtains information indicating that the initial decision should be changed, the property appraiser may change the qualification decision and, if so, must document the reason for the change in a manner acceptable to the executive director or the executive director's designee. Sale or transfer data must be current on all tax rolls submitted to the department. As used in this paragraph, the term "ownership transfer date" means the date that the deed or other transfer instrument is signed and notarized or otherwise executed.

(o) A code indicating that the physical attributes of the property as of January 1 were significantly different than that at the time of the last sale.

(p) The name and address of the owner.

(q) The state of domicile of the owner.

(r) The physical address of the property.

(s) The United States Census Bureau block group in which the parcel is located.

(t) Information specific to the homestead property, including the social security number of the homestead applicant and the applicant's spouse, if any, and, for homestead property to which a homestead assessment difference was transferred in the previous year, the number of owners among whom the previous homestead was split, the assessment difference amount, the county of the previous homestead, the parcel identification number of the previous homestead, and the year in which the difference was transferred.

(u) A code indicating confidentiality pursuant to s. 119.071.

(v) The millage for each taxing authority levying tax on the property.

(w) For tax rolls submitted subsequent to the tax roll submitted pursuant to s. 193.1142, a notation indicating any change in just value from the tax roll initially submitted pursuant to s. 193.1142 and a code indicating the reason for the change.

(3) The tangible personal property roll shall include:

(a) An industry code.

(b) A code reference to tax returns showing the property.

(c) The just value of furniture, fixtures, and equipment.

(d) The just value of leasehold improvements.

(e) The assessed value.

(f) The difference between just value and school district and nonschool district assessed value for each statutory provision resulting in such difference.

(g) The taxable value.

(h) The amount of each exemption or discount causing a difference between assessed and taxable value.

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(i) The penalty rate.

(j) The name and address of the owner or fiduciary responsible for the payment of taxes on the property and an indicator of fiduciary capacity, as appropriate.

(k) The state of domicile of the owner.

(l) The physical address of the property.

(m) The millage for each taxing authority levying tax on the property.

(4)(a) For every change made to the assessed or taxable value of a parcel on an assessment roll subsequent to the mailing of the notice provided for in s. 200.069, the property appraiser shall document the reason for such change in the public records of the office of the property appraiser in a manner acceptable to the executive director or the executive director's designee.

(b) For every change that decreases the assessed or taxable value of a parcel on an assessment roll between the time of complete submission of the tax roll pursuant to s. 193.1142(3) and mailing of the notice provided for in s. 200.069, the property appraiser shall document the reason for such change in the public records of the office of the property appraiser in a manner acceptable to the executive director or the executive director's designee.

(c) Changes made by the value adjustment board are not subject to the requirements of this subsection.

(5) For proprietary purposes, including the furnishing or sale of copies of the tax roll under s. 119.07(1), the property appraiser is the custodian of the tax roll and the copies of it which are maintained by any state agency. The department or any state or local agency may use copies of the tax roll received by it for official purposes and shall permit inspection and examination thereof under s. 119.07(1), but is not required to furnish copies of the records. A social security number submitted under s. 196.011(1) is confidential and exempt from s. 24(a), Art. I of the State Constitution and the provisions of s. 119.07(1). A copy of documents containing the numbers furnished or sold by the property appraiser, except a copy furnished to the department, or a copy of documents containing social security numbers provided by the department or any state or local agency for inspection or examination by the public, must exclude those social security numbers.

(6) The rolls shall be prepared in the format and contain the data fields specified pursuant to s. 193.1142.

**History.**—s. 17, ch. 70-243; ss. 10, 21, ch. 73-172; s. 21, ch. 74-234; s. 1, ch. 77-102; ss. 45, 46, ch. 77-104; s. 8, ch. 80-274; s. 4, ch. 81-308; s. 5, ch. 82-208; ss. 19, 64, 80, ch. 82-226; s. 130, ch. 91-112; s. 2, ch. 93-132; s. 1, ch. 94-130; s. 1466, ch. 95-147; s. 50, ch. 96-406; s. 7, ch. 2006-312; s. 4, ch. 2007-339; s. 1, ch. 2008-173; s. 4, ch. 2012-193.

**Note.**—Consolidation of provisions of former ss. 193.041, 193.051, 193.061, 193.071, 193.113, 193.131, 193.251, 193.261, 193.361-193.381, 193.392.

**193.1142 Approval of assessment rolls.**—

(1)(a) Each assessment roll shall be submitted to the executive director of the Department of Revenue for review in the manner and form prescribed by the executive director on or before July 1. The department shall require the assessment roll submitted under this section to include the social security numbers required under s. 196.011. The roll submitted to the executive director need not include centrally assessed properties prior to approval under this subsection and subsection (2). Such review by the executive director shall be made to determine if the rolls meet all the appropriate requirements of law relating to form and just value. Upon approval of the rolls by the executive director, who, as used in this section includes his or her designee, the hearings required in s. 194.032 may be held.

(b) In addition to the other requirements of this chapter, the executive director is authorized to require that additional data be provided on the assessment roll submitted under this section and subsequent submissions of the tax roll. The executive director is authorized to notify property appraisers by April 1 of each year of the form and content of the assessment roll to be submitted on July 1.

(c) The roll shall be submitted in the compatible electronic format specified by the executive director. This format includes comma delimited, or other character delimited, flat file. Any property appraiser subject to hardship because of the specified format may provide written notice to the executive director by May 1 explaining the hardship and may be allowed to provide the roll in an alternative format at the executive director's discretion. If the tax roll submitted pursuant to this section is in an incompatible format or if its data field integrity is lacking in any respect, such failure shall operate as an automatic extension of time to submit the roll. Additional parcel-

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level data that may be required by the executive director include, but are not limited to codes, fields, and data pertaining to:

1. The elements set forth in s. 193.114; and

2. Property characteristics, including location and other legal, physical, and economic characteristics regarding the property, including, but not limited to, parcel-level geographical information system information.

(2)(a) The executive director or his or her designee shall disapprove all or part of any assessment roll of any county not in full compliance with the administrative order of the executive director issued pursuant to the notice called for in s. 195.097 and shall otherwise disapprove all or any part of any roll not assessed in substantial compliance with law, as disclosed during the investigation by the department, including, but not limited to, audits by the Department of Revenue and Auditor General establishing noncompliance.

(b) If an assessment roll is disapproved under paragraph (a) and the reason for the disapproval is noncompliance due to material mistakes of fact relating to physical characteristics of property, the executive director or his or her designee may issue an administrative order as provided in s. 195.097. In such event, the millage adoption process, extension of tax rolls, and tax collection shall proceed and the interim roll procedures of s. 193.1145 shall not be invoked.

(c) For purposes of this subsection, “material mistakes of fact” means any and all mistakes of fact relating to physical characteristics of property that, if included in the assessment of property, would result in a deviation or change in assessed value of the parcel of property.

(3) An assessment roll shall be deemed to be approved if the department has not taken action to disapprove it within 50 days of a complete submission of the rolls by the property appraiser, except as provided in subsection (4). A submission shall be deemed complete if it meets all applicable provisions of law as to form and content; includes, or is accompanied by, all information which was lawfully requested by the department prior to the initial submission date; and is not an interim roll. The department shall notify the property appraiser of an incomplete submission not later than 10 days after receipt thereof.

(4) The department is authorized to issue a review notice to a county property appraiser within 30 days of a complete submission of the assessment rolls of that county. Such review notice shall be in writing; shall set forth with specificity all reasons relied on by the department as a basis for issuing the review notice; shall specify all supporting data, surveys, and statistical compilations for review; and shall set forth with particularity remedial steps which the department requires the property appraiser to take in order to obtain approval of the tax roll. In the event that such notice is issued:

(a) The time period of 50 days specified in subsection (3) shall be 60 days after the issuance of the notice.

(b) The notice required pursuant to s. 200.069 shall not be issued prior to approval of an assessment roll for the county or prior to institution of interim roll procedures under s. 193.1145.

(5) Whenever an assessment roll submitted to the department is returned to the property appraiser for additional evaluation, a review notice shall be issued for the express purpose of the adjustment provided in s. 200.065(11).

(6) In no event shall a formal determination by the department pursuant to this section be made later than 90 days after the first complete submission of the rolls by the county property appraiser.

(7) Approval or disapproval of all or any part of a roll shall not be deemed to be final until the procedures instituted under s. 195.092 have been exhausted.

(8) Chapter 120 does not apply to this section.

**History.**—s. 5, ch. 82-208; ss. 19, 80, ch. 82-226; s. 54, ch. 83-217; s. 20, ch. 83-349; s. 1, ch. 84-164; s. 3, ch. 86-190; s. 1, ch. 87-318; s. 131, ch. 91-112; s. 3, ch. 93-132; ss. 43, 73, ch. 94-353; s. 31, ch. 95-145; s. 1467, ch. 95-147; s. 5, ch. 2007-321; s. 2, ch. 2008-173.

**193.1145 Interim assessment rolls.**—

(1) It is the intent of the Legislature that no undue restraint shall be placed on the ability of local government to finance its activities in a timely and orderly fashion, and, further, that just and uniform valuations for all parcels shall not be frustrated if the attainment of such valuations necessitates delaying a final determination of

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assessments beyond the normal 12-month period. Toward these ends, the Legislature hereby provides a method for levying and collecting ad valorem taxes which may be used if:

(a) The property appraiser has been granted an extension of time for completion of the assessment of all property pursuant to s. 193.023(1) beyond September 1 or has not certified value pursuant to s. 200.065(1) by August 1; or

(b) All or part of the assessment roll of a county is disapproved pursuant to s. 193.1142;

provided a local taxing authority brings a civil action in the circuit court for the county in which relief is sought and the court finds that there will be a substantial delay in the final determination of assessments, which delay will substantially impair the ability of the authority to finance its activities. Such action may be filed on or after July 1. Upon such a determination, the court may order the use of the last approved roll, adjusted to the extent practicable to reflect additions, deletions, and changes in ownership, parcel configuration, and exempt status, as the interim roll when the action was filed under paragraph (a), or may order the use of the current roll as the interim roll when the action was filed under paragraph (b). When the action was filed under paragraph (a), certification of value pursuant to s. 200.065(1) shall be made immediately following such determination by the court. When the action was filed under paragraph (b), the procedures required under s. 200.065 shall continue based on the original certification of value. However, if the property appraiser recommends that interim roll procedures be instituted and the governing body of the county does not object and if conditions of paragraph (a) or paragraph (b) apply, such civil action shall not be required. The property appraiser shall notify the department and each taxing authority within his or her jurisdiction prior to instituting interim roll procedures without a court order.

(2) The taxing authority shall, in its name as plaintiff, initiate action for relief under this section by filing an "Application for Implementation of an Interim Assessment Roll" in the circuit court. The property appraiser and the executive director of the Department of Revenue shall be named as the defendants when the action is filed. The court shall set an immediate hearing and give the case priority over other pending cases. When the disapproval of all or any part of the assessment roll is contested, the court shall sever this issue from the proceeding and transfer it to the Circuit Court in and for Leon County for a determination.

(3)(a) If the court so finds as provided in subsection (1), the property appraiser shall prepare and extend taxes against the interim assessment roll. The extension of taxes shall occur within 60 days of disapproval of all or part of the assessment roll, or by November 15, in the event that the assessment roll has not been submitted to the department pursuant to s. 193.1142; however, in no event shall taxes be extended before the hearing and notice procedures required in s. 200.065 have been completed.

(b) Upon authorization to use an interim assessment roll, the property appraiser shall so advise the taxing units within his or her jurisdiction. The millage rates adopted at the hearings held pursuant to s. 200.065(2)(d) shall be considered provisional millage rates and shall apply only to valuations shown on the interim assessment roll. Such taxing units shall certify such rates to the property appraiser.

(4) All provisions of law applicable to millage rates and limitations thereon shall apply to provisional millage rates, except as otherwise provided in this section.

(5) Upon extension, the property appraiser shall certify the interim assessment roll to the tax collector and shall notify the tax collector and the clerk of the circuit court that such roll is provisional and that ultimate tax liability on the property is subject to a final determination. The tax collector and the clerk of the circuit court shall be responsible for posting notices to this effect in conspicuous places within their respective offices. The property appraiser shall ensure that such notice appears conspicuously on the printed interim roll.

(6) The tax collector shall prepare and mail provisional tax bills to the taxpayers based upon interim assessments and provisional millage rates, which bills shall be subject to all provisions of law applicable to the collection and distribution of ad valorem taxes, except as otherwise provided in this section. These bills shall be clearly marked "PROVISIONAL—THIS IS NOT A FINAL TAX BILL"; shall be accompanied by an explanation of the possibility of a supplemental tax bill or refund based upon the tax roll as finally approved, pursuant to subsection (7); and shall further explain that the total amount of taxes collected by each taxing unit shall not be increased when the roll is finally approved.

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(7) Upon approval of the assessment roll by the executive director, and after certification of the assessment roll by the value adjustment board pursuant to s. 193.122(2), the property appraiser shall, subject to the provisions of subsection (11), recompute each provisional millage rate of the taxing units within his or her jurisdiction, so that the total taxes levied when each recomputed rate is applied against the approved roll are equal to those of the corresponding provisional rate applied against the interim roll. Each recomputed rate shall be considered the official millage levy of the taxing unit for the tax year in question. The property appraiser shall notify each taxing unit as to the value of the recomputed or official millage rate.

(8)(a) Upon recomputation, the property appraiser shall extend taxes against the approved roll and shall prepare a reconciliation between the interim and approved assessment rolls. For each parcel, the reconciliation shall show provisional taxes levied, final taxes levied, and the difference thereof.

(b) The property appraiser shall certify such reconciliation to the tax collector, unless otherwise authorized pursuant to paragraph (d), which reconciliation shall contain sufficient information for the preparation of supplemental bills or refunds.

(c) Upon receipt of such reconciliation, the tax collector shall prepare and mail to the taxpayers either supplemental bills, due and collectible in the same manner as bills issued pursuant to chapter 197, or refunds in the form of county warrants. However, no bill shall be issued or considered due and owing, and no refund shall be authorized, if the amount thereof is less than $10. Approval by the Department of Revenue shall not be required for refunds made pursuant to this section.

(d) However, the court, upon a determination that the amount to be supplementally billed and refunded is insufficient to warrant a separate billing or that the length of time until the next regular issuance of ad valorem tax bills is similarly insufficient, may authorize the tax collector to withhold issuance of supplemental bills and refunds until issuance of the next year's tax bills. At that time, the amount due or the refund amount shall be added to or subtracted from the amount of current taxes due on each parcel, provided that the current tax and the prior year's tax or refund shall be shown separately on the bill. Alternatively, at the option of the tax collector, separate bills and statements of refund may be issued.

(e) Any tax bill showing supplemental taxes due or a refund due, or any warrant issued as a refund, shall be accompanied by an explanatory notice in substantially the following form:

NOTICE OF SUPPLEMENTAL BILL
OR REFUND
OF PROPERTY TAXES

Property taxes for _(year)_ were based upon a temporary assessment roll, to allow time for a more accurate determination of property values. Reassessment work has now been completed and final tax liability for _(year)_ has been recomputed for each taxpayer. BY LAW, THE REASSESSMENT OF PROPERTY AND RECOMPUTATION OF TAXES WILL NOT INCREASE THE TOTAL AMOUNT OF TAXES COLLECTED BY EACH LOCAL GOVERNMENT. However, if your property was relatively underassessed on the temporary roll, you owe additional taxes. If your property was relatively overassessed, you will receive a partial refund of taxes. If you have questions concerning this matter, please contact your county tax collector's office.

(9) Any person objecting to an interim assessment placed on any property taxable to him or her may request an informal conference with the property appraiser, pursuant to s. 194.011(2), or may seek judicial review of the interim property assessment. However, petitions to the value adjustment board shall not be filed or heard with respect to interim assessments. All provisions of law applicable to objections to assessments shall apply to the final approved assessment roll. The department shall adopt by rule procedures for notifying taxpayers of their final approved assessments and of the time period for filing petitions.

(10)(a) Delinquent provisional taxes on real property shall not be subject to the delinquent tax provisions of chapter 197 until such time as the assessment roll is reconciled, supplemental bills are issued, and taxes on the property remain delinquent. However, delinquent provisional taxes on real property shall accrue interest at an annual rate of 12 percent, computed in accordance with s. 197.172. Interest accrued on provisional taxes shall be

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added to the taxes, interest, costs, and charges due with respect to final taxes levied. When interest begins to accrue on delinquent provisional taxes, the property owner shall be given notice by first-class mail.

(b) Delinquent provisional taxes on personal property shall be subject to all applicable provisions of chapter 197.

(11) A recomputation of millage rates under this section shall not reduce or increase the total of all revenues available from state or local sources to a school district or to a unit of local government as defined in part II of chapter 218. Notwithstanding the provisions of subsection (7), the provisional millage rates levied by a multicounty taxing authority against an interim roll shall not be recomputed, but shall be considered the official or final tax rate for the year in question; and the interim roll shall be considered the final roll for each such taxing authority. Notwithstanding the provisions of subsection (7), millage rates adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution shall not be recomputed.

(12) The property appraiser shall follow a reasonable and expeditious timetable in completing a roll in compliance with the requirements of law. In the event of noncompliance, the executive director may seek any judicial or administrative remedy available to him or her under law to secure such compliance.

(13) For the purpose of this section, the terms “roll,” “assessment roll,” and “interim assessment roll” mean the rolls for real, personal, and centrally assessed property.

(14) Chapter 120 shall not apply to this section.

**History.**—s. 1, ch. 80-261; s. 5, ch. 80-274; s. 7, ch. 82-208; ss. 2, 21, 34, 80, ch. 82-226; ss. 206, 221, ch. 85-342; s. 139, ch. 91-112; s. 973, ch. 95-147; s. 28, ch. 95-280.

**193.1147 Performance review panel.**—If there occurs within any 4-year period the final disapproval of all or any part of a county roll pursuant to s. 193.1142 for 2 separate years, the Governor shall appoint a three-member performance review panel. The panel shall investigate the circumstances surrounding such disapprovals and the general performance of the property appraiser. If the panel finds unsatisfactory performance, the property appraiser shall be ineligible for the designation and special qualification salary provided in s. 145.10(2). Within not less than 12 months, the property appraiser may requalify therefor, provided he or she successfully recompletes the courses and examinations applicable to new candidates.

**History.**—s. 8, ch. 80-377; s. 8, ch. 82-208; ss. 22, 80, ch. 82-226; s. 974, ch. 95-147.

**193.116 Municipal assessment rolls.**—

(1) The county property appraiser shall prepare an assessment roll for every municipality in the county. The value adjustment board shall give notice to the chief executive officer of each municipality whenever an appeal has been taken with respect to property located within that municipality. Representatives of that municipality shall be given an opportunity to be heard at such hearing. The property appraiser shall deliver each assessment roll to the appropriate municipality in the same manner as assessment rolls are delivered to the county commissions. The governing body of the municipality shall have 30 days to certify all millages to the county property appraiser. The county property appraiser shall extend the millage against the municipal assessment roll. The property appraiser shall certify the municipal tax roll to the county tax collector for collection in the same manner as the county tax roll is certified for collection. The property appraiser shall deliver to each municipality a copy of the municipal tax roll.

(2) The county tax collector shall collect all ad valorem taxes for municipalities within the county. He or she shall collect municipal taxes in the same manner as county taxes.

**History.**—s. 3, ch. 74-234; s. 1, ch. 76-133; s. 2, ch. 76-140; ss. 207, 221, ch. 85-342; s. 1, ch. 90-343; s. 140, ch. 91-112; s. 975, ch. 95-147.

**193.122 Certificates of value adjustment board and property appraiser; extensions on the assessment rolls.**—

(1) The value adjustment board shall certify each assessment roll upon order of the board of county commissioners pursuant to s. 197.323, if applicable, and again after all hearings required by s. 194.032 have been held. These certificates shall be attached to each roll as required by the Department of Revenue. Notwithstanding an extension of the roll by the board of county commissioners pursuant to s. 197.323, the value adjustment board

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must complete all hearings required by s. 194.032 and certify the assessment roll to the property appraiser by June 1 following the assessment year. The June 1 requirement shall be extended until December 1 in each year in which the number of petitions filed increased by more than 10 percent over the previous year.

(2) After the first certification of the tax rolls by the value adjustment board, the property appraiser shall make all required extensions on the rolls to show the tax attributable to all taxable property. Upon completion of these extensions, and upon satisfying himself or herself that all property is properly taxed, the property appraiser shall certify the tax rolls and shall within 1 week thereafter publish notice of the date and fact of extension and certification on the property appraiser's website and in a periodical meeting the requirements of s. 50.011 and publicly display a notice of the date of certification in the office of the property appraiser. The property appraiser shall also supply notice of the date of the certification to any taxpayer who requests one in writing. These certificates and notices shall be made in the form required by the department and attached to each roll as required by the department by rule.

(3) When the tax rolls have been extended pursuant to s. 197.323, the second certification of the value adjustment board shall reflect all changes made by the board together with any adjustments or changes made by the property appraiser. Upon such certification, the property appraiser shall recertify the tax rolls with all changes to the collector and shall provide public notice of the date and fact of recertification pursuant to subsection (2).

(4) An appeal of a value adjustment board decision pursuant to s. 194.036(1)(a) or (b) by the property appraiser shall be filed prior to extension of the tax roll under subsection (2) or, if the roll was extended pursuant to s. 197.323, within 30 days of recertification under subsection (3). The roll may be certified by the property appraiser prior to an appeal being filed pursuant to s. 194.036(1)(c), but such appeal shall be filed within 20 days after receipt of the decision of the department relative to further judicial proceedings.

(5) The department shall promulgate regulations to ensure that copies of the tax rolls are distributed to the appropriate officials and maintained as part of their records for as long as is necessary to provide for the orderly collection of taxes. Such regulations shall also provide for the maintenance of the necessary permanent copies of such rolls.

(6) The property appraiser may extend millage as required in subsection (2) against the assessment roll and certify it to the tax collector even though there are parcels subject to judicial or administrative review pursuant to s. 194.036(1). Such parcels shall be certified and have taxes extended against them in accordance with the decisions of the value adjustment board or the property appraiser's valuation if the roll has been extended pursuant to s. 197.323, except that payment of such taxes by the taxpayer shall not preclude the taxpayer from being required to pay additional taxes in accordance with final judicial determination of an appeal filed pursuant to s. 194.036(1).

(7) Each assessment roll shall be submitted to the executive director of the department in the manner and form prescribed by the department within 1 week after extension and certification to the tax collector and again after recertification to the tax collector, if applicable. When the provisions of s. 193.1145 are exercised, the requirements of this subsection shall apply upon extension pursuant to s. 193.1145(3)(a) and again upon reconciliation pursuant to s. 193.1145(8)(a).

**History.**—s. 18, ch. 70-243; s. 1, ch. 71-371; s. 9, ch. 73-172; s. 4, ch. 74-234; s. 2, ch. 76-133; s. 5, ch. 76-234; s. 1, ch. 77-174; s. 14, ch. 82-226; s. 2, ch. 82-388; ss. 3, 26, ch. 83-204; s. 55, ch. 83-217; ss. 208, 221, ch. 85-342; s. 141, ch. 91-112; s. 976, ch. 95-147; s. 3, ch. 2013-72; s. 3, ch. 2016-128.

**Note.**—Consolidation of provisions of former ss. 193.401-193.421.

**193.132 Prior assessments validated.**—Every assessment of taxes heretofore made on property of any kind, when such assessment has been actually made in the name of the true owner, is hereby validated. No tax assessment or tax levy made upon any such property shall be held invalid by reason of or because of the subsequent amendment in the law.

**History.**—s. 1, ch. 10023, 1925; CGL 927; ss. 1, 2, ch. 69-55; s. 19, ch. 70-243.

**Note.**—Former ss. 192.32, 193.341.

**193.133 Effect of mortgage fraud on property assessments.**—

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(1) Upon the finding of probable cause of any person for the crime of mortgage fraud, as defined in s. 817.545, or any other fraud involving real property that may have artificially inflated or could artificially inflate the value of property affected by such fraud, the arresting agency shall promptly notify the property appraiser of the county in which such property or properties are located of the nature of the alleged fraud and the property or properties affected. If notification as required in this section would jeopardize or negatively impact a continuing investigation, notification may be delayed until such time as notice may be made without such effect.

(2) The property appraiser may adjust the assessment of any affected real property.

(3) Upon a conviction of fraud as defined in subsection (1), the property appraiser of the county in which such property or properties are located shall, if necessary, reassess such property or properties affected by such fraud.

**History.**—s. 1, ch. 2008-80.

**193.155 Homestead assessments.**—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(1) Beginning in 1995, or the year following the year the property receives homestead exemption, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment shall not exceed the lower of the following:

(a) Three percent of the assessed value of the property for the prior year; or

(b) The percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) If the assessed value of the property as calculated under subsection (1) exceeds the just value, the assessed value of the property shall be lowered to the just value of the property.

(3)(a) Except as provided in this subsection or subsection (8), property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except if:

1. Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

a. The transfer of title is to correct an error;

b. The transfer is between legal and equitable title or equitable and equitable title and no additional person applies for a homestead exemption on the property;

c. The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if any individual who is additionally named as a grantee applies for a homestead exemption on the property, the application is considered a change of ownership; or

d. The person is a lessee entitled to the homestead exemption under s. 196.041(1).

2. Legal or equitable title is changed or transferred between husband and wife, including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage;

3. The transfer occurs by operation of law to the surviving spouse or minor child or children under s. 732.401; or

4. Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and who is legally or naturally dependent upon the owner.

(b) For purposes of this subsection, a leasehold interest that qualifies for the homestead exemption under s. 196.031 or s. 196.041 shall be treated as an equitable interest in the property.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

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(b) Changes, additions, or improvements that replace all or a portion of homestead property damaged or destroyed by misfortune or calamity shall not increase the homestead property's assessed value when the square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction. Additionally, the homestead property's assessed value shall not increase if the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1). The homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet. Homestead property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the homestead property's total square footage before the damage or destruction shall be assessed pursuant to subsection (5). This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the homestead.

(c) Changes, additions, or improvements that replace all or a portion of real property that was damaged or destroyed by misfortune or calamity shall be assessed upon substantial completion as if such damage or destruction had not occurred and in accordance with paragraph (b) if the owner of such property:

1. Was permanently residing on such property when the damage or destruction occurred;
2. Was not entitled to receive homestead exemption on such property as of January 1 of that year; and
3. Applies for and receives homestead exemption on such property the following year.

(d) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the homestead property by the owner or by an owner association, which improvements directly benefit the homestead property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefiting from the improvement.

(5) When property is destroyed or removed and not replaced, the assessed value of the parcel shall be reduced by the assessed value attributable to the destroyed or removed property.

(6) Only property that receives a homestead exemption is subject to this section. No portion of property that is assessed solely on the basis of character or use pursuant to s. 193.461 or s. 193.501, or assessed pursuant to s. 193.505, is subject to this section. When property is assessed under s. 193.461, s. 193.501, or s. 193.505 and contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately, pursuant to s. 193.011, for the assessment to be subject to the limitation in this section.

(7) If a person received a homestead exemption limited to that person's proportionate interest in real property, the provisions of this section apply only to that interest.

[1](8) Property assessed under this section shall be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of either of the 2 immediately preceding years. A person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007, and only if this subsection applies retroactive to January 1, 2008. For purposes of this subsection, a husband and wife who owned and both permanently resided on a previous homestead shall each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(a) If the just value of the new homestead as of January 1 is greater than or equal to the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the immediate prior

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homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this section.

(b) If the just value of the new homestead as of January 1 is less than the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the immediate prior homestead and multiplied by the assessed value of the immediate prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this paragraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this section.

(c) If two or more persons who have each received a homestead exemption as of January 1 of either of the 2 immediately preceding years and who would otherwise be eligible to have a new homestead property assessed under this subsection establish a single new homestead, the reduction from just value is limited to the higher of the difference between the just value and the assessed value of either of the prior eligible homesteads as of January 1 of the year in which either of the eligible prior homesteads was abandoned, but may not exceed $500,000.

(d) If two or more persons abandon jointly owned and jointly titled property that received a homestead exemption as of January 1 of either of the 2 immediately preceding years, and one or more such persons who were entitled to and received a homestead exemption on the abandoned property establish a new homestead that would otherwise be eligible for assessment under this subsection, each such person establishing a new homestead is entitled to a reduction from just value for the new homestead equal to the just value of the prior homestead minus the assessed value of the prior homestead divided by the number of owners of the prior homestead who received a homestead exemption, unless the title of the property contains specific ownership shares, in which case the share of reduction from just value shall be proportionate to the ownership share. 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). To qualify to make such a designation, the husband and wife must be married on the date that the jointly owned property is abandoned. In calculating the assessment reduction to be transferred from a prior homestead that has an assessment reduction for living quarters of parents or grandparents pursuant to s. 193.703, the value calculated pursuant to s. 193.703(6) must first be added back to the assessed value of the prior homestead. The total reduction from just value for all new homesteads established under this paragraph may not exceed $500,000. There shall be no reduction from just value of any new homestead unless the prior homestead is reassessed at just value or is reassessed under this subsection as of January 1 after the abandonment occurs.

(e) If one or more persons who previously owned a single homestead and each received the homestead exemption qualify for a new homestead where all persons who qualify for homestead exemption in the new homestead also qualified for homestead exemption in the previous homestead without an additional person qualifying for homestead exemption in the new homestead, the reduction in just value shall be calculated pursuant to paragraph (a) or paragraph (b), without application of paragraph (c) or paragraph (d).

(f) A husband and wife abandoning jointly titled property who wish to designate the ownership share to be attributed to each person for purposes of paragraph (d) must file a form provided by the department with the property appraiser in the county where such property is located. The form must include a sworn statement by each person designating the ownership share to be attributed to each person for purposes of paragraph (d) and must be filed prior to either person filing the form required under paragraph (h) to have a parcel of property assessed under this subsection. Such a designation, once filed with the property appraiser, is irrevocable.

(g) For purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her homestead even though it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. This notification must be in writing and delivered at the same time as or before timely filing a new application for homestead exemption on the property.

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(h) In order to have his or her homestead property assessed under this subsection, a person must file a form provided by the department as an attachment to the application for homestead exemption, including a copy of the form required to be filed under paragraph (f), if applicable. The form, which must include a sworn statement attesting to the applicant's entitlement to assessment under this subsection, shall be considered sufficient documentation for applying for assessment under this subsection. The department shall require by rule that the required form be submitted with the application for homestead exemption under the timeframes and processes set forth in chapter 196 to the extent practicable.

(i)1. If the previous homestead was located in a different county than the new homestead, the property appraiser in the county where the new homestead is located must transmit a copy of the completed form together with a completed application for homestead exemption to the property appraiser in the county where the previous homestead was located. If the previous homesteads of applicants for transfer were in more than one county, each applicant from a different county must submit a separate form.

2. The property appraiser in the county where the previous homestead was located must return information to the property appraiser in the county where the new homestead is located by April 1 or within 2 weeks after receipt of the completed application from that property appraiser, whichever is later. As part of the information returned, the property appraiser in the county where the previous homestead was located must provide sufficient information concerning the previous homestead to allow the property appraiser in the county where the new homestead is located to calculate the amount of the assessment limitation difference which may be transferred and must certify whether the previous homestead was abandoned and has been or will be reassessed at just value or reassessed according to the provisions of this subsection as of the January 1 following its abandonment.

3. Based on the information provided on the form from the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located shall calculate the amount of the assessment limitation difference which may be transferred and apply the difference to the January 1 assessment of the new homestead.

4. All property appraisers having information-sharing agreements with the department are authorized to share confidential tax information with each other pursuant to s. 195.084, including social security numbers and linked information on the forms provided pursuant to this section.

5. The transfer of any limitation is not final until any values on the assessment roll on which the transfer is based are final. If such values are final after tax notice bills have been sent, the property appraiser shall make appropriate corrections and a corrected tax notice bill shall be sent. Any values that are under administrative or judicial review shall be noticed to the tribunal or court for accelerated hearing and resolution so that the intent of this subsection may be carried out.

6. If the property appraiser in the county where the previous homestead was located has not provided information sufficient to identify the previous homestead and the assessment limitation difference is transferable, the taxpayer may file an action in circuit court in that county seeking to establish that the property appraiser must provide such information.

7. If the information from the property appraiser in the county where the previous homestead was located is provided after the procedures in this section are exercised, the property appraiser in the county where the new homestead is located shall make appropriate corrections and a corrected tax notice and tax bill shall be sent.

8. This subsection does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

9. The property appraiser in the county where the new homestead is located shall promptly notify a taxpayer if the information received, or available, is insufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable. Such notification shall be sent on or before July 1 as specified in s. 196.151.

10. The taxpayer may correspond with the property appraiser in the county where the previous homestead was located to further seek to identify the homestead and the amount of the assessment limitation difference which is transferable.

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11. If the property appraiser in the county where the previous homestead was located supplies sufficient information to the property appraiser in the county where the new homestead is located, such information shall be considered timely if provided in time for inclusion on the notice of proposed property taxes sent pursuant to ss. 194.011 and 200.065(1).

12. If the property appraiser has not received information sufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable before mailing the notice of proposed property taxes, the taxpayer may file a petition with the value adjustment board in the county where the new homestead is located.

(j) Any person who is qualified to have his or her property assessed under this subsection and who fails to file an application by March 1 may file an application for assessment under this subsection and may, pursuant to s. 194.011(3), file a petition with the value adjustment board requesting that an assessment under this subsection be granted. Such petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, such person must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the assessment under this subsection and demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting the assessment, the property appraiser or the value adjustment board may grant an assessment under this subsection. For the 2008 assessments, all petitioners for assessment under this subsection shall be considered to have demonstrated particular extenuating circumstances.

(k) Any person who is qualified to have his or her property assessed under this subsection and who fails to timely file an application for his or her new homestead in the first year following eligibility may file in a subsequent year. The assessment reduction shall be applied to assessed value in the year the transfer is first approved, and refunds of tax may not be made for previous years.

(l) The property appraisers of the state shall, as soon as practicable after March 1 of each year and on or before July 1 of that year, carefully consider all applications for assessment under this subsection which have been filed in their respective offices on or before March 1 of that year. If, upon investigation, the property appraiser finds that the applicant is entitled to assessment under this subsection, the property appraiser shall make such entries upon the tax rolls of the county as are necessary to allow the assessment. If, after due consideration, the property appraiser finds that the applicant is not entitled to the assessment under this subsection, the property appraiser shall immediately prepare a notice of such disapproval, giving his or her reasons therefor, and a copy of the notice must be served upon the applicant by the property appraiser by personal delivery or by registered mail to the post office address given by the applicant. The applicant may appeal the decision of the property appraiser refusing to allow the assessment under this subsection to the value adjustment board, and the board shall review the application and evidence presented to the property appraiser upon which the applicant based the claim and hear the applicant in person or by agent on behalf of his or her right to such assessment. Such appeal shall be heard by an attorney special magistrate if the value adjustment board uses special magistrates. The value adjustment board shall reverse the decision of the property appraiser in the cause and grant assessment under this subsection to the applicant if, in its judgment, the applicant is entitled to the assessment or shall affirm the decision of the property appraiser. The action of the board is final in the cause unless the applicant, within 60 days following the date of refusal of the application by the board, files in the circuit court of the county in which the homestead is located a proceeding against the property appraiser for a declaratory judgment as is provided under chapter 86 or other appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or value adjustment board or to file any paper other than the application as provided in this subsection does not constitute a bar to or defense in the proceedings.

(m) For purposes of receiving an assessment reduction pursuant to this subsection, an owner of a 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

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following the named tropical storm or hurricane. The election provided for in this paragraph 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 paragraph shall apply to homestead property damaged or destroyed on or after January 1, 2017.

(9) Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:

(a) If errors are made in arriving at any assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value must be recalculated for every such year, including the year in which the mistake occurred.

(b) If changes, additions, or improvements are not assessed at just value as of the first January 1 after they were substantially completed, the property appraiser shall determine the just value for such changes, additions, or improvements for the year they were substantially completed. Assessments for subsequent years shall be corrected, applying this section if applicable.

(c) If back taxes are due pursuant to s. 193.092, the corrections made pursuant to this subsection shall be used to calculate such back taxes.

(10) If the property appraiser determines that for any year or years within the prior 10 years a person who was not entitled to the homestead property assessment limitation granted under this section was granted the homestead property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, when a person entitled to exemption pursuant to s. 196.031 inadvertently receives the limitation pursuant to this section following a change of ownership, the assessment of such property must be corrected as provided in paragraph (9)(a), and the person need not pay the unpaid taxes, penalties, or interest. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.

**History.**—s. 62, ch. 94-353; s. 5, ch. 2001-137; s. 1, ch. 2006-38; s. 1, ch. 2006-311; s. 5, ch. 2007-339; s. 3, ch. 2008-173; s. 1, ch. 2010-109; s. 5, ch. 2012-193; s. 4, ch. 2013-72; s. 2, ch. 2013-77; s. 5, ch. 2016-128; s. 9, ch. 2018-118; s. 1, ch. 2020-175.

[1]**Note.**—

A. Section 3, ch. 2020-175, provides that "[t]his act shall take effect on the effective date of the amendment to the State Constitution proposed by HJR 369 or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the State Constitution is approved at the general election held in November 2020 or at an earlier special election specifically authorized by law for that purpose." If such an amendment is approved, subsection (8) is amended by s. 1, ch. 2020-175, to read:

(8) Property assessed under this section shall be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of any of the 3 immediately preceding years. For purposes of this subsection, a husband and wife who owned and both permanently resided on a previous homestead shall each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(a) If the just value of the new homestead as of January 1 is greater than or equal to the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the immediate prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this section.

(b) If the just value of the new homestead as of January 1 is less than the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the immediate prior homestead and multiplied by the assessed value of the immediate prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this paragraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this section.

(c) If two or more persons who have each received a homestead exemption as of January 1 of any of the 3 immediately preceding years and who would otherwise be eligible to have a new homestead property assessed under this subsection establish a single new homestead, the reduction from just value is limited to the higher of the difference between the just value and the assessed value of either of the prior

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eligible homesteads as of January 1 of the year in which either of the eligible prior homesteads was abandoned, but may not exceed $500,000.

(d) If two or more persons abandon jointly owned and jointly titled property that received a homestead exemption as of January 1 of any of the 3 immediately preceding years, and one or more such persons who were entitled to and received a homestead exemption on the abandoned property establish a new homestead that would otherwise be eligible for assessment under this subsection, each such person establishing a new homestead is entitled to a reduction from just value for the new homestead equal to the just value of the prior homestead minus the assessed value of the prior homestead divided by the number of owners of the prior homestead who received a homestead exemption, unless the title of the property contains specific ownership shares, in which case the share of reduction from just value shall be proportionate to the ownership share. 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). To qualify to make such a designation, the husband and wife must be married on the date that the jointly owned property is abandoned. In calculating the assessment reduction to be transferred from a prior homestead that has an assessment reduction for living quarters of parents or grandparents pursuant to s. 193.703, the value calculated pursuant to s. 193.703(6) must first be added back to the assessed value of the prior homestead. The total reduction from just value for all new homesteads established under this paragraph may not exceed $500,000. There shall be no reduction from just value of any new homestead unless the prior homestead is reassessed at just value or is reassessed under this subsection as of January 1 after the abandonment occurs.

(e) If one or more persons who previously owned a single homestead and each received the homestead exemption qualify for a new homestead where all persons who qualify for homestead exemption in the new homestead also qualified for homestead exemption in the previous homestead without an additional person qualifying for homestead exemption in the new homestead, the reduction in just value shall be calculated pursuant to paragraph (a) or paragraph (b), without application of paragraph (c) or paragraph (d).

(f) A husband and wife abandoning jointly titled property who wish to designate the ownership share to be attributed to each person for purposes of paragraph (d) must file a form provided by the department with the property appraiser in the county where such property is located. The form must include a sworn statement by each person designating the ownership share to be attributed to each person for purposes of paragraph (d) and must be filed prior to either person filing the form required under paragraph (h) to have a parcel of property assessed under this subsection. Such a designation, once filed with the property appraiser, is irrevocable.

(g) For purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her homestead even though it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. This notification must be in writing and delivered at the same time as or before timely filing a new application for homestead exemption on the property.

(h) In order to have his or her homestead property assessed under this subsection, a person must file a form provided by the department as an attachment to the application for homestead exemption, including a copy of the form required to be filed under paragraph (f), if applicable. The form, which must include a sworn statement attesting to the applicant's entitlement to assessment under this subsection, shall be considered sufficient documentation for applying for assessment under this subsection. The department shall require by rule that the required form be submitted with the application for homestead exemption under the timeframes and processes set forth in chapter 196 to the extent practicable.

(i)1. If the previous homestead was located in a different county than the new homestead, the property appraiser in the county where the new homestead is located must transmit a copy of the completed form together with a completed application for homestead exemption to the property appraiser in the county where the previous homestead was located. If the previous homesteads of applicants for transfer were in more than one county, each applicant from a different county must submit a separate form.

2. The property appraiser in the county where the previous homestead was located must return information to the property appraiser in the county where the new homestead is located by April 1 or within 2 weeks after receipt of the completed application from that property appraiser, whichever is later. As part of the information returned, the property appraiser in the county where the previous homestead was located must provide sufficient information concerning the previous homestead to allow the property appraiser in the county where the new homestead is located to calculate the amount of the assessment limitation difference which may be transferred and must certify whether the previous homestead was abandoned and has been or will be reassessed at just value or reassessed according to the provisions of this subsection as of the January 1 following its abandonment.

3. Based on the information provided on the form from the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located shall calculate the amount of the assessment limitation difference which may be transferred and apply the difference to the January 1 assessment of the new homestead.

4. All property appraisers having information-sharing agreements with the department are authorized to share confidential tax information with each other pursuant to s. 195.084, including social security numbers and linked information on the forms provided pursuant to this section.

5. The transfer of any limitation is not final until any values on the assessment roll on which the transfer is based are final. If such values are final after tax notice bills have been sent, the property appraiser shall make appropriate corrections and a corrected tax notice bill shall be sent. Any values that are under administrative or judicial review shall be noticed to the tribunal or court for accelerated hearing and resolution so that the intent of this subsection may be carried out.

6. If the property appraiser in the county where the previous homestead was located has not provided information sufficient to identify the previous homestead and the assessment limitation difference is transferable, the taxpayer may file an action in circuit court in that county seeking to establish that the property appraiser must provide such information.

7. If the information from the property appraiser in the county where the previous homestead was located is provided after the procedures in this section are exercised, the property appraiser in the county where the new homestead is located shall make appropriate

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corrections and a corrected tax notice and tax bill shall be sent.

8. This subsection does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

9. The property appraiser in the county where the new homestead is located shall promptly notify a taxpayer if the information received, or available, is insufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable. Such notification shall be sent on or before July 1 as specified in s. 196.151.

10. The taxpayer may correspond with the property appraiser in the county where the previous homestead was located to further seek to identify the homestead and the amount of the assessment limitation difference which is transferable.

11. If the property appraiser in the county where the previous homestead was located supplies sufficient information to the property appraiser in the county where the new homestead is located, such information shall be considered timely if provided in time for inclusion on the notice of proposed property taxes sent pursuant to ss. 194.011 and 200.065(1).

12. If the property appraiser has not received information sufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable before mailing the notice of proposed property taxes, the taxpayer may file a petition with the value adjustment board in the county where the new homestead is located.

(j) Any person who is qualified to have his or her property assessed under this subsection and who fails to file an application by March 1 may file an application for assessment under this subsection and may, pursuant to s. 194.011(3), file a petition with the value adjustment board requesting that an assessment under this subsection be granted. Such petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, such person must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the assessment under this subsection and demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting the assessment, the property appraiser or the value adjustment board may grant an assessment under this subsection.

(k) Any person who is qualified to have his or her property assessed under this subsection and who fails to timely file an application for his or her new homestead in the first year following eligibility may file in a subsequent year. The assessment reduction shall be applied to assessed value in the year the transfer is first approved, and refunds of tax may not be made for previous years.

(l) The property appraisers of the state shall, as soon as practicable after March 1 of each year and on or before July 1 of that year, carefully consider all applications for assessment under this subsection which have been filed in their respective offices on or before March 1 of that year. If, upon investigation, the property appraiser finds that the applicant is entitled to assessment under this subsection, the property appraiser shall make such entries upon the tax rolls of the county as are necessary to allow the assessment. If, after due consideration, the property appraiser finds that the applicant is not entitled to the assessment under this subsection, the property appraiser shall immediately prepare a notice of such disapproval, giving his or her reasons therefor, and a copy of the notice must be served upon the applicant by the property appraiser by personal delivery or by registered mail to the post office address given by the applicant. The applicant may appeal the decision of the property appraiser refusing to allow the assessment under this subsection to the value adjustment board, and the board shall review the application and evidence presented to the property appraiser upon which the applicant based the claim and hear the applicant in person or by agent on behalf of his or her right to such assessment. Such appeal shall be heard by an attorney special magistrate if the value adjustment board uses special magistrates. The value adjustment board shall reverse the decision of the property appraiser in the cause and grant assessment under this subsection to the applicant if, in its judgment, the applicant is entitled to the assessment or shall affirm the decision of the property appraiser. The action of the board is final in the cause unless the applicant, within 60 days following the date of refusal of the application by the board, files in the circuit court of the county in which the homestead is located a proceeding against the property appraiser for a declaratory judgment as is provided under chapter 86 or other appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or value adjustment board or to file any paper other than the application as provided in this subsection does not constitute a bar to or defense in the proceedings.

(m) For purposes of receiving an assessment reduction pursuant to this subsection, an owner of a 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. The election provided for in this paragraph is available only if the owner establishes a new homestead as of January 1 of the third year immediately following the storm or hurricane. This paragraph shall apply to homestead property damaged or destroyed on or after January 1, 2017.

B. Section 2, ch. 2020-175, provides that “[t]his act applies beginning with the 2021 tax roll.”

**193.1551 Assessment of certain homestead property damaged in 2004 named storms.**—Notwithstanding the provisions of s. 193.155(4), the assessment at just value for changes, additions, or improvements to homestead property rendered uninhabitable in one or more of the named storms of 2004 shall be limited to the square footage exceeding 110 percent of the homestead property’s total square footage. Additionally, homes having square footage of 1,350 square feet or less which were rendered uninhabitable may rebuild up to 1,500 total square feet and the increase in square footage shall not be considered as a change, an addition, or an improvement that is

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subject to assessment at just value. The provisions of this section are limited to homestead properties in which repairs are commenced by January 1, 2008, and apply retroactively to January 1, 2005.

**History.**—s. 1, ch. 2005-268; s. 2, ch. 2007-106.

**193.1554 Assessment of nonhomestead residential property.**—

(1) As used in this section, the term "nonhomestead residential property" means residential real property that contains nine or fewer dwelling units, including vacant property zoned and platted for residential use, and that does not receive the exemption under s. 196.031.

(2) For all levies other than school district levies, nonhomestead residential property shall be assessed at just value as of January 1 of the year that the property becomes eligible for assessment pursuant to this section.

(3) Beginning in the year following the year the nonhomestead residential property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.

(4) If the assessed value of the property as calculated under subsection (3) exceeds the just value, the assessed value of the property shall be lowered to the just value of the property.

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership or control. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (3) and (4). For purpose of this section, a change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change of ownership if:

(a) The transfer of title is to correct an error.

(b) The transfer is between legal and equitable title.

(c) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage.

(d) For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or an acquisition by another company, including an acquisition by acquiring outstanding shares of the company.

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

(b) Changes, additions, or improvements that replace all or a portion of nonhomestead residential property damaged or destroyed by misfortune or calamity shall not increase the property's assessed value when 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. Additionally, the property's assessed value shall not increase if the total square footage of the property as changed or improved does not exceed 1,500 square feet. Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (3). The property's assessed value shall be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction or of that portion exceeding 1,500 square feet. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8). This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.

(c) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the nonhomestead residential property by the owner or by an owner association,

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which improvements directly benefit the property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefiting from the improvement.

(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.

(a) For divided parcels, the amount by which the sum of the just values of the divided parcels exceeds what the just value of the parcel would be if undivided shall be attributable to the division. This amount shall be apportioned to the parcels pro rata based on their relative just values.

(b) For combined parcels, the amount by which the just value of the combined parcel exceeds what the sum of the just values of the component parcels would be if they had not been combined shall be attributable to the combination.

(c) A parcel that is combined or divided after January 1 and included as a combined or divided parcel on the tax notice is not considered to be a combined or divided parcel until the January 1 on which it is first assessed as a combined or divided parcel.

(8) When property is destroyed or removed and not replaced, the assessed value of the parcel shall be reduced by the assessed value attributable to the destroyed or removed property.

(9) Erroneous assessments of nonhomestead residential property assessed under this section may be corrected in the following manner:

(a) If errors are made in arriving at any assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value must be recalculated for every such year, including the year in which the mistake occurred.

(b) If changes, additions, or improvements are not assessed at just value as of the first January 1 after they were substantially completed, the property appraiser shall determine the just value for such changes, additions, or improvements for the year they were substantially completed. Assessments for subsequent years shall be corrected, applying this section if applicable.

(c) If back taxes are due pursuant to s. 193.092, the corrections made pursuant to this subsection shall be used to calculate such back taxes.

(10) If the property appraiser determines that for any year or years within the prior 10 years a person or entity who was not entitled to the property assessment limitation granted under this section was granted the property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.

**History.**—ss. 10, 11, ch. 2007-339; s. 4, ch. 2008-173; s. 12, ch. 2009-21; s. 2, ch. 2010-109; ss. 1, 2, ch. 2011-125; s. 6, ch. 2012-193; s. 3, ch. 2013-77; s. 6, ch. 2016-128.

**193.1555 Assessment of certain residential and nonresidential real property.**—

(1) As used in this section, the term:

(a) "Nonresidential real property" means real property that is not subject to the assessment limitations set forth in subsection 4(a), (b), (c), (d), or (g), Art. VII of the State Constitution.

(b) "Improvement" means an addition or change to land or buildings which increases their value and is more than a repair or a replacement.

(2) For all levies other than school district levies, nonresidential real property and residential real property that is not assessed under s. 193.155 or s. 193.1554 shall be assessed at just value as of January 1 of the year that the property becomes eligible for assessment pursuant to this section.

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(3) Beginning in the year following the year the property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.

(4) If the assessed value of the property as calculated under subsection (3) exceeds the just value, the assessed value of the property shall be lowered to the just value of the property.

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a qualifying improvement or change of ownership or control. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (3) and (4). For purpose of this section:

(a) A qualifying improvement means any substantially completed improvement that increases the just value of the property by at least 25 percent.

(b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change of ownership if:

1. The transfer of title is to correct an error.
2. The transfer is between legal and equitable title.
3. For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity that owns the property occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.

(6)(a) Except as provided in paragraph (b), changes, additions, or improvements to nonresidential real property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

(b) Changes, additions, or improvements that replace all or a portion of nonresidential real property damaged or destroyed by misfortune or calamity shall not increase the property's assessed value when 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 and do not change the property's character or use. Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the damage or destruction and do not change the property's character or use shall be reassessed as provided under subsection (3). The property's assessed value shall be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8). This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.

(7) Any increase in the value of property assessed under this section which is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.

(a) For divided parcels, the amount by which the sum of the just values of the divided parcels exceeds what the just value of the parcel would be if undivided shall be attributable to the division. This amount shall be apportioned to the parcels pro rata based on their relative just values.

(b) For combined parcels, the amount by which the just value of the combined parcel exceeds what the sum of the just values of the component parcels would be if they had not been combined shall be attributable to the combination.

(c) A parcel that is combined or divided after January 1 and included as a combined or divided parcel on the tax notice is not considered to be a combined or divided parcel until the January 1 on which it is first assessed as a combined or divided parcel.

(8) When property is destroyed or removed and not replaced, the assessed value of the parcel shall be reduced by the assessed value attributable to the destroyed or removed property.

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(9) Erroneous assessments of nonresidential real property assessed under this section may be corrected in the following manner:

(a) If errors are made in arriving at any assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value must be recalculated for every such year, including the year in which the mistake occurred.

(b) If changes, additions, or improvements are not assessed at just value as of the first January 1 after they were substantially completed, the property appraiser shall determine the just value for such changes, additions, or improvements for the year they were substantially completed. Assessments for subsequent years shall be corrected, applying this section if applicable.

(c) If back taxes are due pursuant to s. 193.092, the corrections made pursuant to this subsection shall be used to calculate such back taxes.

(10) If the property appraiser determines that for any year or years within the prior 10 years a person or entity who was not entitled to the property assessment limitation granted under this section was granted the property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.

**History.**—ss. 12, 13, ch. 2007-339; s. 5, ch. 2008-173; s. 13, ch. 2009-21; s. 22, ch. 2010-5; s. 3, ch. 2010-109; ss. 3, 4, ch. 2011-125; s. 7, ch. 2012-193; s. 7, ch. 2016-128.

**193.1556 Notice of change of ownership or control required.**—

(1) Any person or entity that owns property assessed under s. 193.1554 or s. 193.1555 must notify the property appraiser promptly of any change of ownership or control as defined in ss. 193.1554(5) and 193.1555(5). If the change of ownership is recorded by a deed or other instrument in the public records of the county where the property is located, the recorded deed or other instrument shall serve as notice to the property appraiser. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner's property was not entitled to assessment under s. 193.1554 or s. 193.1555, the owner of the property is subject to the taxes avoided as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes avoided. It is the duty of the property appraiser making such determination to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the person or entity that illegally or improperly was assessed under s. 193.1554 or s. 193.1555. If such person or entity no longer owns property in that county, but owns property in some other county or counties in the state, it shall be the duty of the property appraiser to record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it becomes a lien against such property in such county or counties.

(2) The Department of Revenue shall provide a form by which a property owner may provide notice to all property appraisers of a change of ownership or control. The form must allow the property owner to list all property that it owns or controls in this state for which a change of ownership or control as defined in s. 193.1554(5) or s. 193.1555(5) has occurred, but has not been noticed previously to property appraisers. Providing notice on this form constitutes compliance with the notification requirements in this section.

**History.**—s. 14, ch. 2007-339; s. 6, ch. 2008-173; s. 4, ch. 2010-109.

**193.1557 Assessment of certain property damaged or destroyed by Hurricane Michael.**—For property damaged or destroyed by Hurricane Michael in 2018, s. 193.155(4)(b), s. 193.1554(6)(b), or s. 193.1555(6)(b)

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applies to changes, additions, or improvements commenced within 5 years after January 1, 2019. This section applies to the 2019-2023 tax rolls and shall stand repealed on December 31, 2023.

**History.**—s. 3, ch. 2020-10.

## PART II
## SPECIAL CLASSES OF PROPERTY

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193.703 Reduction in assessment for living quarters of parents or grandparents.

**193.441 Legislative intent; findings and declaration.**—

(1) For the purposes of assessment roll preparation and recordkeeping, it is the legislative intent that any assessment for tax purposes which is less than the just value of the property shall be considered a classified use assessment and reported accordingly.

(2) The Legislature finds that Florida's groundwater is among the state's most precious and basic natural resources. The Legislature further finds that it is in the interest of the state to protect its groundwater from pollution, overutilization, and other degradation because groundwater is the primary source of potable water for 90 percent of Floridians. The Legislature declares that it is in the public interest to allow county governments the flexibility to implement voluntary tax assessment programs that protect the state's high-water recharge areas.

**History.**—s. 12, ch. 79-334; s. 1, ch. 96-204.

**193.451 Annual growing of agricultural crops, nonbearing fruit trees, nursery stock; taxability.**—

(1) Growing annual agricultural crops, nonbearing fruit trees, nursery stock, and aquacultural crops, regardless of the growing methods, shall be considered as having no ascertainable value and shall not be taxable until they have reached maturity or a stage of marketability and have passed from the hands of the producer or offered for sale. This section shall be construed liberally in favor of the taxpayer.

(2) Raw, annual, agricultural crops shall be considered to have no ascertainable value and shall not be taxable until such property is offered for sale to the consumer.

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(3) Personal property leased or subleased by the Department of Agriculture and Consumer Services and utilized in the inspection, grading, or classification of citrus fruit shall be deemed to have value for purposes of assessment for ad valorem property taxes no greater than its market value as salvage. It is the expressed intent of the Legislature that this subsection shall have retroactive application to December 31, 2003.

**History.**—ss. 1, 2, ch. 63-432; s. 1, ch. 67-573; ss. 1, 2, ch. 69-55; s. 1, ch. 2005-210; s. 5, ch. 2013-72.

**Note.**—Former s. 192.063.

**193.4516 Assessment of citrus fruit packing and processing equipment rendered unused due to Hurricane Irma or citrus greening.**—

(1) For purposes of ad valorem taxation, and applying to the 2018 tax roll only, tangible personal property owned and operated by a citrus fruit packing or processing facility is deemed to have a market value no greater than its value for salvage, provided the tangible personal property is no longer used in the operation of the facility due to the effects of Hurricane Irma or to citrus greening.

(2) As used in this section, the term "citrus" has the same meaning as provided in s. 581.011(7).

**History.**—s. 10, ch. 2018-118.

**193.4517 Assessment of agricultural equipment rendered unable to be used due to Hurricane Michael.**—

(1) As used in this section, the term:

(a) "Farm" has the same meaning as provided in s. 823.14(3)(a).

(b) "Farm operation" has the same meaning as provided in s. 823.14(3)(b).

(c) "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.

(2) For purposes of ad valorem taxation and applying to the 2019 tax roll only, 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.

(3) The deadline for an applicant to file an application with the property appraiser for assessment pursuant to this section is August 1, 2019.

(4) If the property appraiser denies an application, the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board which requests that the tangible personal property be assessed pursuant to this section. 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).

(5) This section applies retroactively to January 1, 2019.

**History.**—s. 2, ch. 2019-42.

**193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program; natural disasters.**—

(1) The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural.

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of agricultural classification on or before July 1 of the year for which the application was filed. The notification shall advise the landowner of his or her right to appeal to the value adjustment board and of the filing deadline. The property appraiser shall have available at his or her office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(3)(a) Lands may not be classified as agricultural lands unless a return is filed on or before March 1 of each year. Before classifying such lands as agricultural lands, the property appraiser may require the taxpayer or the

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taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 constitutes a waiver for 1 year of the privilege granted in this section for agricultural assessment. However, an applicant who is qualified to receive an agricultural classification who fails to file an application by March 1 must file an application for the classification with the property appraiser on or before the 25th day after the mailing by the property appraiser of the notice required under s. 194.011(1). Upon receipt of sufficient evidence, as determined by the property appraiser, that demonstrates that the applicant was unable to apply for the classification in a timely manner or that otherwise demonstrates extenuating circumstances that warrant the granting of the classification, the property appraiser may grant the classification. If the applicant files an application for the classification and fails to provide sufficient evidence to the property appraiser as required, the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the classification be granted. The petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the classification and demonstrates particular extenuating circumstances judged by the value adjustment board to warrant granting the classification, the value adjustment board may grant the classification for the current year. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. The lessee of property may make original application or reapply using the short form if the lease, or an affidavit executed by the owner, provides that the lessee is empowered to make application for the agricultural classification on behalf of the owner and a copy of the lease or affidavit accompanies the application. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification granted by the property appraiser. Such waiver may be revoked by a majority vote of the governing body of the county.

(b) Subject to the restrictions specified in this section, only lands that are used primarily for bona fide agricultural purposes shall be classified agricultural. The term "bona fide agricultural purposes" means good faith commercial agricultural use of the land.

1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

a. The length of time the land has been so used.

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.

g. Such other factors as may become applicable.

2. Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale.

(c) The maintenance of a dwelling on part of the lands used for agricultural purposes does not in itself preclude an agricultural classification.

(d) When property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately, pursuant to s. 193.011, to qualify for the assessment limitation set forth in s. 193.155. The remaining property may be classified under the provisions of paragraphs (a) and (b).

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(e) Notwithstanding the provisions of paragraph (a), land that has received an agricultural classification from the value adjustment board or a court of competent jurisdiction pursuant to this section 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 subsection (4). The property appraiser must, no later than January 31 of each year, provide notice to the owner of land that was classified agricultural in the previous year informing the owner of the requirements of this paragraph and requiring the owner to certify that neither the ownership nor the use of the land has changed. The department shall, by administrative rule, prescribe the form of the notice to be used by the property appraiser under this paragraph. If a county has waived the requirement that an annual application or statement be made for classification of property pursuant to paragraph (a), the county may, by a majority vote of its governing body, waive the notice and certification requirements of this paragraph and shall provide the property owner with the same notification provided to owners of land granted an agricultural classification by the property appraiser. Such waiver may be revoked by a majority vote of the county's governing body. This paragraph does not apply to any property if the agricultural classification of that property is the subject of current litigation.

(4) The property appraiser shall reclassify the following lands as nonagricultural:

(a) Land diverted from an agricultural to a nonagricultural use.

(b) Land no longer being utilized for agricultural purposes.

(5) For the purpose of this section, the term "agricultural purposes" includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, if the land is used principally for the production of tropical fish; aquaculture as defined in s. 597.0015; algaculture; sod farming; and all forms of farm products as defined in s. 823.14(3) and farm production.

(6)(a) In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use. The property appraiser shall consider the following use factors only:

1. The quantity and size of the property;
2. The condition of the property;
3. The present market value of the property as agricultural land;
4. The income produced by the property;
5. The productivity of land in its present use;
6. The economic merchantability of the agricultural product; and
7. Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.

(b) Notwithstanding any provision relating to annual assessment found in s. 192.042, the property appraiser shall rely on 5-year moving average data when utilizing the income methodology approach in an assessment of property used for agricultural purposes.

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection, which are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services pursuant to s. 570.93 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

4. Screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements shall be assessed by the methodology described in subparagraph 1.

(d) In years in which proper application for agricultural assessment has not been made, the land shall be assessed under the provisions of s. 193.011.

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(7)(a) Lands classified for assessment purposes as agricultural lands which are taken out of production by a state or federal eradication or quarantine program, including the Citrus Health Response Program, shall continue to be classified as agricultural lands for 5 years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services or a federal agency, as applicable, pursuant to such program or successor programs. Lands under these programs which are converted to fallow or otherwise nonincome-producing uses shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to $50 per acre on a single-year assessment methodology while fallow or otherwise used for nonincome-producing purposes. Lands under these programs which are replanted in citrus pursuant to the requirements of the compliance agreement shall continue to be classified as agricultural lands and shall be assessed at a de minimis value of up to $50 per acre, on a single-year assessment methodology, during the 5-year term of agreement. However, lands converted to other income-producing agricultural uses permissible under such programs shall be assessed pursuant to this section. Land under a mandated eradication or quarantine program which is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(b) Lands classified for assessment purposes as agricultural lands that participate in a dispersed water storage program pursuant to a contract with the Department of Environmental Protection or a water management district which requires flooding of land shall continue to be classified as agricultural lands for the duration of the inclusion of the lands in such program or successor programs and shall be assessed as nonproductive agricultural lands. Land that participates in a dispersed water storage program that is diverted from an agricultural to a nonagricultural use shall be assessed under s. 193.011.

(c) Lands classified for assessment purposes as agricultural lands which are not being used for agricultural production as a result of a natural disaster for which a state of emergency is declared pursuant to s. 252.36, when such disaster results in the halting of agricultural production, must continue to be classified as agricultural lands for 5 years after termination of the emergency declaration. However, if such lands are diverted from agricultural use to nonagricultural use during or after the 5-year recovery period, such lands must be assessed under s. 193.011. This paragraph applies retroactively to natural disasters that occurred on or after July 1, 2017.

(8) Lands classified for assessment purposes as agricultural lands, which are not being used for agricultural production due to a hurricane that made landfall in this state during calendar year 2017, must continue to be classified as agricultural lands for assessment purposes 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.

**History.**—s. 1, ch. 59-226; s. 1, ch. 67-117; ss. 1, 2, ch. 69-55; s. 1, ch. 72-181; s. 4, ch. 74-234; s. 3, ch. 76-133; s. 15, ch. 82-208; ss. 10, 80, ch. 82-226; s. 1, ch. 85-77; s. 3, ch. 86-300; s. 23, ch. 90-217; ss. 132, 142, ch. 91-112; s. 63, ch. 94-353; s. 1468, ch. 95-147; s. 1, ch. 95-404; s. 1, ch. 98-313; s. 1, ch. 99-351; s. 3, ch. 2000-308; s. 4, ch. 2001-279; s. 15, ch. 2002-18; s. 2, ch. 2003-162; s. 43, ch. 2003-254; s. 1, ch. 2006-45; s. 2, ch. 2008-197; ss. 1, 11, ch. 2010-277; HJR 5-A, 2010 Special Session A; s. 2, ch. 2011-206; s. 15, ch. 2012-83; s. 6, ch. 2013-72; s. 1, ch. 2013-95; s. 2, ch. 2014-150; s. 1, ch. 2016-88; s. 1, ch. 2018-84; s. 12, ch. 2018-118.

**193.4615 Assessment of obsolete agricultural equipment.**—For purposes of ad valorem property taxation, agricultural equipment that is located on property classified as agricultural under s. 193.461 and that is no longer usable for its intended purpose shall be deemed to have a market value no greater than its value for salvage.

**History.**—s. 16, ch. 2006-289; s. 32, ch. 2019-3.

**193.462 Agricultural lands; annual application process; extenuating circumstances; waivers.**—

(1) For purposes of granting an agricultural classification for January 1, 2003, the term “extenuating circumstances,” as used in s. 193.461(3)(a), includes the failure of a property owner in a county that waived the annual application process to return the agricultural classification form or card, which return was required by operation of s. 193.461(3)(e), as created by chapter 2002-18, Laws of Florida.

(2) Any waiver of the annual application granted under s. 193.461(3)(a), which is in effect on December 31, 2002, shall remain in full force and effect until subsequently revoked as provided by s. 193.461(3)(a).

**History.**—s. 3, ch. 2003-162; s. 44, ch. 2003-254.

**193.481 Assessment of mineral, oil, gas, and other subsurface rights.**—

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(1) Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas, and other subsurface rights, when separated from the fee or other interest in the fee, shall be subject to separate taxation. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights.

(2) The property appraiser shall, upon request of the owner of real property who also owns mineral, oil, gas, or other subsurface mineral rights to the same property, separately assess the subsurface mineral right and the remainder of the real estate as separate items on the tax roll.

(3) Such subsurface rights shall be assessed on the basis of a just valuation, as required by s. 4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights.

(4) Statutes and regulations, not in conflict with the provisions herein, relating to the assessment and collection of ad valorem taxes on real property, shall apply to the separate assessment and taxation of such subsurface rights, insofar as they may be applied.

(5) Tax certificates and tax liens encumbering subsurface rights, as aforesaid, may be acquired, purchased, transferred, and enforced as are tax certificates and tax liens encumbering real property generally, including the issuance of a tax deed.

(6) Nothing contained in chapter 69-60, Laws of Florida, amending subsections (1) and (3) of this section and creating former s. 197.083 shall be construed to affect any contractual obligation existing on June 4, 1969.

**History.**—ss. 1, 2, 3, 4, ch. 57-150; s. 1, ch. 63-355; ss. 1, 2, ch. 69-55; ss. 1, 2, ch. 69-60; s. 13, ch. 69-216; s. 2, ch. 71-105; ss. 33, 35, ch. 73-332; s. 1, ch. 77-102; s. 29, ch. 95-280.

**Note.**—Former s. 193.221.

**193.501 Assessment of lands subject to a conservation easement, environmentally endangered lands, or lands used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions have been covenanted.**—

(1) The owner or owners in fee of any land subject to a conservation easement as described in s. 704.06; land qualified as environmentally endangered pursuant to paragraph (6)(i) and so designated by formal resolution of the governing board of the municipality or county within which such land is located; land designated as conservation land in a comprehensive plan adopted by the appropriate municipal or county governing body; or any land which is utilized for outdoor recreational or park purposes may, by appropriate instrument, for a term of not less than 10 years:

(a) Convey the development right of such land to the governing board of any public agency in this state within which the land is located, or to the Board of Trustees of the Internal Improvement Trust Fund, or to a charitable corporation or trust as described in s. 704.06(3); or

(b) Covenant with the governing board of any public agency in this state within which the land is located, or with the Board of Trustees of the Internal Improvement Trust Fund, or with a charitable corporation or trust as described in s. 704.06(3), that such land be subject to one or more of the conservation restrictions provided in s. 704.06(1) or not be used by the owner for any purpose other than outdoor recreational or park purposes. If land is covenanted and used for an outdoor recreational purpose, the normal use and maintenance of the land for that purpose, consistent with the covenant, shall not be restricted.

(2) The governing board of any public agency in this state, or the Board of Trustees of the Internal Improvement Trust Fund, or a charitable corporation or trust as described in s. 704.06(3), is authorized and empowered in its discretion to accept any and all instruments conveying the development right of any such land or establishing a covenant pursuant to subsection (1), and if accepted by the board or charitable corporation or trust,

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the instrument shall be promptly filed with the appropriate officer for recording in the same manner as any other instrument affecting the title to real property.

(3) When, pursuant to subsections (1) and (2), the development right in real property has been conveyed to the governing board of any public agency of this state, to the Board of Trustees of the Internal Improvement Trust Fund, or to a charitable corporation or trust as described in s. 704.06(2), or a covenant has been executed and accepted by the board or charitable corporation or trust, the lands which are the subject of such conveyance or covenant shall be thereafter assessed as provided herein:

(a) If the covenant or conveyance extends for a period of not less than 10 years from January 1 in the year such assessment is made, the property appraiser, in valuing such land for tax purposes, shall consider no factors other than those relative to its value for the present use, as restricted by any conveyance or covenant under this section.

(b) If the covenant or conveyance extends for a period less than 10 years, the land shall be assessed under the provisions of s. 193.011, recognizing the nature and length thereof of any restriction placed on the use of the land under the provisions of subsection (1).

(4) After making a conveyance of the development right or executing a covenant pursuant to this section, or conveying a conservation easement pursuant to this section and s. 704.06, the owner of the land shall not use the land in any manner not consistent with the development right voluntarily conveyed, or with the restrictions voluntarily imposed, or with the terms of the conservation easement or shall not change the use of the land from outdoor recreational or park purposes during the term of such conveyance or covenant without first obtaining a written instrument from the board or charitable corporation or trust, which instrument reconveys all or part of the development right to the owner or releases the owner from the terms of the covenant and which instrument must be promptly recorded in the same manner as any other instrument affecting the title to real property. Upon obtaining approval for reconveyance or release, the reconveyance or release shall be made to the owner upon payment of the deferred tax liability. Any payment of the deferred tax liability shall be payable to the county tax collector within 90 days of the date of approval by the board or charitable corporation or trust of the reconveyance or release. The collector shall distribute the payment to each governmental unit in the proportion that its millage bears to the total millage levied on the parcel for the years in which such conveyance or covenant was in effect.

(5) The governing board of any public agency or the Board of Trustees of the Internal Improvement Trust Fund or a charitable corporation or trust which holds title to a development right pursuant to this section may not convey that development right to anyone other than the governing board of another public agency or a charitable corporation or trust, as described in s. 704.06(3), or the record owner of the fee interest in the land to which the development right attaches. The conveyance from the governing board of a public agency or the Board of Trustees of the Internal Improvement Trust Fund to the owner of the fee shall be made only after a determination by the board that such conveyance would not adversely affect the interest of the public. Section 125.35 does not apply to such sales, but any public agency accepting any instrument conveying a development right pursuant to this section shall forthwith adopt appropriate regulations and procedures governing the disposition of same. These regulations and procedures must provide in part that the board may not convey a development right to the owner of the fee without first holding a public hearing and unless notice of the proposed conveyance and the time and place at which the public hearing is to be held is published once a week for at least 2 weeks in some newspaper of general circulation in the county involved prior to the hearing.

(6) The following terms whenever used as referred to in this section have the following meanings unless a different meaning is clearly indicated by the context:

(a) “Board” is the governing board of any city, county, or other public agency of the state or the Board of Trustees of the Internal Improvement Trust Fund.

(b) “Conservation restriction” means a limitation on a right to the use of land for purposes of conserving or preserving land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition. The limitation on rights to the use of land may involve or pertain to any of the activities enumerated in s. 704.06(1).

(c) “Conservation easement” means that property right described in s. 704.06.

(d) “Covenant” is a covenant running with the land.

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(e) "Deferred tax liability" means an amount equal to the difference between the total amount of taxes that would have been due in March in each of the previous years in which the conveyance or covenant was in effect if the property had been assessed under the provisions of s. 193.011 and the total amount of taxes actually paid in those years when the property was assessed under the provisions of this section, plus interest on that difference computed as provided in s. 212.12(3).

(f) "Development right" is the right of the owner of the fee interest in the land to change the use of the land.

(g) "Outdoor recreational or park purposes" includes, but is not necessarily limited to, boating, golfing, camping, swimming, horseback riding, and archaeological, scenic, or scientific sites and applies only to land which is open to the general public.

(h) "Present use" is the manner in which the land is utilized on January 1 of the year in which the assessment is made.

(i) "Qualified as environmentally endangered" means land that has unique ecological characteristics, rare or limited combinations of geological formations, or features of a rare or limited nature constituting habitat suitable for fish, plants, or wildlife, and which, if subject to a development moratorium or one or more conservation easements or development restrictions appropriate to retaining such land or water areas predominantly in their natural state, would be consistent with the conservation, recreation and open space, and, if applicable, coastal protection elements of the comprehensive plan adopted by formal action of the local governing body pursuant to s. 163.3161, the Community Planning Act; or surface waters and wetlands, as determined by the methodology ratified in s. 373.4211.

(7) The property appraiser shall report to the department showing the just value and the classified use value of property that is subject to a conservation easement under s. 704.06, property assessed as environmentally endangered land pursuant to this section, and property assessed as outdoor recreational or park land.

(8) A person or organization that, on January 1, has the legal title to land that is entitled by law to assessment under this section shall, on or before March 1 of each year, file an application for assessment under this section with the county property appraiser. The application must identify the property for which assessment under this section is claimed. The initial application for assessment for any property must include a copy of the instrument by which the development right is conveyed or which establishes a covenant that establishes the conservation purposes for which the land is used. The Department of Revenue shall prescribe the forms upon which the application is made. The failure to file an application on or before March 1 of any year constitutes a waiver of assessment under this section for that year. However, an applicant who is qualified to receive an assessment under this section but fails to file an application by March 1 may file an application for the assessment and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the assessment be granted. The petition must be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser pursuant to s. 194.011(1). Notwithstanding s. 194.013, the applicant must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the assessment and demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting the assessment, the property appraiser or the value adjustment board may grant the assessment. The owner of land that was assessed under this section in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for assessment of property within the county. Such waiver may be revoked by a majority vote of the governing body of the county.

(9) A person or entity that owns land assessed pursuant to this section must notify the property appraiser promptly if the land becomes ineligible for assessment under this section. If any property owner fails to notify the property appraiser and the property appraiser determines that for any year within the preceding 10 years the land was not eligible for assessment under this section, the owner of the land is subject to taxes avoided as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes avoided. The property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of

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tax lien. The property is subject to a lien in the amount of the unpaid taxes and penalties. The lien when filed shall attach to any property identified in the notice of tax lien which is owned by the person or entity and which was improperly assessed. If such person or entity no longer owns property in that county but owns property in some other county or counties of this state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity.

**History.**—s. 1, ch. 67-528; ss. 1, 2, ch. 69-55; s. 2, ch. 72-181; s. 1, ch. 77-102; s. 1, ch. 78-354; s. 2, ch. 84-253; s. 29, ch. 85-55; s. 2, ch. 86-44; s. 39, ch. 93-206; s. 3, ch. 94-122; s. 43, ch. 94-356; s. 9, ch. 2004-349; s. 2, ch. 2009-157; s. 41, ch. 2011-139; s. 8, ch. 2012-193.

**Note.**—Former s. 193.202.

**193.503 Classification and assessment of historic property used for commercial or certain nonprofit purposes.**—

(1) Pursuant to s. 4(e), Art. VII of the State Constitution, the board of county commissioners of a county or the governing authority of a municipality may adopt an ordinance providing for assessment of historic property used for commercial or certain nonprofit purposes as described in this section solely on the basis of character or use as provided in this section. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The board of county commissioners or municipal governing authority shall notify the property appraiser of the adoption of such ordinance no later than December 1 of the year prior to the year such assessment will take effect. If such assessment is granted only for a specified period or the ordinance is repealed, the board of county commissioners or municipal governing authority shall notify the property appraiser no later than December 1 of the year prior to the year the assessment expires.

(2) If an ordinance is adopted as described in subsection (1), the property appraiser shall, for assessment purposes, annually classify any eligible property as historic property used for commercial or certain nonprofit purposes, for purposes of the taxes levied by the governing body or authority adopting the ordinance. For all other purposes, the property shall be assessed pursuant to s. 193.011.

(3) No property shall be classified as historic property used for commercial or certain nonprofit purposes unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying such property, may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such property was actually used as required by this section. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for such assessment.

(4) Any property classified and assessed as historic property used for commercial or certain nonprofit purposes pursuant to this section must meet all of the following criteria:

(a) The property must be used for commercial purposes or used by a not-for-profit organization under s. 501(c)(3) or (6) of the Internal Revenue Code of 1986.

(b) The property must be listed in the National Register of Historic Places, as defined in s. 267.021; or must be a contributing property to a National Register Historic District; or must be designated as a historic property or as a contributing property to a historic district, under the terms of a local preservation ordinance.

(c) The property must be regularly open to the public; that is, it must be open for a minimum of 40 hours per week for 45 weeks per year or an equivalent of 1,800 hours per year.

(d) The property must be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.

(5) In years in which proper application for assessment has been made and granted pursuant to this section, the assessment of such historic property shall be based solely on its use for commercial or certain nonprofit purposes. The property appraiser shall consider the following use factors only:

(a) The quantity and size of the property.

(b) The condition of the property.

(c) The present market value of the property as historic property used for commercial or certain nonprofit purposes.

(d) The income produced by the property.

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(6) In years in which proper application for assessment has not been made under this section, the property shall be assessed under the provisions of s. 193.011 for all purposes.

(7) Any property owner who is denied classification under this section may appeal to the value adjustment board. The property appraiser shall notify the property owner in writing of the denial of such classification on or before July 1 of the year for which the application was filed. The notification shall advise the property owner of his or her right to appeal to the value adjustment board and of the filing deadline. The property appraiser shall have available at his or her office a list by ownership of all applications received showing the full valuation under s. 193.011, the valuation of the property under the provisions of this section, and whether or not the classification requested was granted.

(8) For the purposes of assessment roll preparation and recordkeeping, the property appraiser shall report the assessed value of property qualified for the assessment pursuant to this section as its "classified use value" and shall annually determine and report as "just value" the fair market value of such property, irrespective of any negative impact that restrictions imposed or conveyances made pursuant to this section may have had on such value.

(9)(a) After qualifying for and being granted the classification and assessment pursuant to this section, the owner of the property shall not use the property in any manner not consistent with the qualifying criteria. If the historic designation status or the use of the property changes or if the property fails to meet the other qualifying criteria for the classification and assessment, the property owner shall be liable for the amount of taxes equal to the "deferred tax liability" for up to the past 10 years in which the property received the use classification and assessment pursuant to this section. The governmental taxing unit shall determine the time period for which the deferred tax liability is due. A written instrument from the governmental taxing unit shall be promptly recorded in the same manner as any other instrument affecting the title to real property. A release of the written instrument shall be made to the owner upon payment of the deferred tax liability.

(b) For purposes of this subsection, "deferred tax liability" means an amount equal to the difference between the total amount of taxes that would have been due in March if the property had been assessed under the provisions of s. 193.011 and the total amount of taxes actually paid in those years when the property was assessed under the provisions of this section, plus interest on that difference computed as provided in s. 212.12(3).

(c) Any payment of the deferred tax liability shall be payable to the county tax collector within 90 days after the date of the change in classification. The collector shall distribute the payment to each governmental unit where the classification and assessment was allowed in the proportion that its millage bears to the total millage levied on the parcel for the years in which such classification and assessment was in effect.

**History.**—s. 2, ch. 97-117; s. 23, ch. 2010-5; s. 9, ch. 2012-193; s. 2, ch. 2013-95.

**193.505 Assessment of historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted.**—

(1) The owner or owners in fee of any improved real property qualified as historically significant pursuant to paragraph (6)(a), and so designated by formal resolution of the governing body of the county within which the property is located, may by appropriate instrument:

(a) Convey all rights to develop the property to the governing body of the county in which such property is located; or

(b) Enter into a covenant running with the land for a term of not less than 10 years with the governing body of the county in which the property is located that the property shall not be used for any purpose inconsistent with historic preservation or the historic qualities of the property.

(2)(a) The governing body of each county is authorized and empowered in its discretion, subject to the provisions of paragraph (6)(b), to accept any instrument conveying a development right or establishing a covenant pursuant to subsection (1); and, if such instrument is accepted by the governing body, it shall be promptly filed with the appropriate officer for recording in the same manner as any other instrument affecting title to real property.

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(b) Before accepting any instrument pursuant to this section, the governing body of the county shall seek the counsel and advice of the governing body of the municipality in which the property lies, if any, as to the merit of such acceptance.

(3) When, pursuant to this section, the development right in historically significant property has been conveyed to the governing body of the county or a covenant for historic preservation has been executed and accepted by such body, the real property subject to such conveyance or covenant shall be assessed at fair market value; however, the appraiser shall recognize the nature and length of the restriction placed on the use of the property under the provisions of the conveyance or covenant.

(4)(a) During the unexpired term of a covenant executed pursuant to this section, the owner of the property subject thereto shall not use the property in any manner inconsistent with historic preservation or the historic character of the property without first obtaining a written instrument from the governing body of the county releasing the owner from the terms of the covenant. Such instrument shall be promptly recorded in the same manner as any other instrument affecting the title to real property. Upon obtaining the approval of the board for release, the property will be subject to a deferred tax liability. The release shall be made to the owner upon payment of the deferred tax liability. Any payment of the deferred tax liability shall be payable to the county tax collector within 90 days of the date of approval of the release by the board. The tax collector shall distribute the payment to each governmental unit in the proportion that its millage bears to the total millage levied on the parcel for the years in which the covenant was in effect.

(b) After a covenant executed pursuant to this section has expired, the property previously subject to the covenant will be subject to a deferred tax liability, payable as provided in paragraph (a), within 90 days of the date of such expiration.

(5) The governing body of any county which holds title to a development right pursuant to this section shall not convey that right to anyone and shall not exercise that right in any manner inconsistent with historic preservation. No property for which the development right has been conveyed to the governing body of the county shall be used for any purpose inconsistent with historic preservation or the historic qualities of the property.

(6)(a) Improved real property shall be qualified as historically significant only if:

1. The property is listed on the national register of historic places pursuant to the National Historic Preservation Act of 1966, as amended, 16 U.S.C. s. 470; or is within a certified locally ordinanced district pursuant to s. 48(g)(3)(B)(ii), Internal Revenue Code; or has been found to be historically significant in accordance with the intent of and for purposes of this section by the Division of Historical Resources existing under chapter 267, or any successor agency, or by the historic preservation board existing under chapter 266, if any, in the jurisdiction of which the property lies; and

2. The owner of the property has applied to such division or board for qualification pursuant to this section.

(b) It is the legislative intent that property be qualified as historically significant pursuant to paragraph (a) only when it is of such unique or rare historic character or significance that a clear and substantial public benefit is provided by virtue of its preservation.

(7) A covenant executed pursuant to this section shall, at a minimum, contain the following restrictions:

(a) No use shall be made of the property which in the judgment of the covenantee or the division or board is inconsistent with the historic qualities of the property.

(b) In any restoration or repair of the property, the architectural features of the exterior shall be retained consistent with the historic qualities of the property.

(c) The property shall not be permitted to deteriorate and shall be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.

(d) The covenant shall include provisions for periodic access by the public to the property.

(8) For the purposes of this section, the term “deferred tax liability” means an amount equal to the difference between the total amount of taxes which would have been due in March in each of the previous years in which a covenant executed and accepted pursuant to this section was in effect if the property had been assessed under the provisions of s. 193.011 irrespective of any negative impact on fair market value that restrictions imposed pursuant

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to this section may have caused and the total amount of taxes actually paid in those years, plus interest on that difference computed as provided in s. 212.12(3).

(9)(a) For the purposes of assessment roll preparation and recordkeeping, the property appraiser shall report the assessed value of property subject to a conveyance or covenant pursuant to this section as its "classified use value" and shall annually determine and report as "just value" the fair market value of such property irrespective of any negative impact that restrictions imposed or conveyances made pursuant to this section may have had on such value.

(b) The property appraiser shall annually report to the department the just value and classified use value of property for which the development right has been conveyed separately from such values for property subject to a covenant.

**History.**—s. 1, ch. 84-253; s. 8, ch. 86-163; s. 10, ch. 2012-193.

**193.621 Assessment of pollution control devices.**—

(1) If it becomes necessary for any person, firm or corporation owning or operating a manufacturing or industrial plant or installation to construct or install a facility, as is hereinafter defined, in order to eliminate or reduce industrial air or water pollution, any such facility or facilities shall be deemed to have value for purposes of assessment for ad valorem property taxes no greater than its market value as salvage. Any facility as herein defined heretofore constructed shall be assessed in accordance with this section.

(2) If the owner of any manufacturing or industrial plant or installation shall find it necessary in the control of industrial contaminants to demolish and reconstruct that plant or installation in whole or part and the property appraiser determines that such demolition or reconstruction does not substantially increase the capacity or efficiency of such plant or installation or decrease the unit cost of production, then in that event, such demolition or reconstruction shall not be deemed to increase the value of such plant or installation for ad valorem tax assessment purposes.

(3) The terms "facility" or "facilities" as used in this section shall be deemed to include any device, fixture, equipment, or machinery used primarily for the control or abatement of pollution or contaminants from manufacturing or industrial plants or installations, but shall not include any public or private domestic sewerage system or treatment works.

(4) Any taxpayer claiming the right of assessments for ad valorem taxes under the provisions of this law shall so state in a return filed as provided by law giving a brief description of the facility. The property appraiser may require the taxpayer to produce such additional evidence as may be necessary to establish taxpayer's right to have such properties classified hereunder for assessments.

(5) If a property appraiser is in doubt whether a taxpayer is entitled, in whole or in part, to an assessment under this section, he or she may refer the matter to the Department of Environmental Protection for a recommendation. If the property appraiser so refers the matter, he or she shall notify the taxpayer of such action. The Department of Environmental Protection shall immediately consider whether or not such taxpayer is so entitled and certify its recommendation to the property appraiser.

(6) The Department of Environmental Protection shall promulgate rules and regulations regarding the application of the tax assessment provisions of this section for the consideration of the several county property appraisers of this state. Such rules and regulations shall be distributed to the several county property appraisers of this state.

**History.**—s. 25, ch. 67-436; ss. 1, 2, ch. 69-55; ss. 21, 26, 35, ch. 69-106; s. 13, ch. 69-216; s. 2, ch. 71-137; s. 33, ch. 71-355; s. 1, ch. 77-102; s. 47, ch. 77-104; s. 4, ch. 79-65; s. 44, ch. 94-356; s. 1469, ch. 95-147; s. 20, ch. 2000-158; s. 1, ch. 2000-210.

**Note.**—Former s. 403.241.

**193.623 Assessment of building renovations for accessibility to the physically handicapped.**—Any taxpayer who renovates an existing building or facility owned by such taxpayer in order to permit physically handicapped persons to enter and leave such building or facility or to have effective use of the accommodations and facilities therein shall, for the purpose of assessment for ad valorem tax purposes, be deemed not to have increased the value of such building more than the market value of the materials used in such renovation, valued

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as salvage materials. “Building or facility” shall mean only a building or facility, or such part thereof, as is intended to be used, and is used, by the general public. The renovation required in order to entitle a taxpayer to the benefits of this section must include one or more of the following: the provision of ground level or ramped entrances and washroom and toilet facilities accessible to, and usable by, physically handicapped persons.

**History.**—s. 1, ch. 76-144.

**193.624 Assessment of renewable energy source devices.**—

(1) As used in this section, the term “renewable energy source device” means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, wiring, structural supports, refrigerant handling systems, and other components used as integral parts of such systems; however, such equipment does not include conventional backup systems of any type or any equipment or structure that would be required in the absence of the renewable energy source device.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The term does not include equipment that is on the distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines.

[1](2) In determining the assessed value of real property used:

(a) For residential purposes, the just value of the property attributable to a renewable energy source device may not be considered.

(b) For nonresidential purposes, 80 percent of the just value of the property attributable to a renewable energy source device may not be considered.

[1](3) This section applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property. This section applies to a renewable energy source device installed on or after January 1, 2018, to all other real property, except when installed as part of a project planned for a location in a fiscally constrained county, as defined in s. 218.67(1), and for which an application for a comprehensive plan amendment or planned unit development zoning has been filed with the county on or before December 31, 2017.

**History.**—s. 1, ch. 2013-77; ss. 2, 7, ch. 2017-118.

[1]**Note.**—Section 7, ch. 2017-118, provides that “[t]he amendments made by this act to s. 193.624(2) and (3), Florida Statutes, expire on December 31, 2037, and the text of those subsections shall revert to that in existence on December 31, 2017, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the text which expire pursuant to this section.” Effective December 31, 2037, subsections (2) and (3) will read:

(2) In 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.

(3) This section applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property.

**193.625 High-water recharge lands; classification and assessment.**—

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(1) Notwithstanding the provisions of s. 193.461, the property appraiser shall annually classify for assessment purposes all lands within a county choosing to have a high-water recharge protection tax assessment program as either agricultural, nonagricultural, or high-water recharge. The classification applies only to taxes levied by the counties and municipalities adopting an ordinance under subsection (5).

(2) Any landowner whose land is within a county that has a high-water recharge protection tax assessment program and whose land is denied high-water recharge classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of high-water recharge classification on or before July 1 of the year for which the application was filed. The notification must advise the landowner of a right to appeal to the value adjustment board and of the filing deadline. The property appraiser shall have available at her or his office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(3)(a) Lands may not be classified as high-water recharge lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying the lands, may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that the lands were actually used for a bona fide high-water recharge purpose. Failure to make timely application by March 1 constitutes a waiver for 1 year of the privilege granted for high-water recharge assessment. The owner of land that was classified high-water recharge in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification granted.

(b) Subject to the restrictions set out in this section, only lands that are used primarily for bona fide high-water recharge purposes may be classified as high-water recharge. The term "bona fide high-water recharge purposes" means good faith high-water recharge use of the land. In determining whether the use of the land for high-water recharge purposes is bona fide, the following factors apply:

1. The land use must have been continuous.
2. 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.
3. 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.
4. The land must not be receiving any other special classification.
5. 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:
   a. Toxic or hazardous substances;
   b. Free-flowing saline artesian wells;
   c. Drainage wells;
   d. Underground storage tanks; or
   e. Any potential pollution source existing on a property that drains to the property seeking the high-water recharge classification.
6. The owner of the property has entered into a contract with the county as provided in subsection (5).
7. The parcel of land must be at least 10 acres.

Notwithstanding the provisions of this paragraph, the property appraiser shall use the best available information on the high-water recharge characteristics of lands when making a final determination to grant or deny an application for high-water recharge assessment for the lands.

(4) The provisions of this section do not constitute a basis for zoning restrictions.

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(5)(a) In years in which proper application for high-water recharge assessment has been made and granted under this section, for purposes of taxes levied by the county, the assessment of the land must be based on the formula adopted by the county as provided in paragraph (b).

(b) Counties that choose to have a high-water recharge protection tax assessment program must adopt by ordinance a formula for determining the assessment of properties classified as high-water recharge property and a method of contracting with property owners who wish to be involved in the program.

(c) The contract must include a provision that the land assessed as high-water recharge land will be used primarily for bona fide high-water recharge purposes for a period of at least 5 years, as determined by the county, from January 1 of the year in which the assessment is made. Violation of the contract results in the property owner being subject to the payment of the difference between the total amount of taxes actually paid on the property and the amount of taxes which would have been paid in each previous year the contract was in effect if the high-water recharge assessment had not been used.

(d) A municipality located in any county that adopts an ordinance under paragraph (a) may adopt an ordinance providing for the assessment of land located in the incorporated areas in accordance with the county's ordinance.

(e) Property owners whose land lies within an area determined to be a high-water recharge area must not be required to have their land assessed according to the high-water recharge classification.

(f) In years in which proper application for high-water recharge assessment has not been made, the land must be assessed under s. 193.011.

**History.**—s. 2, ch. 96-204; s. 27, ch. 97-96; s. 25, ch. 97-236; s. 3, ch. 2005-36; s. 3, ch. 2013-95.

**193.6255 Applicability of duties of property appraisers and clerks of the court pursuant to high-water recharge areas.**—The amendments to ss. 193.625 and 194.037 by this act, insofar as they impose duties on property appraisers and on clerks of the court, apply only to the unincorporated area within those counties that adopt an ordinance under s. 193.625(5). A municipality located in any county that adopts such an ordinance may include all eligible property for high-water recharge classification by ordinance adopted by the municipality's governing body.

**History.**—s. 9, ch. 96-204.

**193.703 Reduction in assessment for living quarters of parents or grandparents.**—

(1) In accordance with s. 4(f), Art. VII of the State Constitution, a county may provide for a reduction in the assessed value of homestead property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive parents or grandparents of the owner of the property or of the owner's spouse if at least one of the parents or grandparents for whom the living quarters are provided is at least 62 years of age.

(2) A reduction may be granted under subsection (1) only to the owner of homestead property where the construction or reconstruction is consistent with local land development regulations.

(3) A reduction in assessment which is granted under this section applies only to construction or reconstruction that occurred after the effective date of this section to an existing homestead and applies only during taxable years during which at least one such parent or grandparent maintains his or her primary place of residence in such living quarters within the homestead property of the owner.

(4) Such a reduction in assessment may be granted only upon an application filed annually with the county property appraiser. The application must be made before March 1 of the year for which the reduction is to be granted. If the property appraiser is satisfied that the property is entitled to a reduction in assessment under this section, the property appraiser shall approve the application, and the value of such residential improvements shall be excluded from the value of the property for purposes of ad valorem taxation. The value excluded may not exceed the lesser of the following:

(a) The increase in assessed value resulting from construction or reconstruction of the property; or

(b) Twenty percent of the total assessed value of the property as improved.

(5) At the request of the property appraiser and by a majority vote of the county governing body, a county may waive the annual application requirement after the initial application is filed and the reduction is granted.

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Notwithstanding such waiver, an application is required if property granted a reduction is sold or otherwise disposed of, the ownership changes in any manner, the applicant for the reduction ceases to use the property as his or her homestead, or the status of the owner changes so as to change the use of the property qualifying for the reduction pursuant to this section.

(6) The property owner shall notify the property appraiser when the property owner no longer qualifies for the reduction in assessed value for living quarters of parents or grandparents, and the previously excluded just value of such improvements as of the first January 1 after the improvements were substantially completed shall be added back to the assessed value of the property.

(7) If the property appraiser determines that for any year within the previous 10 years a property owner who was not entitled to a reduction in assessed value under this section was granted such reduction, the property appraiser shall serve on the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by that person and is situated in this state is subject to the taxes exempted by the improper reduction, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. However, if a reduction is improperly granted due to a clerical mistake or omission by the property appraiser, the person who improperly received the reduction may not be assessed a penalty or interest. Before such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such lien is subject to s. 196.161(3).

**History.**—s. 1, ch. 2002-226; s. 24, ch. 2010-5; s. 7, ch. 2013-72.

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# The 2020 Florida Statutes

Title XIV
TAXATION AND FINANCE

Chapter 194
ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

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## CHAPTER 194
## ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

**PART I**
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## PART I
## ADMINISTRATIVE REVIEW

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**194.011 Assessment notice; objections to assessments.**—

(1) Each taxpayer whose property is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069.

(2) Any taxpayer who objects to the assessment placed on any property taxable to him or her, including the assessment of homestead property at less than just value under s. 193.155(8), may request the property appraiser to informally confer with the taxpayer. Upon receiving the request, the property appraiser, or a member of his or her staff, shall confer with the taxpayer regarding the correctness of the assessment. At this informal conference, the taxpayer shall present those facts considered by the taxpayer to be supportive of the taxpayer's claim for a change in the assessment of the property appraiser. The property appraiser or his or her representative at this conference shall present those facts considered by the property appraiser to be supportive of the correctness of

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the assessment. However, nothing herein shall be construed to be a prerequisite to administrative or judicial review of property assessments.

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization or power of attorney, unless the person filing the petition is listed in s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on behalf of the taxpayer. If a taxpayer notifies the value adjustment board that a petition has been filed for the taxpayer's property without his or her consent, the value adjustment board may require the person filing the petition to provide written authorization from the taxpayer authorizing the person to proceed with the appeal before a hearing is held. If the value adjustment board finds that a person listed in s. 194.034(1)(a) willfully and knowingly filed a petition that was not authorized by the taxpayer, the value adjustment board shall require such person to provide the taxpayer's written authorization for representation to the value adjustment board clerk before any petition filed by that person is heard, for 1 year after imposition of such requirement by the value adjustment board. A power of attorney or written authorization is valid for 1 assessment year, and a new power of attorney or written authorization by the taxpayer is required for each subsequent assessment year. A petition shall also describe the property by parcel number and shall be filed as follows:

(a) The clerk of the value adjustment board and the property appraiser shall have available and shall distribute forms prescribed by the Department of Revenue on which the petition shall be made. Such petition shall be sworn to by the petitioner.

(b) The completed petition shall be filed with the clerk of the value adjustment board of the county, who shall acknowledge receipt thereof and promptly furnish a copy thereof to the property appraiser.

(c) The petition shall state the approximate time anticipated by the taxpayer to present and argue his or her petition before the board.

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173, or s. 196.193 or notice by the tax collector under s. 197.2425.

(e) A condominium association, cooperative association, 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 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. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

(f) An owner of contiguous, undeveloped parcels may file with the value adjustment board a single joint petition if the property appraiser determines such parcels are substantially similar in nature.

(g) 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.

(h) The individual, agent, or legal entity that signs the petition becomes an agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser pursuant to s. 194.036. This

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paragraph does not authorize the individual, agent, or legal entity to receive or access the taxpayer's confidential information without written authorization from the taxpayer.

(4)(a) At least 15 days before the hearing the petitioner shall provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses.

(b) No later than 7 days before the hearing, if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner, the property appraiser shall provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. The evidence list must contain the property appraiser's property record card. Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.

(5)(a) The department shall by rule prescribe uniform procedures for hearings before the value adjustment board which include requiring:

1. Procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032.

2. That the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

(b) 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.

(6) The following provisions apply to petitions to the value adjustment board concerning the assessment of homestead property at less than just value under s. 193.155(8):

(a) If the taxpayer does not agree with the amount of the assessment limitation difference for which the taxpayer qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the taxpayer qualifies to transfer any assessment limitation difference, upon the taxpayer filing a petition to the value adjustment board in the county where the new homestead property is located, the value adjustment board in that county shall, upon receiving the appeal, send a notice to the value adjustment board in the county where the previous homestead was located, which shall reconvene if it has already adjourned.

(b) Such notice operates as a petition in, and creates an appeal to, the value adjustment board in the county where the previous homestead was located of all issues surrounding the previous assessment differential for the taxpayer involved. However, the taxpayer may not petition to have the just, assessed, or taxable value of the previous homestead changed.

(c) The value adjustment board in the county where the previous homestead was located shall set the petition for hearing and notify the taxpayer, the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located, and the value adjustment board in that county, and shall hear the appeal. Such appeal shall be heard by an attorney special magistrate if the value adjustment board in the county where the previous homestead was located uses special magistrates. The taxpayer may attend such hearing and present evidence, but need not do so. The value adjustment board in the county where the previous homestead was located shall issue a decision and send a copy of the decision to the value adjustment board in the county where the new homestead is located.

(d) In hearing the appeal in the county where the new homestead is located, that value adjustment board shall consider the decision of the value adjustment board in the county where the previous homestead was located on the issues pertaining to the previous homestead and on the amount of any assessment reduction for which the taxpayer qualifies. The value adjustment board in the county where the new homestead is located may not hold its hearing until it has received the decision from the value adjustment board in the county where the previous homestead was located.

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(e) In any circuit court proceeding to review the decision of the value adjustment board in the county where the new homestead is located, the court may also review the decision of the value adjustment board in the county where the previous homestead was located.

**History.**—s. 25, ch. 4322, 1895; GS 525; s. 1, ch. 5605, 1907; ss. 23, 66, ch. 5596, 1907; RGS 723, 724; CGL 929, 930; s. 1, ch. 67-415; ss. 1, 2, ch. 69-55; s. 1, ch. 69-140; ss. 21, 35, ch. 69-106; s. 25, ch. 70-243; s. 34, ch. 71-355; s. 11, ch. 73-172; s. 5, ch. 76-133; s. 1, ch. 76-234; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 2, ch. 78-354; s. 36, ch. 80-274; s. 13, ch. 82-208; ss. 8, 55, 80, ch. 82-226; s. 209, ch. 85-342; s. 1, ch. 86-175; s. 1, ch. 88-146; s. 143, ch. 91-112; s. 1, ch. 92-32; s. 977, ch. 95-147; s. 6, ch. 95-404; s. 4, ch. 96-204; s. 3, ch. 97-117; s. 2, ch. 2002-18; s. 1, ch. 2004-349; s. 7, ch. 2008-173; s. 3, ch. 2008-197; s. 2, ch. 2011-93; s. 54, ch. 2011-151; s. 1, ch. 2015-115; s. 8, ch. 2016-128.

**Note.**—Former s. 193.25.

**194.013 Filing fees for petitions; disposition; waiver.**—

(1) If required by resolution of the value adjustment board, a petition filed pursuant to s. 194.011 shall be accompanied by a filing fee to be paid to the clerk of the value adjustment board in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal, covered by the petition and subject to appeal. However, such filing fee may not be required with respect to an appeal from the disapproval of homestead exemption under s. 196.151 or from the denial of tax deferral under s. 197.2425. Only a single filing fee shall be charged under this section as to any particular parcel of real property or tangible personal property account despite the existence of multiple issues and hearings pertaining to such parcel or account. For joint petitions filed pursuant to s. 194.011(3)(e), (f), or (g), a single filing fee shall be charged. Such fee shall be calculated as the cost of the special magistrate for the time involved in hearing the joint petition and shall not exceed $5 per parcel of real property or tangible property account. Such fee is to be proportionately paid by affected parcel owners.

(2) The value adjustment board shall waive the filing fee with respect to a petition filed by a taxpayer who demonstrates at the time of filing, by an appropriate certificate or other documentation issued by the Department of Children and Families and submitted with the petition, that the petitioner is then an eligible recipient of temporary assistance under chapter 414.

(3) All filing fees imposed under this section shall be paid to the clerk of the value adjustment board at the time of filing. If such fees are not paid at that time, the petition shall be deemed invalid and shall be rejected.

(4) All filing fees collected by the clerk shall be allocated and utilized to defray, to the extent possible, the costs incurred in connection with the administration and operation of the value adjustment board.

**History.**—s. 19, ch. 83-204; s. 210, ch. 85-342; s. 2, ch. 86-175; s. 4, ch. 86-300; s. 2, ch. 88-146; s. 144, ch. 91-112; s. 55, ch. 96-175; s. 18, ch. 99-8; s. 3, ch. 2000-262; s. 70, ch. 2004-11; s. 55, ch. 2011-151; s. 41, ch. 2014-19; s. 2, ch. 2015-115.

**194.014 Partial payment of ad valorem taxes; proceedings before value adjustment board.**—

(1)(a) A petitioner before the value adjustment board who challenges the assessed value of property must pay all of the non-ad valorem assessments and make a partial payment of at least 75 percent of the ad valorem taxes, less the applicable discount under s. 197.162, before the taxes become delinquent pursuant to s. 197.333.

(b)1. A petitioner before the value adjustment board who challenges the denial of a classification or exemption, or the assessment based on an argument that the property was not substantially complete as of January 1, must pay all of the non-ad valorem assessments and the amount of the tax which the taxpayer admits in good faith to be owing, less the applicable discount under s. 197.162, before the taxes become delinquent pursuant to s. 197.333.

2. If the value adjustment board determines that the amount of the tax that the taxpayer has admitted to be owing pursuant to this paragraph is grossly disproportionate to the amount of the tax found to be due and that the taxpayer's admission was not made in good faith, the tax collector must collect a penalty at the rate of 10 percent of the deficiency per year from the date the taxes became delinquent pursuant to s. 197.333.

(c) The value adjustment board must deny the petition by written decision by April 20 if the petitioner fails to make the payment required by this subsection. The clerk, upon issuance of the decision, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

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(2) If the value adjustment board or the property appraiser determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at an annual percentage rate equal to the bank prime loan rate on July 1, or the first business day thereafter if July 1 is a Saturday, Sunday, or legal holiday, of the year, beginning on the date the taxes became delinquent pursuant to s. 197.333 until the unpaid amount is paid. If the value adjustment board or the property appraiser determines that a refund is due, the overpaid amount accrues interest at an annual percentage rate equal to the bank prime loan rate on July 1, or the first business day thereafter if July 1 is a Saturday, Sunday, or legal holiday, of the tax year, beginning on the date the taxes became delinquent pursuant to s. 197.333 until a refund is paid. Interest on an overpayment related to a petition shall be funded proportionately by each taxing authority that was overpaid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued pursuant to s. 197.322. For purposes of this subsection, the term “bank prime loan rate” means the average predominant prime rate quoted by commercial banks to large businesses as published by the Board of Governors of the Federal Reserve System.

(3) This section does not apply to petitions for ad valorem tax deferrals pursuant to chapter 197.

**History.**—s. 1, ch. 2011-181; s. 9, ch. 2016-128.

**194.015 Value adjustment board.**—There is hereby created a value adjustment board for each county, which shall consist of two members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district. A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. 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. No meeting of the board shall take place unless counsel to the board is present. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

**History.**—s. 2, ch. 69-140; s. 1, ch. 69-300; s. 26, ch. 70-243; s. 22, ch. 73-172; s. 5, ch. 74-234; s. 1, ch. 75-77; s. 6, ch. 76-133; s. 2, ch. 76-234; s. 1, ch. 77-69; s. 145, ch. 91-112; s. 978, ch. 95-147; s. 4, ch. 2008-197.

**194.032 Hearing purposes; timetable.**—

(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 s. 194.011(1); however, no board hearing shall be held before approval of all or any part of the assessment rolls by the Department of Revenue. The board shall meet for the following purposes:

1. Hearing petitions relating to assessments filed pursuant to s. 194.011(3).
2. Hearing complaints relating to homestead exemptions as provided for under s. 196.151.
3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under s. 196.011.
4. Hearing appeals concerning ad valorem tax deferrals and classifications.
5. Hearing appeals from determinations that a change of ownership under s. 193.155(3), a change of ownership or control under s. 193.1554(5) or s. 193.1555(5), or a qualifying improvement under s. 193.1555(5) has occurred.

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(b) Notwithstanding the provisions of paragraph (a), the value adjustment board may meet prior to the approval of the assessment rolls by the Department of Revenue, but not earlier than July 1, to hear appeals pertaining to the denial by the property appraiser of exemptions, tax abatements under s. 197.318, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, and deferrals under subparagraphs (a)2., 3., and 4. In such event, however, the board may not certify any assessments under s. 193.122 until the Department of Revenue has approved the assessments in accordance with s. 193.1142 and all hearings have been held with respect to the particular parcel under appeal.

(c) In no event may a hearing be held pursuant to this subsection relative to valuation issues prior to completion of the hearings required under s. 200.065(2)(c).

(2)(a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance at least 25 calendar days before the day of the scheduled appearance. The notice must indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. The property appraiser must provide a copy of the property record card containing information relevant to the computation of the current assessment, with confidential information redacted, to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser, in which case the property appraiser must notify the petitioner that the property record card is available online. The petitioner and the property appraiser may each reschedule the hearing a single time for good cause. As used in this paragraph, the term “good cause” means circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing. If the hearing is rescheduled by the petitioner or the property appraiser, the clerk shall notify the petitioner of the rescheduled time of his or her appearance at least 15 calendar days before the day of the rescheduled appearance, unless this notice is waived by both parties.

(b) A petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the scheduled time for the hearing to commence. If the hearing is not commenced within that time, the petitioner may inform the chairperson of the meeting that he or she intends to leave. If the petitioner leaves, the clerk shall reschedule the hearing, and the rescheduling is not considered to be a request to reschedule as provided in paragraph (a).

(c) Failure on three occasions with respect to any single tax year to convene at the scheduled time of meetings of the board is grounds for removal from office by the Governor for neglect of duties.

(3) The board shall remain in session from day to day until all petitions, complaints, appeals, and disputes are heard. If all or any part of an assessment roll has been disapproved by the department pursuant to s. 193.1142, the board shall reconvene to hear petitions, complaints, or appeals and disputes filed upon the finally approved roll or part of a roll.

**History.**—s. 4, ch. 69-140; ss. 21, 35, ch. 69-106; s. 27, ch. 70-243; s. 12, ch. 73-172; s. 6, ch. 74-234; s. 7, ch. 76-133; s. 3, ch. 76-234; s. 1, ch. 77-174; s. 13, ch. 77-301; ss. 1, 9, 37, ch. 80-274; s. 5, ch. 81-308; ss. 14, 16, ch. 82-208; ss. 9, 11, 23, 26, 80, ch. 82-226; ss. 20, 21, 22, 23, 24, 25, ch. 83-204; s. 146, ch. 91-112; s. 979, ch. 95-147; s. 5, ch. 96-204; s. 4, ch. 97-117; s. 2, ch. 98-52; s. 3, ch. 2002-18; s. 2, ch. 2004-349; s. 11, ch. 2012-193; s. 8, ch. 2013-109; s. 10, ch. 2016-128; s. 14, ch. 2018-118.

**194.034 Hearing procedures; rules.**—

(1)(a) Petitioners before the board may be represented by an employee of the taxpayer or an affiliated entity, an attorney who is a member of The Florida Bar, a real estate appraiser licensed under chapter 475, a real estate broker licensed under chapter 475, or a certified public accountant licensed under chapter 473, retained by the taxpayer. Such person may present testimony and other evidence.

(b) A petitioner before the board may also be represented by a person with a power of attorney to act on the taxpayer’s behalf. Such person may present testimony and other evidence. The power of attorney must conform to the requirements of part II of chapter 709, is valid only to represent a single petitioner in a single assessment year,

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and must identify the parcels for which the taxpayer has granted the person the authority to represent the taxpayer. The Department of Revenue shall adopt a form that meets the requirements of this paragraph. However, a petitioner is not required to use the department's form to grant the power of attorney.

(c) A petitioner before the board may also be represented by a person with written authorization to act on the taxpayer's behalf, for which such person receives no compensation. Such person may present testimony and other evidence. The written authorization is valid only to represent a single petitioner in a single assessment year and must identify the parcels for which the taxpayer authorizes the person to represent the taxpayer. The Department of Revenue shall adopt a form that meets the requirements of this paragraph. However, a petitioner is not required to use the department's form to grant the authorization.

(d) The property appraiser or his or her authorized representatives may be represented by an attorney in defending the property appraiser's assessment or opposing an exemption and may present testimony and other evidence.

(e) The property appraiser, each petitioner, and all witnesses shall be required, upon the request of either party, to testify under oath as administered by the chair of the board. Hearings shall be conducted in the manner prescribed by rules of the department, which rules shall include the right of cross-examination of any witness.

(f) Nothing herein shall preclude an aggrieved taxpayer from contesting his or her assessment in the manner provided by s. 194.171, regardless of whether he or she has initiated an action pursuant to s. 194.011.

(g) The rules shall provide that no evidence shall be considered by the board except when presented during the time scheduled for the petitioner's hearing or at a time when the petitioner has been given reasonable notice; that a verbatim record of the proceedings shall be made, and proof of any documentary evidence presented shall be preserved and made available to the Department of Revenue, if requested; and that further judicial proceedings shall be as provided in s. 194.036.

(h) Notwithstanding the provisions of this subsection, a petitioner may not present for consideration, and a board or special magistrate may not accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser of which the petitioner had knowledge but denied to the property appraiser.

(i) Chapter 120 does not apply to hearings of the value adjustment board.

(j) An assessment may not be contested unless a return as required by s. 193.052 was timely filed. For purposes of this paragraph, the term "timely filed" means filed by the deadline established in s. 193.062 or before the expiration of any extension granted under s. 193.063. If notice is mailed pursuant to s. 193.073(1)(a), a complete return must be submitted under s. 193.073(1)(a) for the assessment to be contested.

(2) In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. Findings of fact must be based on admitted evidence or a lack thereof. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

(3) Appearance before an advisory board or agency created by the county may not be required as a prerequisite condition to appearing before the value adjustment board.

(4) A condominium homeowners' association may appear before the board to present testimony and evidence regarding the assessment of condominium units which the association represents. Such testimony and evidence shall be considered by the board with respect to hearing petitions filed by individual condominium unit owners, unless the owner requests otherwise.

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(5) For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods.

(6) For purposes of hearing joint petitions filed pursuant to s. 194.011(3)(e), each included parcel shall be considered by the board as a separate petition. Such separate petitions shall be heard consecutively by the board. If a special magistrate is appointed, such separate petitions shall all be assigned to the same special magistrate.

**History.**—s. 21, ch. 83-204; s. 12, ch. 83-216; s. 3, ch. 86-175; s. 147, ch. 91-112; s. 2, ch. 92-32; s. 980, ch. 95-147; s. 71, ch. 2004-11; s. 2, ch. 2011-181; s. 12, ch. 2012-193; s. 4, ch. 2013-192; s. 11, ch. 2016-128.

**194.035 Special magistrates; property evaluators.**—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions, classifications, and determinations that a change of ownership, a change of ownership or control, or a qualifying improvement has occurred shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. 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. Before appointing a special magistrate, a value adjustment board shall verify the special magistrate's qualifications. The value adjustment 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. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board. When appointing special magistrates or when scheduling special magistrates for specific hearings, the board, the board attorney, and the board clerk may not consider the dollar amount or percentage of any assessment reductions recommended by any special magistrate in the current year or in any previous year.

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(2) The value adjustment board of each county may employ qualified property appraisers or evaluators to appear before the value adjustment board at that meeting of the board which is held for the purpose of hearing complaints. Such property appraisers or evaluators shall present testimony as to the just value of any property the value of which is contested before the board and shall submit to examination by the board, the taxpayer, and the property appraiser.

(3) The department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the department's standard measures of value, including the guidelines for real and tangible personal property. Notwithstanding subsection (1), a person who has 3 years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training shall be open to the public. The department shall charge tuition fees to any person attending this training in an amount sufficient to fund the department's costs to conduct all aspects of the training. The department shall deposit the fees collected into the Certification Program Trust Fund pursuant to s. 195.002(2).

**History.**—s. 22, ch. 83-204; s. 148, ch. 91-112; s. 981, ch. 95-147; s. 4, ch. 2002-18; s. 72, ch. 2004-11; s. 5, ch. 2008-197; s. 12, ch. 2016-128; s. 4, ch. 2020-10.

**194.036 Appeals.**—Appeals of the decisions of the board shall be as follows:

(1) If the property appraiser disagrees with the decision of the board, he or she may appeal the decision to the circuit court if one or more of the following criteria are met:

(a) The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the board, except that nothing herein shall authorize the property appraiser to institute any suit to challenge the validity of any portion of the constitution or of any duly enacted legislative act of this state;

(b) There is a variance from the property appraiser's assessed value in excess of the following: 15 percent variance from any assessment of $50,000 or less; 10 percent variance from any assessment in excess of $50,000 but not in excess of $500,000; 7.5 percent variance from any assessment in excess of $500,000 but not in excess of $1 million; or 5 percent variance from any assessment in excess of $1 million; or

(c) There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the value adjustment board in its decisions. The property appraiser shall notify the department of those portions of the tax roll for which the assertion is made. The department shall thereupon notify the clerk of the board who shall, within 15 days of the notification by the department, send the written decisions of the board to the department. Within 30 days of the receipt of the decisions by the department, the department shall notify the property appraiser of its decision relative to further judicial proceedings. If the department finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it shall so inform the property appraiser, who may thereupon bring suit in circuit court against the value adjustment board for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the tax roll to its just value in such amount as determined by judicial proceeding. However, when a final judicial decision is rendered as a result of an appeal filed pursuant to this paragraph which alters or changes an assessment of a parcel of property of any taxpayer not a party to such procedure, such taxpayer shall have 60 days from the date of the final judicial decision to file an action to contest such altered or changed assessment pursuant to s. 194.171(1), and the provisions of s. 194.171(2) shall not bar such action.

(2) Any taxpayer may bring an action to contest a tax assessment pursuant to s. 194.171.

(3) The circuit court proceeding shall be de novo, and the burden of proof shall be upon the party initiating the action.

**History.**—s. 23, ch. 83-204; s. 149, ch. 91-112; s. 982, ch. 95-147.

**194.037 Disclosure of tax impact.**—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board in at least a quarter-page size advertisement of a standard size or tabloid size

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newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. The newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. The headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

(2) There must be a line entry in each of the columns described in subsection (1), for each of the following property classes:

(a) Improved residential property, which must be identified as "Residential."

(b) Improved commercial property, which must be identified as "Commercial."

(c) Improved industrial property, utility property, leasehold interests, subsurface rights, and other property not properly attributable to other classes listed in this section, which must be identified as "Industrial and Misc."

(d) Agricultural property, which must be identified as "Agricultural."

(e) High-water recharge property, which must be identified as "High-Water Recharge."

(f) Historic property used for commercial or certain nonprofit purposes, which shall be identified as "Historic Commercial or Nonprofit."

(g) Tangible personal property, which must be identified as "Business Machinery and Equipment."

(h) Vacant land and nonagricultural acreage, which must be identified as "Vacant Lots and Acreage."

(3) The form of the notice, including appropriate narrative and column descriptions, shall be prescribed by department rule and shall be brief and nontechnical to minimize confusion for the average taxpayer.

**History.**—s. 24, ch. 83-204; s. 150, ch. 91-112; s. 6, ch. 96-204; s. 5, ch. 97-117; s. 6, ch. 2007-321; s. 6, ch. 2008-197.

## PART II
## JUDICIAL REVIEW

194.171 Circuit court to have original jurisdiction in tax cases.
194.181 Parties to a tax suit.
194.192 Costs; interest on unpaid taxes; penalty.
194.211 Injunction against tax sales.

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194.231 Parties in suits relating to distribution, etc., of funds to counties, etc.

**194.171 Circuit court to have original jurisdiction in tax cases.**—

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located, except that venue shall be in Leon County when the property is assessed pursuant to s. 193.085(4).

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2), or after 60 days from the date a decision is rendered concerning such assessment by the value adjustment board if a petition contesting the assessment had not received final action by the value adjustment board prior to extension of the roll under s. 197.323.

(3) Before an action to contest a tax assessment may be brought, the taxpayer shall pay to the collector not less than the amount of the tax which the taxpayer admits in good faith to be owing. The collector shall issue a receipt for the payment, and the receipt shall be filed with the complaint. Notwithstanding the provisions of chapter 197, payment of the taxes the taxpayer admits to be due and owing and the timely filing of an action pursuant to this section shall suspend all procedures for the collection of taxes prior to final disposition of the action.

(4) Payment of a tax shall not be deemed an admission that the tax was due and shall not prejudice the right to bring a timely action as provided in subsection (2) to challenge such tax and seek a refund.

(5) No action to contest a tax assessment may be maintained, and any such action shall be dismissed, unless all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent.

(6) The requirements of subsections (2), (3), and (5) are jurisdictional. No court shall have jurisdiction in such cases until after the requirements of both subsections (2) and (3) have been met. A court shall lose jurisdiction of a case when the taxpayer has failed to comply with the requirements of subsection (5).

**History.**—s. 1, ch. 8586, 1921; CGL 1038; s. 2, ch. 29737, 1955; s. 1, ch. 67-538; ss. 1, 2, ch. 69-55; s. 8, ch. 69-102; s. 6, ch. 69-140; ss. 30, 31, ch. 70-243; s. 1, ch. 72-239; s. 6, ch. 74-234; s. 17, ch. 82-226; s. 7, ch. 83-204; s. 56, ch. 83-217; s. 211, ch. 85-342; s. 3, ch. 88-146; s. 151, ch. 91-112; s. 32, ch. 94-353; s. 1470, ch. 95-147.

**Note.**—Former ss. 192.21, 194.151, 196.01.

**194.181 Parties to a tax suit.**—

(1) The plaintiff in any tax suit shall be:

(a) The taxpayer or other 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, or the condominium association, cooperative association, or homeowners' association as defined in s. 723.075 which operates the units subject to the assessment; or

(b) The property appraiser pursuant to s. 194.036.

(2) In any case brought by the taxpayer or association contesting the assessment of any property, the county property appraiser shall be party defendant. In any case brought by the property appraiser pursuant to s. 194.036(1)(a) or (b), the taxpayer shall be party defendant. In any case brought by the property appraiser pursuant to s. 194.036(1)(c), the value adjustment board shall be party defendant.

(3) In any suit involving the collection of any tax on property, as well as questions relating to tax certificates or applications for tax deeds, the tax collector charged under the law with collecting such tax shall be the defendant.

(4) In any suit involving a tax other than an ad valorem tax on property, the tax collector charged under the law with collecting such tax shall be defendant. However, this section does not apply in any instance wherein general law provides for some other person to be the party defendant.

(5) In any suit in which the assessment of any tax, or the collection of any tax, tax certificate, or tax deed is contested on the ground that it is contrary to the State Constitution, the official of the state government responsible for overall supervision of the assessment and collection of such tax shall be made a party defendant of such suit. Any such suit shall be brought in that county having venue under s. 194.171 or, when that section is inapplicable, in the Circuit Court of Leon County, and the attorney for the defendant county officer shall upon

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request represent the state official in any such suit or proceeding, for which he or she shall receive no additional compensation.

(6) In any suit in which the validity of any statute or regulation found in, or issued pursuant to, chapters 192-197, inclusive, is contested, the public officer affected may be a party plaintiff.

**History.**—s. 3, ch. 8586, 1921; CGL 1040; ss. 1, 2, ch. 69-55; s. 7, ch. 69-140; s. 32, ch. 70-243; s. 1, ch. 73-74; s. 9, ch. 76-133; s. 4, ch. 76-234; s. 1, ch. 77-174; s. 27, ch. 83-204; s. 4, ch. 88-146; s. 152, ch. 91-112; s. 983, ch. 95-147; s. 7, ch. 2004-349.

**Note.**—Former s. 196.03.

**194.192 Costs; interest on unpaid taxes; penalty.**—

(1) In any suit involving the assessment or collection of any tax, the court shall assess all costs.

(2) 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, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 10 percent of the deficiency per year from the date the tax became delinquent.

**History.**—s. 8, ch. 69-140; s. 33, ch. 70-243; s. 35, ch. 71-355; s. 2, ch. 72-239; s. 18, ch. 82-226; s. 4, ch. 96-397.

**194.211 Injunction against tax sales.**—In any tax suit, the court may issue injunctions to restrain the sale of real or personal property for any tax which shall appear to be contrary to law or equity, and in no case shall any complaint be dismissed because the tax assessment complained of, or the injunction asked for, involves personal property only.

**History.**—s. 2, ch. 8586, 1921; CGL 1039; ss. 1, 2, ch. 69-55; s. 34, ch. 70-243.

**Note.**—Former s. 196.02.

**194.231 Parties in suits relating to distribution, etc., of funds to counties, etc.**—

(1) No court shall hereafter enter any interlocutory or final order, decree, or judgment in any case involving the validity or constitutionality of any law relating to the distribution, apportionment, or allocation of any state excise or other taxes equally to the several counties in this state under such law, until it shall be made to appear of record in the case that the party to the cause seeking such order, decree, or judgment has duly served upon the chairperson of the board of county commissioners or the chairperson of the school board of each of the counties of this state or upon both such chairpersons of said boards, depending upon whether one or both of said boards has an interest in the subject matter, written notice of the pendency of the case and thereafter of all hearings of all applications or motions for such orders, decrees of judgments in such cases, at least 5 days before all hearings.

(2) Such notice shall state the time, place and date of each such hearing and adjournments thereof, and shall be accompanied by copy of the complaint and petition, motion or application for any such order, decree, or judgment and the exhibits thereto attached, if any; and upon such service such boards of such counties having an interest in the subject matter of the case shall forthwith be and become parties to the cause, and shall be by order of the court properly aligned as parties plaintiff or defendant.

**History.**—s. 1, ch. 19029, 1939; CGL 1940 Supp. 1279(110-f); s. 2, ch. 29737, 1955; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 984, ch. 95-147.

**Note.**—Former s. 196.13.

## PART III
## ASSESSMENT:
## PRESUMPTION OF CORRECTNESS

194.301 Challenge to ad valorem tax assessment.
194.3015 Burden of proof.

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

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(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.

**History.**—s. 1, ch. 97-85; s. 1, ch. 2009-121.

**194.3015 Burden of proof.**—

(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.

**History.**—s. 2, ch. 2009-121.

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# The 2020 Florida Statutes

Title XIV
TAXATION AND FINANCE

Chapter 195
PROPERTY ASSESSMENT ADMINISTRATION AND FINANCE

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## CHAPTER 195
## PROPERTY ASSESSMENT ADMINISTRATION AND FINANCE

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**195.0011 Short title.**—Chapter 195 shall be known as the "Property Assessment Administration and Finance Law."

**History.**—s. 1, ch. 73-172.

**195.0012 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.

**History.**—s. 47, ch. 70-243; s. 2, ch. 73-172.

**Note.**—Former s. 195.111.

**195.002 Supervision by Department of Revenue.**—

(1) The Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution. It shall also have supervision over tax collection and all other aspects of the administration of such taxes. The supervision of the department shall consist primarily of aiding and assisting county officers in the

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assessing and collection functions, with particular emphasis on the more technical aspects. In this regard, the department shall conduct schools to upgrade assessment skills of both state and local assessment personnel.

(2) In furtherance of its duty to conduct schools to upgrade assessment skills and collection skills, the department may establish by rule committees on admissions and certification. The department may also incur reasonable expenses for hiring instructors, travel, office operations, certificates of completion, badges or awards, food service incidental to conducting such schools, salaries and benefits of department employees whose duties are directly associated with developing and conducting such schools, and administering any certification program under s. 145.10, s. 145.11, or s. 194.035. The department may charge a tuition fee and an examination fee to any person who attends such a school and may charge a fee to certify or recertify any person under such a program. The department shall deposit such fees into the Certification Program Trust Fund which is created in the State Treasury. There shall be separate school accounts and program accounts in the trust fund for property appraisers, tax collectors, and special magistrates. The department shall use money in the fund to pay such expenses.

**History.**—s. 35, ch. 70-243; s. 7, ch. 74-234; s. 5, ch. 86-300; s. 25, ch. 90-203; s. 1, ch. 2008-138; s. 8, ch. 2008-197.

**195.022 Forms to be prescribed by Department of Revenue.**—The Department of Revenue shall prescribe all forms to be used by property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards in administering and collecting ad valorem taxes. The department shall prescribe a form for each purpose. The county officer shall reproduce forms for distribution at the expense of his or her office. A county officer may use a form other than the form prescribed by the department upon obtaining written permission from the executive director of the department; however, a county officer may not use a form if the substantive content of the form varies from the form prescribed by the department for the same or a similar purpose. If the executive director finds good cause to grant such permission he or she may do so. The county officer may continue to use the approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director. Otherwise, all such officers and their employees shall use the forms, and follow the instructions applicable to the forms, which are prescribed by the department. Upon request of any property appraiser or, in any event, at least once every 3 years, the department shall prescribe and furnish such aerial photographs and nonproperty ownership maps to the property appraisers as necessary to ensure that all real property within the state is properly listed on the roll. All photographs and maps furnished to counties with a population of 25,000 or fewer shall be paid for by the department as provided by law. For counties with a population greater than 25,000, the department shall furnish such items at the property appraiser's expense. The department may incur reasonable expenses for procuring aerial photographs and nonproperty ownership maps and may charge a fee to the respective property appraiser equal to the cost incurred. The department shall deposit such fees into the Certification Program Trust Fund created pursuant to s. 195.002. There shall be a separate account in the trust fund for the aid and assistance activity of providing aerial photographs and nonproperty ownership maps to property appraisers. The department shall use money in the fund to pay such expenses. All forms and maps and instructions relating to their use must be substantially uniform throughout the state. An officer may employ supplemental forms and maps, at the expense of his or her office, which he or she deems expedient for the purpose of administering and collecting ad valorem taxes. The forms required in ss. 193.461(3)(a) and 196.011(1) for renewal purposes must require sufficient information for the property appraiser to evaluate the changes in use since the prior year. If the property appraiser determines, in the case of a taxpayer, that he or she has insufficient current information upon which to approve the exemption, or if the information on the renewal form is inadequate for him or her to evaluate the taxable status of the property, he or she may require the resubmission of an original application.

**History.**—s. 37, ch. 70-243; s. 4, ch. 73-172; s. 7, ch. 74-234; s. 10, ch. 76-133; s. 2, ch. 78-185; s. 1, ch. 78-193; s. 153, ch. 91-112; s. 8, ch. 93-132; ss. 70, 71, ch. 2003-399; s. 1, ch. 2004-22; s. 2, ch. 2008-138; s. 1, ch. 2009-67.

**195.027 Rules and regulations.**—

(1) The Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations shall be followed by the property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards. It is hereby declared to be the legislative intent that the department

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shall formulate such rules and regulations that property will be assessed, taxes will be collected, and the administration will be uniform, just, and otherwise in compliance with the requirements of the general law and the constitution.

(2) It is the legislative intent that all counties operate on computer programs that are substantially similar and produce data which are directly comparable. The rules and regulations shall prescribe uniform standards and procedures for computer programs and operations for all programs installed in any property appraiser's office. It is the legislative intent that the department shall require a high degree of uniformity so that data will be comparable among counties and that a single audit procedure will be practical for all property appraisers' offices.

(3) The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property which records are required to make a determination of the proper assessment as to the particular property in question. Access to a taxpayer's records shall be provided only in those instances in which it is determined that such records are necessary to determine either the classification or the value of the taxable nonhomestead property. Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment is made. All records produced by the taxpayer under this subsection shall be deemed to be confidential in the hands of the property appraiser, the department, the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such records are exempt from the provisions of s. 119.07(1).

(4)(a) The rules and regulations prescribed by the department shall require a return of tangible personal property which shall include:

1. A general identification and description of the property or, when more than one item constitutes a class of similar items, a description of the class.
2. The location of such property.
3. The original cost of such property and, in the case of a class of similar items, the average cost.
4. The age of such property and, in the case of a class of similar items, the average age.
5. The condition, including functional and economic depreciation or obsolescence.
6. The taxpayer's estimate of fair market value.

(b) For purposes of this subsection, a class of property shall include only those items which are substantially similar in function and use. Nothing in this chapter shall authorize the department to prescribe a return requiring information other than that contained in this subsection; nor shall the department issue or promulgate any rule or regulation directing the assessment of property by the consideration of factors other than those enumerated in s. 193.011.

(5) The rules and regulations shall require that the property appraiser deliver copies of all pleadings in court proceedings in which his or her office is involved to the Department of Revenue.

(6) The fees and costs of the sale or purchase and terms of financing shall be presumed to be usual unless the buyer or seller or agent thereof files a form which discloses the unusual fees, costs, and terms of financing. Such form shall be filed with the clerk of the circuit court at the time of recording. The rules and regulations shall prescribe an information form to be used for this purpose. Either the buyer or the seller or the agent of either shall complete the information form and certify that the form is accurate to the best of his or her knowledge and belief. The information form shall be confidential in the hands of all persons after delivery to the clerk, except that the Department of Revenue and the Auditor General shall have access to it in the execution of their official duties, and such form is exempt from the provisions of s. 119.07(1). The information form may be used in any judicial proceeding, upon a motion to produce duly made by any party to such proceedings. Failure of the clerk to obtain an information form with the recording shall not impair the validity of the recording or the conveyance. The form shall provide for a notation by the clerk indicating the book and page number of the conveyance in the official record books of the county. The clerk shall promptly deliver all information forms received to the property appraiser for his or her custody and use.

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**History.**—s. 39, ch. 70-243; s. 2, ch. 73-172; ss. 8, 22, 23, ch. 74-234; s. 11, ch. 76-133; s. 16, ch. 76-234; s. 14, ch. 79-334; s. 10, ch. 80-77; s. 23, ch. 80-274; s. 6, ch. 81-308; s. 22, ch. 88-119; s. 64, ch. 89-356; s. 39, ch. 90-360; s. 154, ch. 91-112; s. 985, ch. 95-147; s. 5, ch. 96-397; s. 51, ch. 96-406.

**Note.**—Former s. 195.042.

**195.032 Establishment of standards of value.**—In furtherance of the requirement set out in s. 195.002, the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law, to be used by property appraisers in all counties, including taxing districts, to aid and assist them in arriving at assessments of all property. 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 ss. 193.011 and 193.461. 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. However, the presumption of correctness accorded an assessment made by a property appraiser shall not be impugned merely because the standard measures of value do not establish the just value of any property.

**History.**—s. 38, ch. 70-243; s. 12, ch. 76-133; s. 9, ch. 76-234; s. 62, ch. 82-226.

**195.052 Research and tabulation of data.**—The department shall conduct constant research and maintain accurate tabulations of data and conditions existing as to ad valorem taxation, shall annually publish such data as may be appropriate to facilitate fiscal policymaking, and shall annually make such recommendations to the Legislature as are necessary to ensure that property is valued according to its just value and is equitably taxed throughout the state. Such data shall include the annual percentage increase in total nonvoted ad valorem taxes levied by each city and county and shall include information on the distribution of ad valorem taxes levied among the various classifications of property, including homestead, nonhomestead residential, new construction, commercial, and industrial properties. Such data shall include the previous year's adopted millage rate, the current year's millage rate, and the current percentage increase in taxes levied above the rolled-back rate. Such data shall be published, at a minimum, on the department's website and on the websites of all property appraisers of this state, if available. Publication shall occur not later than 90 days after receipt of extended rolls for all counties pursuant to s. 193.122(7).

**History.**—s. 40, ch. 70-243; s. 3, ch. 82-388; s. 6, ch. 83-204; s. 9, ch. 2008-197.

**195.062 Manual of instructions.**—

(1) The department shall prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes. This manual shall contain all:

(a) Rules and regulations.

(b) Standard measures of value.

(c) Forms and instructions relating to the use of forms and maps.

Consistent with s. 195.032, the standard measures of value shall be adopted in general conformity with the procedures set forth in s. 120.54, but shall not have the force or effect of such rules and shall be used only to assist tax officers in the assessment of property as provided by s. 195.002. Guidelines may be updated annually to incorporate new market data, which may be in tabular form, technical changes, changes indicated by established decisions of the Supreme Court, and, if a summary of justification is set forth in the notice required under s. 120.54, other changes relevant to appropriate assessment practices or standard measurement of value. Such new data may be incorporated into the guidelines on the approval of the executive director if after notice in substantial conformity with s. 120.54 there is no objection filed with the department within 45 days, and the procedures set forth in s. 120.54 do not apply.

(2) The department may also include in such manual any other information which it deems pertinent or helpful in the administration of taxes. Such manual shall instruct that the mere recordation of a plat on previously unplatted acreage shall not be construed as evidence of sufficient change in the character of the land to require

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reassessment until such time as development is begun on the platted acreage. Such manual shall be made available for distribution to the public at a nominal cost, to include cost of printing and circulation.

**History.**—s. 41, ch. 70-243; s. 1, ch. 71-367; s. 2, ch. 73-172; s. 9, ch. 74-234; s. 1, ch. 75-12; s. 10, ch. 76-234; s. 1, ch. 77-174; s. 5, ch. 2002-18; s. 3, ch. 2004-349.

**195.072 Cooperation with other state agencies.**—

(1) State agencies are authorized and directed to render such necessary aid and assistance to the Department of Revenue as is required to enable the department to carry out its functions of ensuring just valuation and equitable administration of property taxes in this state.

(2) The Department of Revenue shall render such aid and assistance as may be required in an active investigation of a property appraiser by a state agency by providing procedural and valuation assistance as it relates to the property appraiser's property tax administrative duties.

**History.**—s. 42, ch. 70-243; s. 13, ch. 2012-193.

**195.073 Classification of property.**—All items required by law to be on the assessment rolls must receive a classification based upon the use of the property. The department shall promulgate uniform definitions for all classifications. The department may designate other subclassifications of property. No assessment roll may be approved by the department which does not show proper classifications.

(1) Real property must be classified according to the assessment basis of the land into the following classes:

(a) Residential, subclassified into categories, one category for homestead property and one for nonhomestead property:

1. Single family.
2. Mobile homes.
3. Multifamily, up to nine units.
4. Condominiums.
5. Cooperatives.
6. Retirement homes.

(b) Commercial and industrial, including apartments with more than nine units.

(c) Agricultural.

(d) Nonagricultural acreage.

(e) High-water recharge.

(f) Historic property used for commercial or certain nonprofit purposes.

(g) Exempt, wholly or partially.

(h) Centrally assessed.

(i) Leasehold interests.

(j) Time-share property.

(k) Land assessed under s. 193.501.

(l) Other.

(2) Personal property shall be classified as:

(a) Floating structures—residential.

(b) Floating structures—nonresidential.

(c) Mobile homes and attachments.

(d) Household goods.

(e) Other tangible personal property.

(3) When the tax roll is submitted to the department for approval, there shall also be appended a statement indicating the total assessed valuation of structures added to and deleted from the assessment roll for that year in each taxing jurisdiction.

(4)(a) Rules adopted pursuant to this section shall provide for the separate identification of property as prior existing property of an expanded or rebuilt business, as expansion-related property of an expanded or rebuilt

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business, and as property of a new business, in the event the business qualifies for an enterprise zone property tax credit pursuant to s. 220.182, in addition to classification according to use.

(b) This subsection expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(5) Rules adopted pursuant to this section shall provide for the separate identification of property granted an economic development ad valorem tax exemption, in addition to classification according to use.

(6) To the greatest extent practicable and based on existing information, all publicly owned real property required to be listed on the assessment roll shall also be separately classified according to ownership by federal, state, or local government; water management district; or other public entity.

**History.**—s. 3, ch. 73-172; ss. 8, 23, ch. 74-234; s. 15, ch. 79-334; s. 11, ch. 80-77; ss. 6, 10, ch. 80-248; s. 3, ch. 80-347; s. 9, ch. 81-308; ss. 56, 74, ch. 82-226; s. 1, ch. 83-223; s. 27, ch. 84-356; s. 65, ch. 94-136; s. 64, ch. 94-353; s. 7, ch. 96-204; s. 6, ch. 97-117; s. 24, ch. 2000-210; s. 16, ch. 2005-287; s. 4, ch. 2009-157; s. 5, ch. 2020-10.

**195.084 Information exchange.**—

(1) The department shall promulgate rules and regulations for the exchange of information among the department, the property appraisers' offices, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability. All records and returns of the department useful to the property appraiser or the tax collector shall be made available upon request but subject to the reasonable conditions imposed by the department. This section shall supersede statutes prohibiting disclosure only with respect to the property appraiser, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, but the department may establish regulations setting reasonable conditions upon the access to and custody of such information. The Auditor General, the Office of Program Policy Analysis and Government Accountability, the tax collectors, and the property appraisers shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality shall be a misdemeanor of the first degree, punishable as provided by ss. 775.082 and 775.083.

(2) All of the records of property appraisers and collectors, including, but not limited to, worksheets and property record cards, shall be made available to the Department of Revenue, the Auditor General, and the Office of Program Policy Analysis and Government Accountability. Property appraisers and collectors are hereby directed to cooperate fully with representatives of the Department of Revenue, the Auditor General, and the Office of Program Policy Analysis and Government Accountability in realizing the objectives stated in s. 195.0012.

**History.**—s. 5, ch. 73-172; s. 1, ch. 77-102; s. 23, ch. 88-119; s. 40, ch. 90-360; s. 52, ch. 96-406; s. 48, ch. 2001-266.

**195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.**—

(1)(a) On or before June 1 of each year, every property appraiser, regardless of the form of county government, shall submit to the Department of Revenue a budget for the operation of the property appraiser's office for the ensuing fiscal year beginning October 1. The property appraiser shall submit his or her budget in the manner and form required by the department. A copy of such budget shall be furnished at the same time to the board of county commissioners. The department shall, upon proper notice to the county commission and property appraiser, review the budget request and may amend or change the budget request as it deems necessary, in order that the budget be neither inadequate nor excessive. On or before July 15, the department shall notify the property appraiser and the board of county commissioners of its tentative budget amendments and changes. Before August 15, the property appraiser and the board of county commissioners may submit additional information or testimony to the department respecting the budget. On or before August 15, the department shall make its final budget amendments or changes to the budget and shall provide notice thereof to the property appraiser and board of county commissioners. Once the department makes its final budget amendments, the budget is final and shall be funded by the county commission pursuant to s. 192.091.

(b) The Governor and Cabinet, sitting as the Administration Commission, may hear appeals from the final action of the department upon a written request being filed by the property appraiser or the presiding officer of the county commission no later than 15 days after the conclusion of the hearing held pursuant to s. 200.065(2)(d). The filing of an appeal does not relieve the county commission of its obligation to fund the department-approved

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final budget during the pendency of the appeal. The Administration Commission may amend the budget if it finds that any aspect of the budget is unreasonable in light of the workload of the office of the property appraiser in the county under review. The budget request as approved by the department and as amended by the commission shall become the operating budget of the property appraiser for the ensuing fiscal year beginning October 1, except that the budget so approved may subsequently be amended under the same procedure. After final approval, the property appraiser shall make no transfer of funds between accounts without the written approval of the department. However, all moneys received by property appraisers in complying with chapter 119 shall be accounted for in the same manner as provided for in s. 218.36, for moneys received as county fees and commissions, and any such moneys may be used and expended in the same manner and to the same extent as funds budgeted for the office and no budget amendment shall be required.

(2) On or before August 1 of each year, each tax collector, regardless of the form of county government, shall submit to the Department of Revenue a budget for the operation of the tax collector's office for the ensuing fiscal year, in the manner and form prescribed by the department. A copy of such budget shall be furnished at the same time to the board of county commissioners. The department shall examine the budget and, if it is found adequate to carry on the work of the tax collector, shall approve the budget and certify it back to the tax collector. If the department finds the budget inadequate or excessive, it shall return such budget to the tax collector, together with its ruling thereon. The tax collector shall revise the budget as required and resubmit it to the department. After the final approval of the budget by the department, there shall be no reduction or increase by any officer, board, or commission without the approval of the department. However, all moneys received by tax collectors in complying with chapter 119 shall be accounted for in the same manner as provided for in s. 218.36, for moneys received as county fees and commissions, and any such moneys may be used and expended in the same manner and to the same extent as funds budgeted for the office and no budget amendment shall be required. This subsection does not apply in a county in which the office of tax collector has been abolished and the duties of that office have been transferred to another office pursuant to s. 1(d), Art. VIII of the State Constitution or in a county in which a resolution is in effect pursuant to s. 145.022 or in any charter county where the charter specifically provides for a different method for the submission of the tax collector's budget.

(3) Any check received by the office of the collector which is returned by the bank upon which the check is drawn shall be the personal liability of the tax collector unless the collector, after due diligence to collect the returned check, forwards the returned check for prosecution to the state attorney of the circuit where the check was drawn. This subsection does not apply to ad valorem taxes, in which case the collector shall proceed under chapter 197.

(4) The property appraisers and tax collectors of this state are hereby authorized to pay any fee established by the department for attendance by an employee at a school established and conducted by the department pursuant to s. 195.002. Further, the travel and per diem expenses of such employee may be paid as set forth in s. 112.061. Property appraisers are authorized to pay a fee established by the department for the costs of aerial photographs and nonproperty ownership maps provided by the department pursuant to s. 195.022.

(5) Any property appraiser or tax collector whose budget is approved by the Department of Revenue who has not been reelected to office or is not seeking reelection shall be prohibited from making any budget amendments, transferring funds between itemized appropriations, or expending in a single month more than one-twelfth of any itemized approved appropriation following the date he or she is eliminated as a candidate or October 1, whichever comes later, without the approval of the Department of Revenue.

(6) Each property appraiser and tax collector must post their final approved budget on their official website within 30 days after adoption. Each county's official website must have a link to the websites of the property appraiser or tax collector where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the final approved budget must be posted on the county's official website.

**History.**—s. 56, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 36, ch. 70-243; s. 6, ch. 73-172; s. 10, ch. 74-234; s. 1, ch. 77-102; s. 93, ch. 79-190; s. 16, ch. 79-334; s. 29, ch. 80-274; s. 84, ch. 81-259; s. 3, ch. 82-33; s. 6, ch. 86-300; s. 3, ch. 88-85; s. 3, ch. 88-158; s. 26, ch. 90-203; s. 2, ch. 90-343; s. 986, ch. 95-147; ss. 4, 18, ch. 95-272; s. 4, ch. 97-287; s. 3, ch. 2008-138; s. 17, ch. 2011-144; s. 1, ch. 2015-87.

**Note.**—Former ss. 193.02, 195.011.

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**195.092 Authority to bring and maintain suits.**—

(1) The Department of Revenue shall have authority to bring and maintain such actions at law or in equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, rule, regulation, or decision of the Department of Revenue lawfully made under the authority of these tax laws. Venue for such actions shall be in the county in which the official duties of the property appraiser are to be performed.

(2) The property appraiser or any taxing authority shall have the authority to bring and maintain such actions as may be necessary to contest the validity of any rule, regulation, order, directive, or determination of any agency of the state, including, but not limited to, disapproval of all or any part of an assessment roll or a determination of assessment levels. The defendant in such actions shall be the agency head, and service of process shall be on such person or, when the head of the agency is a collegial body, its executive director, if there be one. Such action shall be brought within 60 days of the date the rule, regulation, order, directive, or determination becomes effective. Venue for such actions shall be in Leon County. The circuit court judge, upon proper motion, may agree to hear the case in the county where the property is located if trial in Leon County would result in substantial expense and inconvenience to the necessary participants. Appeal shall be to the First District Court of Appeal.

(3) No action shall be instituted to compel reappraisal of property or adjustment of the tax rolls unless the executive director has first met or in good faith has attempted to meet in conference with the affected property appraiser and has been unable to resolve differences or obtain acceptable written assurance of the implementation of a plan to ensure compliance with general law and the constitutional requirement of just value.

(4) In any action instituted against a property appraiser to compel the performance of his or her official duties, the court may order the implementation of a plan of reappraisal to be completed within a prescribed period of time. To implement its decision, the court shall have the power to:

(a) Enter such orders as are necessary to ensure that assessments shall be uniform, equitable, at just value, and otherwise in compliance with law.

(b) Maintain jurisdiction until such time as all of the requirements of the court as expressed in its order have been met.

(5) Chapter 120 shall not apply to this section.

**History.**—s. 55, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 44, ch. 70-243; s. 6, ch. 80-274; s. 987, ch. 95-147.
**Note.**—Former ss. 196.16, 195.041.

**195.096 Review of assessment rolls.**—

(1) The assessment rolls of each county shall be subject to review by the Department of Revenue.

(2) The department shall conduct, no less frequently than once every 2 years, an in-depth review of the real property assessment roll of each county. The department need not individually study every use-class of property set forth in s. 195.073, but shall at a minimum study the level of assessment in relation to just value of each classification specified in subsection (3). Such in-depth review may include proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

(a) The department shall, at least 30 days prior to the beginning of an in-depth review in any county, notify the property appraiser in the county of the pending review. At the request of the property appraiser, the department shall consult with the property appraiser regarding the classifications and strata to be studied, in order that the review will be useful to the property appraiser in evaluating his or her procedures.

(b) Every property appraiser whose upcoming roll is subject to an in-depth review shall, if requested by the department on or before January 1, deliver upon completion of the assessment roll a list of the parcel numbers of all parcels that did not appear on the assessment roll of the previous year, indicating the parcel number of the parent parcel from which each new parcel was created or “cut out.”

(c) In conducting assessment ratio studies, the department must use all practicable steps, including stratified statistical and analytical reviews and sale-qualification studies, to maximize the representativeness or statistical

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reliability of samples of properties in tests of each classification, stratum, or roll made the subject of a ratio study published by it. The department shall document and retain records of the measures of representativeness of the properties studied in compliance with this section. Such documentation must include a record of findings used as the basis for the approval or disapproval of the tax roll in each county pursuant to s. 193.1142. In addition, to the greatest extent practicable, the department shall study assessment roll strata by subclassifications such as value groups and market areas for each classification or stratum to be studied, to maximize the representativeness of ratio study samples. For purposes of this section, the department shall rely primarily on an assessment-to-sales-ratio study in conducting assessment ratio studies in those classifications of property specified in subsection (3) for which there are adequate market sales. The department shall compute the median and the value-weighted mean for each classification or subclassification studied and for the roll as a whole.

(d) In the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere.

(e) The department and each property appraiser shall cooperate in the conduct of these reviews, and each shall make available to the other all matters and records bearing on the preparation and computation of the reviews. The property appraisers shall provide any and all data requested by the department in the conduct of the studies, including electronic data processing tapes. Any and all data and samples developed or obtained by the department in the conduct of the studies shall be confidential and exempt from the provisions of s. 119.07(1) until a presentation of the findings of the study is made to the property appraiser. After the presentation of the findings, the department shall provide any and all data requested by a property appraiser developed or obtained in the conduct of the studies, including tapes. Direct reimbursable costs of providing the data shall be borne by the party who requested it. Copies of existing data or records, whether maintained or required pursuant to law or rule, or data or records otherwise maintained, shall be submitted within 30 days from the date requested, in the case of written or printed information, and within 14 days from the date requested, in the case of computerized information.

(f) Within 120 days after receipt of a county assessment roll by the executive director of the department pursuant to s. 193.1142(1), or within 10 days after approval of the assessment roll, whichever is later, the department shall complete the review for that county and publish the department's findings. The findings must include measures as may be appropriate for each classification or subclassification studied and related statistical and analytical details. The measures in the findings must be based on:

1. A 95-percent level of confidence; or

2. Ratio study standards that are generally accepted by professional appraisal organizations in developing a statistically valid sampling plan if a 95-percent level of confidence is not attainable.

(g) Notwithstanding any other provision of this chapter, in one or more assessment years following a natural disaster in counties for which a state of emergency was declared by executive order or proclamation of the Governor pursuant to chapter 252, if the department determines that the natural disaster creates difficulties in its statistical and analytical reviews of the assessment rolls in affected counties, the department shall take all practicable steps to maximize the representativeness and reliability of its statistical and analytical reviews and may use the best information available to estimate the levels of assessment. This paragraph first applies to the 2019 assessment roll and operates retroactively to January 1, 2019.

(3)(a) Upon completion of review pursuant to paragraph (2)(f), the department shall publish the results of reviews conducted under this section. The results must include all statistical and analytical measures computed under this section for the real property assessment roll and independently for the following real property classes if the classes constituted 5 percent or more of the total assessed value of real property in a county on the previous tax roll:

1. Residential property that consists of one primary living unit, including, but not limited to, single-family residences, condominiums, cooperatives, and mobile homes.

2. Residential property that consists of two to nine primary living units.

3. Agricultural, high-water recharge, historic property used for commercial or certain nonprofit purposes, and other use-valued property.

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4. Vacant lots.
5. Nonagricultural acreage and other undeveloped parcels.
6. Improved commercial and industrial property, including apartments with more than nine units.
7. Taxable institutional or governmental, utility, locally assessed railroad, oil, gas and mineral land, subsurface rights, and other real property.

If one of the above classes constituted less than 5 percent of the total assessed value of all real property in a county on the previous assessment roll, the department may combine it with one or more other classes of real property for purposes of assessment ratio studies or use the weighted average of the other classes for purposes of calculating the level of assessment for all real property in a county. The department shall also publish such results for any subclassifications of the classes or assessment roll it may have chosen to study.

(b) If necessary for compliance with s. 1011.62, and for those counties not being studied in the current year, the department shall project value-weighted mean levels of assessment for each county. The department shall make its projection based upon the best information available, using professionally accepted methodology, and shall separately allocate changes in total assessed value to:

1. New construction, additions, and deletions.
2. Changes in the value of the dollar.
3. Changes in the market value of property other than those attributable to changes in the value of the dollar.
4. Changes in the level of assessment.

In lieu of the statistical and analytical measures published pursuant to paragraph (a), the department shall publish details concerning the computation of estimated assessment levels and the allocation of changes in assessed value for those counties not subject to an in-depth review.

(c) Upon publication of data and findings as required by this subsection, the department shall notify the committees of the Senate and of the House of Representatives having oversight responsibility for taxation, the appropriate property appraiser, and the county commission chair or corresponding official under a consolidated charter. Copies of the data and findings shall be provided upon request.

(4) It is declared to be the legislative intent that approval of the rolls by the department pursuant to s. 193.1142 and certification by the value adjustment board pursuant to s. 193.122(1) shall not be deemed to impugn the use of postcertification reviews to require adjustments in the preparation of succeeding assessment rolls to ensure that such succeeding assessment rolls do meet the constitutional mandates of just value.

(5) It is the legislative intent that the department utilize to the fullest extent practicable objective measures of market value in the conduct of reviews pursuant to this section.

(6) Reviews conducted under this section must include an evaluation of whether nonhomestead exempt values determined by the appraiser under applicable provisions of chapter 196 are correct and whether agricultural and high-water recharge classifications and classifications of historic property used for commercial and certain nonprofit purposes were granted in accordance with law.

(7) When a roll is prepared as an interim roll pursuant to s. 193.1145, the department shall compute assessment levels for both the interim roll and the final approved roll.

(8) Chapter 120 shall not apply to this section.

**History.**—s. 7, ch. 73-172; ss. 11, 21, ch. 74-234; s. 2, ch. 75-211; s. 13, ch. 76-133; ss. 7, 10, ch. 80-248; s. 18, ch. 80-274; ss. 1, 3, 10, ch. 82-208; ss. 3, 27, 29, 80, ch. 82-226; s. 61, ch. 89-356; s. 134, ch. 91-112; s. 3, ch. 92-32; s. 7, ch. 93-132; ss. 5, 19, ch. 95-272; s. 8, ch. 96-204; s. 7, ch. 96-397; ss. 53, 54, ch. 96-406; s. 7, ch. 97-117; s. 5, ch. 97-287; s. 13, ch. 99-333; ss. 1, 2, ch. 2001-137; s. 49, ch. 2001-266; s. 906, ch. 2002-387; s. 2, ch. 2005-185; s. 1, ch. 2006-42; s. 13, ch. 2007-5; s. 4, ch. 2011-52; s. 14, ch. 2012-193; s. 3, ch. 2019-42; s. 6, ch. 2020-10.

**195.097 Postaudit notification of defects; supervision by the department.**—

(1)(a) Upon evaluation of any reviews, studies, or findings of the Department of Revenue, the executive director of the department shall issue a notice to any property appraiser who the executive director has determined has one or more classes or other strata of property listed on the assessment rolls in a manner inconsistent with the requirements of law, or is otherwise not assessing in accordance with law. The executive

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director shall specify in his or her notice the classes or strata of property that have been improperly assessed on the prior year's roll, the nature of the defect or defects, and the requirements of the department to obtain approval of the current year's assessment roll. Such notice shall be provided to the property appraiser no later than November 15.

(b) Notwithstanding other provisions of this section, the executive director is not required to notice as a defect a class or stratum of property which, based upon the evaluation of any review, study, or finding of the department, indicates an assessment level of more than 100 percent of just value in any class or stratum of property on the prior year's tax roll.

(2) Within 15 days after receipt of a notice, but no later than December 1, the property appraiser shall either notify the executive director in writing of his or her intention to comply or request an immediate conference with the executive director for the purpose of attempting to resolve differences between the property appraiser and the executive director. Such conference shall be held no later than December 15. At the conclusion of the conference, but no later than January 1, the executive director shall issue an administrative order, which order shall incorporate the remedial steps, if any, to be taken by the property appraiser to ensure that all property on his or her rolls is assessed at just value. An administrative order shall also be issued in the case of a property appraiser who has stated his or her intention to comply.

(3) Upon receipt of an administrative order issued pursuant to this section, but not later than January 15, the property appraiser shall notify the department of his or her intent to comply with the order or of the basis for intended noncompliance. Upon receipt of a notice of intended noncompliance, the department shall take such action as it deems necessary pursuant to s. 195.092.

(4) Upon the issuance of the administrative order, the department shall commence continuing supervision of the preparation of the current rolls to ensure that every reasonable effort is being taken by the property appraiser to comply with the order. Supervision may include, but shall not be limited to, the conduct of ratio or other mass-data studies on the roll being prepared, onsite inspection of the property appraiser's office or field operations, and interviews with the property appraiser's personnel or consultants. The executive director may require the property appraiser to certify in writing the specific steps taken to comply with the administrative order. During such supervision, the executive director may seek any judicial remedy available to him or her under law to force compliance with the order, and may request removal of the property appraiser by the Governor when he or she deems such action necessary. No later than May 1, the executive director shall notify the property appraiser, in writing, as to whether he or she is in substantial compliance with the order. In the event that the executive director determines that the property appraiser is not in substantial compliance at that time, he or she shall send to the property appraiser and the governing body of each tax-levying agency in the county a notice of intent to disapprove the tax roll in whole or in part.

(5) The dates specified in this section shall be extended if the date for completion of the current or prior year's roll was extended pursuant to s. 193.023(1), or records or data requested in writing pursuant to s. 195.096(2)(e) were not submitted within the time allowed by law. The length of extension of dates specified in this section shall be equal to:

(a) The number of days the date for completion of the rolls was extended; or

(b) The number of days from the time the data or records were required by law to be submitted until the time received by the department.

(6) Chapter 120 does not apply to this section.

**History.**—s. 7, ch. 73-172; ss. 14, 21, ch. 74-234; s. 3, ch. 75-211; s. 1, ch. 77-102; s. 19, ch. 80-274; s. 4, ch. 80-347; s. 3, ch. 82-208; ss. 29, 80, ch. 82-226; s. 41, ch. 83-204; s. 989, ch. 95-147; ss. 6, 20, ch. 95-272; s. 6, ch. 97-287.

**195.099 Periodic review.**—

(1)(a) The department may review the assessments of new, rebuilt, and expanded business reported according to s. 193.077(3), to ensure parity of level of assessment with other classifications of property.

(b) This subsection shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

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(2) The department may review the assessments of new and expanded businesses granted an exemption pursuant to s. 196.1995 to ensure parity of level of assessment with other classifications of property.

**History.**—ss. 7, 10, ch. 80-248; s. 4, ch. 80-347; s. 3, ch. 82-208; ss. 29, 80, ch. 82-226; s. 57, ch. 83-217; s. 28, ch. 84-356; s. 25, ch. 85-80; s. 66, ch. 94-136; s. 1, ch. 2006-113; s. 16, ch. 2012-193.

**195.0995 Use of sales transactions data; qualification; review.**—

(1) For each sales transaction disqualified by a property appraiser, the property appraiser shall document the reason for disqualification of the sale in a manner prescribed by the department.

(2) The department shall randomly sample all sales in the county to determine whether those sales were properly qualified or disqualified. If the department finds that more than 10 percent of sales qualification decisions do not fall within the applicable criteria, the department shall issue a postaudit notification of defects and shall follow the procedures set forth in s. 195.097.

(3) Chapter 120 shall not apply to this section.

**History.**—s. 4, ch. 93-132; s. 1, ch. 2005-185.

**195.101 Withholding of state funds.**—

(1) The Department of Revenue is hereby directed to determine each year whether the several counties of this state are assessing the real and tangible personal property within their jurisdiction in accordance with law. If the Department of Revenue determines that any county is assessing property at less than that prescribed by law, the Chief Financial Officer shall withhold from such county a portion of any state funds to which the county may be entitled equal to the difference of the amount assessed and the amount required to be assessed by law.

(2) The Department of Revenue is hereby directed to determine each year whether the several municipalities of this state are assessing the real and tangible personal property within their jurisdiction in accordance with law. If the Department of Revenue determines that any municipality is assessing property at less than that prescribed by law, the Chief Financial Officer shall withhold from such municipality a portion of any state funds to which that municipality may be entitled equal to the difference of the amount assessed and the amount required to be assessed by law.

**History.**—s. 6, ch. 67-395; s. 5, ch. 67-396; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 45, ch. 70-243; s. 175, ch. 2003-261.

**Note.**—Former ss. 193.326, 195.051; ss. 167.445, 195.061.

**195.207 Effect on levy of municipal taxes.**—No municipal charter may prohibit or limit the authority of the governing body to levy ad valorem taxes or utility service taxes authorized under [1]s. 167.431. Any word, sentence, phrase, or provision, of any special act, municipal charter, or other law, that prohibits or limits a municipality from levying ad valorem taxes within the millage limits fixed by s. 9, Art. VII of the State Constitution, or prohibits or limits a municipality from levying utility service taxes within the limits fixed by [1]s. 167.431, is hereby nullified and repealed.

**History.**—s. 2, ch. 72-360; s. 3, ch. 73-129.

[1]**Note.**—Repealed by s. 5, ch. 73-129.

**Note.**—Former s. 167.4391.

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Attachment: FSChapter195 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# Uniform Policies and Procedures Manual for Value Adjustment Boards




## Florida Department of Revenue
## December 2020

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# Introduction

The Uniform Policies and Procedures Manual is available on the Department's website at http://floridarevenue.com/property/Pages/VAB.aspx and should be available on the board clerks' existing websites. Clerks may provide a working link to the manual on the Department's website to satisfy this requirement.

## Statutory Requirements:

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

> *(b) 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.*

## Rules and Forms:

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

1. Rule Chapter 12D-9, Florida Administrative Code (F.A.C.), and accompanying forms.

2. Rule Chapter 12D-10, F.A.C.

Rule Chapter 12D-9, F.A.C., is the primary component of the Uniform Policies and Procedures Manual. Value adjustment 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), Florida Statutes.

## The Uniform Policies and Procedures Manual contains:

1. Rule Chapters 12D-9 and 12D-10, F.A.C.
2. Provisions in Florida Statutes that govern value adjustment board procedures with the rights of taxpayers
3. Forms used in the value adjustment board process
4. A notice regarding case law

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## Other sets of documents for use with the Uniform Policies and Procedures Manual:

1. Other Legal Resources Including Statutory Criteria
   This set of compiled documents contains parts of the Florida Constitution, Florida Statutes, and Florida Administrative Code that are substantive criteria for the production of original assessments, including exemptions, classifications, and deferrals.

2. Reference Materials Including Guidelines
   This set of compiled documents contains
   Taxpayer brochure
   Checklists
   General description and internet links to:
   The Department's training for value adjustment boards and special magistrates;
   The Florida Real Property Appraisal Guidelines;
   The Florida Tangible Personal Property Appraisal Guidelines;
   The Florida Classified Use Valuation Guidelines for Agricultural Property; and
   Florida Attorney General Opinions, Government in the Sunshine Manual, PTO Bulletins and Advisements, and other reference materials.

These materials are not part of the Uniform Policies and Procedures Manual. Each of these sets of documents contains an introduction that provides orientation on the authority, content, and use of that respective set.

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# IMPORTANT NOTE ABOUT CASE LAW

In 2009, the Legislature amended section 194.301, F.S., and created section 194.3015, F.S. The amendment and new statutory section addresses the use of case law in administrative reviews of assessments. Value adjustment boards and appraiser special magistrates should use case law in conjunction with legal advice from the board legal counsel.

> "The provisions of this subsection preempt any prior case law that is inconsistent with this subsection." See section 194.301(1), F.S.

> "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." See section 194.3015(1), F.S.

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# FLORIDA ADMINISTRATIVE CODE
# CHAPTER 12D-9

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# PART I

## TAXPAYER RIGHTS; INFORMAL CONFERENCE PROCEDURES; DEFINITIONS; COMPOSITION OF THE VALUE ADJUSTMENT BOARD; APPOINTMENT OF THE CLERK; APPOINTMENT OF LEGAL COUNSEL TO THE BOARD; APPOINTMENT OF SPECIAL MAGISTRATES

### 12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings.

(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;





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(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 non-homestead property

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 193.074, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.301, 195.002, 195.027, 195.084, 196.151, 196.193, 196.194 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.002 Informal Conference Procedures.**

(1) Any taxpayer who objects to the assessment placed on his or her property, including the assessment of homestead property at less than just value, shall have the right to request an informal conference with the property appraiser.

(2) The property appraiser or a member of his or her staff shall confer with the taxpayer regarding the correctness of the assessment.

(3) At the conference, the taxpayer shall present facts that he or she considers supportive of changing the assessment and the property appraiser or his or her representative shall present facts that the property appraiser considers to be supportive of the assessment.

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(4) The request for an informal conference is not a prerequisite to administrative or judicial review of property assessments. Requesting or participating in an informal conference does not extend the petition filing deadline. A taxpayer may file a petition while seeking an informal conference in order to preserve his or her right to an administrative hearing.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 213.05 FS. History–New 3-30-10.*

**12D-9.003 Definitions.**

(1) "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."

(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) "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.

(6) "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 this rule chapter.

(7) "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.

(8) "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."

(9) "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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.001, 194.011, 194.013, 194.015, 194.032, 194.034, 195.022 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.004 Composition of the Value Adjustment Board.**

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



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(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

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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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.005 Duties of the Board.**

(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), F.S.; 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:

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), F.S. or 193.1555(5), F.S., or a qualifying improvement under Section 193.1555(5), F.S., has occurred.

(b) 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.

(c) The board shall remain in session until its duties are completed concerning all assessment rolls or parts of assessment rolls. 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. The board shall make its decisions timely so that the board clerk may observe the requirement that such decisions shall be issued within

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20 calendar days of the last day the board is in session pursuant to Section 194.034, F.S.

(2)(a) Value adjustment boards may have additional internal operating procedures, not rules, that 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 value adjustment board process. The board may publish fee schedules adopted by the board.

(b) 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.

(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. 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. Personnel performing any of the board's duties shall be independent of the property appraiser's and tax collector's office. This section shall not prevent 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. This section shall not prevent the property appraiser from providing data to assist the board clerk with the notice of tax impact.

(3) 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.

(4) 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.

(5) Failure on three occasions with respect to 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 194.011, 194.015, 194.032, 194.034, 194.035, 194.037 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.006 Clerk of the Value Adjustment Board.**

(1) The clerk of the governing body of the county shall be the clerk of the value adjustment board.

(2) The board clerk may delegate the day to day responsibilities for the board to a member of his or her staff, but is ultimately responsible for the operation of the board.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 28.12, 192.001, 194.011, 194.015, 194.032, 213.05 FS. History–New 3-30-10.*

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

(1) It is the board clerk's responsibility to verify through board legal counsel that the value adjustment board meets all of the requirements for the organizational meeting before the board or special magistrates hold hearings. If the board clerk determines that any of the requirements were not met, he or she shall contact the board legal counsel or the chair of the board regarding such deficiencies and cancel any scheduled hearings until such time as the requirements are met.

(2) The board clerk shall make petition forms available to the public upon request.

(3) 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. Alternatively, the property appraiser or the tax collector may obtain the relevant information from the board clerk electronically.

(4) The board clerk shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. 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.

(5) No less than 25 calendar days prior to the day of the petitioner's scheduled appearance before the board, the board clerk must notify the petitioner of the date and time scheduled for the appearance. The board clerk shall simultaneously notify the property appraiser or tax collector.

(6) 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 notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days from the date notification is mailed. Such petition shall be 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.

(7) 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.

(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.

(9) 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. The board

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clerk shall advise the chair of the board if the board's tentative schedule for holding hearings is insufficient to allow for proper scheduling.

(10) The board clerk shall timely notify the parties of the decisions of the board so that such decisions 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 such decision. Notification of the petitioner must be by first class mail or by electronic means as set forth in Section 194.034(2) or 192.048, F.S. 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. No party shall have access to decisions prior to any other party.

(11) After the value adjustment 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.

(12) 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.

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

(13) 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 any. Making materials available on a website is sufficient; however, provisions shall be made for persons that have hardship. Such materials shall be consistent with Department rules and forms.

(14) The board clerk shall provide notification of appeals or value adjustment board petitions taken with respect to property located within a municipality to the chief executive officer of each municipality as provided in Section 193.116, F.S. The board clerk shall also publish any notice required by Section 196.194, F.S.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.048, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History–New 3-30-10, Amended 6-14-16, 3-13-17, 9-19-17.*

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**12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board.**

(1) Each value adjustment board must appoint private legal counsel to assist the board.

(2) This legal counsel must be an attorney in private practice. The use of an attorney employed by government is prohibited. Counsel must have practiced law for over five years and meet the requirements of Section 194.015, F.S.

(3) An attorney may represent more than one value adjustment board.

(4) An attorney may represent a value adjustment board, even if another member of the attorney's law firm represents one of the enumerated parties so long as the representation is not before the value adjustment board.

(5) Legal counsel should avoid conflicts of interest or the appearance of a conflict of interest in their representation.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015 FS. History–New 3-30-10.*

**12D-9.009 Role of Legal Counsel to the Board.**

(1) 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.

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(f) Board legal counsel shall review and respond to written complaints alleging noncompliance with the law by the board, special magistrates, board clerk, and the parties. The legal counsel shall send a copy of the complaint along with the response to the department. This section does not refer to routine requests for reconsideration, requests for rescheduling, and pleadings and argument in petitions.

(2) The board legal counsel shall, upon appointment, send his or her contact information, which shall include his or her name, mailing address, telephone number, fax number, and e-mail address, to the department by mail, fax, or e-mail to:

Department of Revenue Property
Tax Oversight Program Attn.:
Director
P. O. Box 3000
Tallahassee, FL 32315-3000
Fax Number: (850) 617-6112
Email Address: VAB@floridarevenue.com

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS. History–New 3-30-10.*

**12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board.**

(1) In counties with populations of more than 75,000, the value adjustment board shall appoint special magistrates to take testimony and make recommendations on petitions filed with the value adjustment board. Special magistrates shall be selected from a list maintained by the board clerk of qualified individuals who are willing to serve. 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. The process for review of complaints of bias, prejudice, or conflict of interest regarding the actions of a special magistrate shall be as provided in subsection 12D-9.022(4), F.A.C.

(2) In counties with populations of 75,000 or less, the value adjustment board shall have the option of using special magistrates. The department shall make available to such counties a list of qualified special magistrates.

(3) A person does not have to be a resident of the county in which he or she serves as a special magistrate.

(4) 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

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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.

1. 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 be a member of The Florida Bar, must have at least five years of experience in the area of ad valorem taxation, and must receive training provided by the department. Alternatively, a member of The Florida Bar with at least three years of experience in ad valorem taxation and who has completed board training provided by the department including the examination, may serve as a special magistrate.

2. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser, must have at least five years of experience in real property valuation, and must receive training provided by the department. Alternatively, a state certified real estate appraiser with at least three years of real estate valuation experience and who has completed board training provided by the department including the examination, may serve as a special magistrate. A real property valuation special magistrate must be certified under Chapter 475, Part II, F.S.

a. A Florida certified residential appraiser appointed by the value adjustment board shall only hear petitions on the just valuation of residential real property of one to four residential units and shall not hear petitions on other types of real property.

b. A Florida certified general appraiser appointed by the value adjustment board may hear petitions on the just valuation of any type of real property.

3. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization, must have at least five years of experience in tangible personal property valuation, and must receive training provided by the department. Alternatively, a designated member of a nationally recognized appraiser's organization with at least three years of experience in tangible personal property valuation and who has completed board training provided by the department including the examination, may serve as a special magistrate.

4. All special magistrates shall attend or receive an annual training program provided by the department. Special magistrates substituting two years of experience must show that they have completed the training by taking a written examination provided by the department. A special magistrate must receive or complete any required training prior to holding hearings.

(5)(a) The value adjustment board or board legal counsel must verify a special magistrate's qualifications before appointing the special magistrate.

(b) The selection of a special magistrate must be based solely on the experience and qualification of such magistrate, and must not be influenced by any party, or prospective

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party, to a board proceeding or by any such party with an interest in the outcome of such proceeding. Special magistrates must adhere to Rule 12D-9.022, F.A.C., relating to disqualification or recusal.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.011 Role of Special Magistrates to the Value Adjustment Board.**

(1) 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.

(2) 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.

(3) When the special magistrate determines that the property appraiser did not establish a presumption of correctness, or determines that the property appraiser established a presumption of correctness that is overcome, as provided in Rule 12D-9.027, F.A.C., and the record contains competent substantial evidence for establishing value, an appraiser special magistrate is required to establish a revised value for the petitioned property. In establishing the revised value when authorized by law, the board or special magistrate is not restricted to any specific value offered by the parties.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, Chapter 475, Part II FS. History–New 3-30-10.*

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

(1) The department shall provide and conduct training for special magistrates at least once each state fiscal year available in at least five locations throughout the state. Such training shall emphasize:

(a) The law that applies to the administrative review of assessments;

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(b) Taxpayer rights in the administrative review process;

(c) The composition and operation of the value adjustment board;

(d) The roles of the board, board clerk, board legal counsel, special magistrates, and the property appraiser or tax collector and their staff;

(e) Procedures for conducting hearings;

(f) Administrative reviews of just valuations, classified use valuations, property classifications, exemptions, and portability assessment differences;

(g) The review, admissibility, and consideration of evidence;

(h) Requirements for written decisions; and

(i) The department's standard measures of value, including the guidelines for real and tangible personal property.

(2) The training shall be open to the public.

(3) Before any hearings are conducted, in those counties that do not use special magistrates, all members of the board or the board's legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the board clerk.

(4)(a) Each special magistrate that has five years of experience and, in those counties that do not use special magistrates, each board member or the board legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the board clerk.

(b) Each special magistrate that has three years of experience must complete the training including any updated modules and examinations, and receive from the department a certificate of completion, before conducting hearings and shall provide a copy of the certificate of completion of the training and examinations, including any updated modules, to the board clerk.

(5) The department's training is the official training for special magistrates regarding administrative reviews. The board clerk and board legal counsel may provide orientation to the special magistrates relating to local operating or ministerial procedures only. Such orientation meetings shall be open to the public for observation. This does not prevent board legal counsel from giving legal advice; however, to the fullest extent practicable, such legal advice should be in writing and public record. For requirements for decisions specifically based on legal advice see subsection 12D-9.030(6), and paragraph 12D-9.032(1)(b), F.A.C.

(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

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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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 195.084, 213.05, Chapter 475, Part II FS. History–New 3-30-10.*

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

(1) The board shall annually hold one or more organizational meetings, at least one of which shall meet the requirements of this section. The board shall hold this organizational meeting prior to the holding of value adjustment board hearings. 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. At one organizational meeting the board shall:

(a) Introduce the members of the board and provide contact information;

(b) Introduce the board clerk or any designee of the board clerk and provide the board clerk's contact information;

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

(d) Appoint or ratify special magistrates, if the board will be using them for that year;

(e) 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;

(f) 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;

(g) 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;

(h) Discuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the board. Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions or rules of the department. 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;

(i) 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;

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(j) 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;

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

(l) 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.

(2) The board shall announce the tentative schedule for the value adjustment board taking into consideration the number of petitions filed, the possibility of the need to reschedule and the requirement that the board stay in session until all petitions have been heard.

(3) The board may hold additional meetings for the purpose of addressing administrative matters.

*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 3-30-10.*

**12D-9.014 Prehearing Checklist.**

(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;

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(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).

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

## PART II

## PETITIONS; REPRESENTATION OF THE TAXPAYER; SCHEDULING AND NOTICE OF A HEARING; EXCHANGE OF EVIDENCE; WITHDRAWN OR SETTLED PETITIONS; HEARING PROCEDURES; DISQUALIFICATION OR RECUSAL; EX PARTE COMMUNICATION PROHIBITION; RECORD OF THE PROCEEDING; PETITIONS ON TRANSFER OF "PORTABILITY" ASSESSMENT DIFFERENCE; REMANDING ASSESSMENTS; RECOMMENDED DECISIONS; CONSIDERATION AND ADOPTION OF RECOMMENDED DECISIONS; FINAL DECISIONS; FURTHER JUDICIAL PROCEEDINGS

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## 12D-9.015 Petition; Form and Filing Fee.

(1)(a) For the purpose of requesting a hearing before the value adjustment board, the department prescribes Form DR-486. The Form DR-486 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(b) In accordance with Section 194.011(3), F.S., the department is required to prescribe petition forms. The department will not approve any local version of this form that contains substantive content that varies from the department's prescribed form. Any requests under Section 195.022, F.S., or approval from the department to use forms for petitions that are not identical to the department's form shall be by written board action or by written and signed request from the board chair or board legal counsel.

(2) Content of Petition. Petition forms as adopted or approved by the department shall contain the following elements so that when filed with the board clerk they shall:

(a) Describe the property by parcel number;

(b) Be sworn by the petitioner;

(c) State the approximate time anticipated by the petitioner for presenting and arguing his or her petition before the board or special magistrate to be considered by the board clerk as provided in subsection 12D-9.019(1), F.A.C., and may provide dates of nonavailability for scheduling purposes if applicable;

(d) Contain a space for the petitioner to indicate on the petition form that he or she does not wish to be present and argue the petition before the board or special magistrate but would like to have their evidence considered without an appearance;

(e) 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;

(f)1. 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,

2. 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,

3. 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 sworn 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; and,

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4. 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., 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.

(g) If the petition indicates that the taxpayer has authorized a compensated representative, who is not acting as a licensed or certified professional listed in paragraph 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; and,

(h) 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.

(i) Contain a space for the petitioner to indicate if the property is four or less residential units; or other property type; provided the board clerk shall accept the petition even if this space is not filled in; and,

(j) Contain a statement that a tangible personal property assessment may not be contested unless a return required by Section 193.052, F.S., is timely filed.

(3) 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 value adjustment board proceeding, including any appeals to circuit court of a board decision by the property appraiser or tax collector.

(4) The petition form shall provide notice to the petitioner of his or her right to an informal conference with the property appraiser and that such conference is not a prerequisite to filing a petition nor does it alter the time frame for filing a timely petition.

(5) The department, the board clerk, and the property appraiser or tax collector shall make available to petitioners the blank petition form adopted or approved by the department. The department prescribes the Form DR-486 series, for this purpose, incorporated in Rule 12D-16.002, F.A.C., by reference.

(6) If the taxpayer or representative's name, address, telephone, or similar contact information on the petition changes after filing the petition and before the hearing, the taxpayer or representative shall notify the board clerk in writing.

(7) Filing Fees. By resolution of the value adjustment board, a petition shall be accompanied by a filing fee to be paid to the board clerk in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal covered by the petition and subject to appeal. The resolution may include arrangements for petitioners to pay filing fees by credit card.

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(a) Other than fees required for late filed applications under Sections 193.155(8)(j) and 196.011(8), F.S., only a single filing fee shall be charged to any particular parcel of real property or tangible personal property account, despite the existence of multiple issues or hearings pertaining to such parcels or accounts.

(b) No filing fee shall be required with respect to an appeal from the disapproval of a timely filed application for homestead exemption or from the denial of a tax deferral.

(c) For joint petitions filed pursuant to Section 194.011(3)(e), (f), or (g), F.S., a single filing fee shall be charged. Such fee shall be calculated as the cost of the time required for the special magistrate in hearing the joint petition and shall not exceed $5 per parcel or account, for each additional parcel or account included in the petition, in addition to any filing fee for the petition. Said fee is to be proportionately paid by affected property owners.

(d) The value adjustment board or its designee shall waive the filing fee with respect to a petition filed by a taxpayer who demonstrates at the time of the filing by submitting with the petition documentation issued by the Department of Children and Families that the petitioner is currently an eligible recipient of temporary assistance under Chapter 414, F.S.

(e) All filing fees shall be paid to the board clerk at the time of filing. Any petition not accompanied by the required filing fee will be deemed incomplete.

(8) An owner of contiguous, undeveloped parcels may file a single joint petition if the property appraiser determines such parcels are substantially similar in nature. A condominium association, cooperative association, or any homeowners' association as defined in Section 723.075, F.S., 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 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. An owner of multiple tangible personal property accounts may file a single joint petition if the property appraiser determines that the tangible personal property accounts are substantially similar in nature. The property appraiser shall provide the petitioner with such determination upon request by the petitioner. The petitioner must obtain the determination from the property appraiser prior to filing the petition and must file the determination provided and completed by the property appraiser with the petition. An incorporated attached list of parcels or accounts by parcel number or account number, with an indication on the petition form showing a joint petition, shall be sufficient to signify a joint petition.

(9) Persons Authorized to Sign and File Petitions. The following persons may sign and file petitions with the value adjustment board.

(a) The taxpayer may sign and file a petition.

(b) 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

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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.

(c) 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.

(d) 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.

(10)(a) 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.

(b) 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.

(11) 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

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file a petition and represent the taxpayer, and resolve the issue in accordance with this rule chapter.

(12)(a) 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. If an incomplete petition is received, the board clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days. Such completed petition shall be timely if completed and filed within the time frame provided in the board clerk's notice.

(b) 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.

(c) 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.

(13) Timely Filing of Petitions. Petitions related to valuation issues may be filed, and must be accepted by the board clerk, at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes. Other petitions may be filed as follows:

(a) With respect to issues involving the denial of an exemption on or before the 30th day following the mailing of the written notification of the denial of the exemption on or before July 1 of the year for which the application was filed;

(b) With respect to issues involving the denial of an agricultural classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the agricultural classification on or before July 1 of the year for which the application was filed;

(c) With respect to issues involving the denial of a high-water recharge classification application on or before the 30th day following the mailing of the notification in writing of the denial of the high-water recharge classification on or before July 1 of the year for which the application was filed;

(d) With respect to issues involving the denial of a historic property used for commercial or certain nonprofit purposes classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the classification on or before July 1 of the year for which the application was filed;

(e) With respect to issues involving the denial of a tax deferral, on or before the 30th day following the mailing of the notification in writing of the denial of the deferral application;

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(f) With respect to exemption or classification claims relating to an exemption or classification that is not reflected on the notice of property taxes, including late filed exemption claims, on or before the 25th day following the mailing of the notice of proposed property taxes, or on or before the 30th day following the mailing of the written notification of the denial of the exemption or classification, whichever date is later; and,

(g) With respect to penalties imposed for filing incorrect information relating to tax deferrals for homestead, for recreational and commercial working waterfronts or for affordable rental housing properties, within 30 days after the penalties are imposed.

(14) Late Filed Petitions.

(a) The board may not extend the time for filing a petition. The board is not authorized to set and publish a deadline for late filed petitions. 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 the petitioner has demonstrated good cause justifying consideration and that the delay will not, in fact, be harmful to the performance of board functions in the taxing process. "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.

(b) The board clerk shall accept but not schedule for hearing a petition submitted to the board after the statutory deadline has expired, and 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. 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 such decision.

(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.

(d) The board is authorized to, but need not, require good cause hearings before good cause determinations are made. 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. If the board or a board designee determines that the petitioner has demonstrated good cause, the board clerk

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shall accept the petition for filing and so notify the petitioner and the property appraiser or the tax collector.

(e) 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.

(f) A person who files a petition may timely file an action in circuit court to preserve the right to proceed in circuit court. (Sections 193.155(8)(l), 194.036, 194.171(2) and 196.151, F.S.).

(15) Acknowledgement of Timely Filed Petitions. The board clerk shall accept all completed petitions, as defined by statute and subsection (2), of this rule. Upon receipt of a completed and filed petition, the board clerk shall provide to the petitioner an acknowledgment of receipt of such petition and shall provide to the property appraiser or tax collector a copy of the petition.

(16) 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.

(17) The board clerk shall send the notice of hearing such that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. 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.

(18) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.155, 194.011, 194.013, 194.032, 194.034, 194.036, 195.022, 196.151, 197.2425 FS. History–New 3-30-10, Amended 11-1-12, 6-14-16, 3-13-17, 9-19-17.*

**12D-9.016 Filing and Service.**

(1) 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.

(2)(a) 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 filed the next regular business day.

(b) 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 filed the next

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regular business day.

(c) Any document that is required to be filed, served, provided or made available may be filed, served, provided or made available electronically, if the board and the board clerk make such resources available, and no party is prejudiced.

(d) Local procedure may supersede provisions regarding the number of copies that must be provided.

(3) 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. When a document is filed that does not clearly indicate it has been provided to the other party, the board clerk, board legal counsel, board members and special magistrates shall inform the party of the requirement to provide to every party or shall exercise care to ensure that a copy is provided to every party, and that no ex parte communication occurs.

(4) 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.

*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, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.017 Ex Parte Communication Prohibition.**

(1)(a) No participant, including the petitioner, the property appraiser, the board 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 party shall communicate with a member of the board or the special magistrate regarding the issues in the case without the other party being present or without providing a copy of any written communication to the other party.

(b) 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. 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.

(2) Any attempt by the property appraiser, tax collector, taxpayer or taxpayer's representative to provide information or discuss issues regarding a petition without the presence of the opposing party before or after the hearing, with a member of the board or the special magistrate shall be immediately placed on the record by the board member or special magistrate.

(3) The ex parte communication shall not be considered by the board or the special magistrate unless all parties have been notified about the ex parte communication, and no party objects, and all parties have an opportunity during the hearing to cross-examine, object, or otherwise address the communication.

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*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.018 Representation of the Taxpayer.**

(1) A taxpayer has the right, at the taxpayer's own expense, to be represented before the board by a person described in subsection (3), below. The taxpayer's representative may present testimony and other evidence in support of the petition

(2) 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.

(3) Subject to the petition filing requirements set forth in this rule chapter, a taxpayer may be represented before the board by one of the persons described in this subsection.

(a)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.

3. If the taxpayer has authorized an employee or professional, listed in this subsection, 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.

(b) 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, 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, 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.

(c) An uncompensated person who provides to the board clerk at the time the petition is

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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.

(4) 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.

*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 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.019 Scheduling and Notice of a Hearing.**

(1)(a) The board clerk shall prepare a schedule of appearances before the board or special magistrates based on timely filed petitions, and shall notify each petitioner of the scheduled time of appearance. The board clerk shall simultaneously notify the property appraiser or tax collector. 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.

(b) When scheduling hearings, the board clerk shall consider:

1. The 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.

(c) 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.

(d) 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.

(e) 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

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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 this rule. This hearing is subject to the single time reschedule for good cause as provided in this rule. 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.

(2) No hearing shall be scheduled related to valuation issues prior to completion by the governing body of each taxing authority of the public hearing on the tentative budget and proposed millage rate.

(3)(a) The notice of hearing before the value adjustment board 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, 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. The Form DR-486 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. The notice of hearing form shall meet the requirements of this section and shall be subject to approval by the department. The department provides Form DR-481 as a format for the form of such notice. Form DR-481, Value Adjustment Board – Notice of Hearing, is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(b) The notice shall include these 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.;

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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.

(4) 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 subsection, the term "good cause" is defined in Section 194.032(2)(a), F.S.

(a) 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.

(b) 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.

(c) 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.

(d) If the board or a board designee determines that the request demonstrates good cause, the request will be granted.

(e) 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.

(f) 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.

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

(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.

(i) 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.

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(j) 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.

(k) 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.

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

(m) 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.

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

(5) If a hearing is rescheduled by a party, the board clerk must notify the petitioner of the rescheduled time in the manner referenced in subsection (3), 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.

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

(7)(a) If a petitioner's hearing does not commence as scheduled, the board clerk is authorized to reschedule the hearing.

(b) 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. The board clerk is authorized to find that a reasonable time 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. If his or her petition has not been heard within a reasonable time, the petitioner may request to be heard immediately. If the board clerk finds a reasonable time has elapsed and petitioner is not heard, the board clerk shall reschedule the petitioner's hearing. A reasonable time must not exceed two hours. After two hours, the petitioner has the right to inform the board chairperson, or the clerk as board designee, that he or she intends to leave. If the petitioner chooses to leave, the petitioner must first inform the board chairperson or clerk that he or she intends to leave. The clerk must not list the petitioner as a no show. If the hearing does not commence within two hours and the petitioner leaves, the clerk must reschedule the hearing.

(c) A rescheduling under this subsection is not a request by a party to reschedule as provided in subsection (4).

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(d) A petitioner is not required to wait any length of time as a prerequisite to filing an action in circuit court.

(8) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 195.022 FS. History–New 3-30-10, Amended 9-26-11, 6-14-16, Section 15, Chapter 2016-128, Laws of Florida, 7-1-16, 3-13-17, 9-19-17.*

**12D-9.020 Exchange of Evidence.**

(1)(a)1. At least 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.

2. 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.

(b) A petitioner's noncompliance with paragraph (1)(a), 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.

(c) A petitioner's noncompliance with paragraph (1)(a), does not authorize a value adjustment board or special magistrate to exclude the petitioner's evidence. However, 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. 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. These requirements are more specifically described in subsection (8), of this rule, and in paragraphs 12D-9.025(4)(a) and (f), F.A.C.

(2)(a) If the property appraiser receives the petitioner's documentation as described in paragraph (1)(a), 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. The evidence list must contain the current property record card. There is no specific form or format required for the petitioner's written request.

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(b) 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.

(3)(a) If the petitioner does not provide the information to the property appraiser described in paragraph (1)(a), the property appraiser need not provide the information to the petitioner as described in subsection (2).

(b) If the property appraiser does not provide the information to the petitioner within the time required by paragraph (2)(b), the hearing shall be rescheduled to allow the petitioner additional time to review the property appraiser's evidence.

(4) By agreement of the parties the evidence exchanged under this rule section shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. The petitioner and property appraiser may agree to a different timing and method of exchange. "Provided" means received by the party not later than the time frame provided in this rule section. 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. The property appraiser shall provide the information at the address listed on the petition form for the petitioner.

(5) Level of detail on evidence summaries: The summaries of evidence to be presented by witnesses for the petitioner and the property appraiser under this rule section 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.

(6) Hearing procedures: Neither the board nor the special magistrate shall take any general action regarding compliance with this section, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with this section, and shall be taken at a scheduled hearing and based on evidence presented at such hearing. "General action" means a prearranged course of conduct not based on evidence received in a specific case at a scheduled hearing on a petition.

(7) A property appraiser shall not use at a hearing evidence that was not supplied to the petitioner as required. 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.

(8) 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. Such evidentiary materials shall be considered timely if provided to the property appraiser no later

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than fifteen (15) days before the hearing in accordance with the exchange of evidence rules in this section. 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 they were provided a reasonable time before the hearing, as described in paragraph 12D-9.025(4)(f), 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 this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

(9) As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence. 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. The basis for any ruling on admissibility of evidence must be reflected in the record.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 195.022 FS. History–New 3-30-10, Amended 6-14-16, 4-10-18.*

**12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct; Non-Appearance; Summary Disposition of Petitions.**

(1) A petitioner may withdraw a petition prior to the scheduled hearing. Form DR-485WI is prescribed by the department for such purpose; however, other written or electronic means may be used. Form DR-485WI is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. Form DR-485WI shall indicate the reason for the withdrawal as one of the following:

(a) Petitioner agrees with the determination of the property appraiser or tax collector;

(b) Petitioner and property appraiser or tax collector have reached a settlement of the issues;

(c) 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

(d) Other specified reason.

(2) 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.

(3) 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 issue the petitioner a notice granting said exemption, classification, portability assessment difference transfer, or deferral and shall 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 acknowledgement and there shall be no further proceeding on the matter acknowledged as correct.

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(4) If parties do not file a notice of withdrawal or notice of acknowledgement 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. If a petition is withdrawn or acknowledged as correct under subsection (1), (2), or (3), or settlement is reached and filed by the parties, at any time before a recommended decision or final board decision is issued, the board, special magistrate or clerk need not issue such decision. The board clerk shall list and report all withdrawals, settlements, acknowledgements of correctness as withdrawn or settled petitions. Settled petitions shall include those acknowledged as correct by the property appraiser or tax collector.

(5) For all withdrawn or settled petitions, a special magistrate shall not produce a recommended decision and the board shall not produce a final decision.

(6) 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 not commence or proceed with the hearing and shall produce a decision or recommended decision as described in this section. If the petitioner makes a good cause request before the decision, if no special magistrate is used, or recommended decision, if a special magistrate is used, is issued, the board or board designee shall rule on the good cause request before determining that the decision or recommended decision should be set aside and that the hearing should be rescheduled, or that the board or special magistrate should issue the decision or recommended decision.

(7) When a petitioner does not appear by the commencement of a scheduled hearing and a good cause request is pending, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

(a) If the board or board designee finds good cause for the petitioner's failure to appear, the board clerk shall reschedule the hearing.

(b) 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.

(8) Decisions issued under subsection (6) or (7) shall not be treated as withdrawn or settled petitions and shall contain:

(a) A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and

(b) 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.

(9) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 194.034, 195.027(1) FS. Law Implemented 193.155, 194.011, 194.032, 194.037, 213.05 FS. History–New 3-30-10.*

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

(1) If either the petitioner or the property appraiser communicates a reasonable belief that a special magistrate does not possess the statutory qualifications in accordance with Sections 194.035 and 475.611(1)(h) and (i), F.S., to conduct a particular proceeding, the basis for that belief shall be included in the record of the proceeding or submitted prior to the hearing in writing to the board legal counsel.

(2)(a) 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.

(b) Upon review, if the board or its legal counsel 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, or, if a hearing was already held, the recommended decision will be forwarded to the board in accordance with these rules.

(3) 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.

(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.

(b) 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. A special magistrate who recuses himself or herself shall close the hearing on the record and notify the board clerk of the recusal. Upon a board member's recusal, the hearing shall go forward if there is a quorum. 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.

(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; 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.

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(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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 213.05, 475.611, FS. History–New 3-30-10.*

**12D-9.023 Hearings Before Board or Special Magistrates.**

(1) 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 of the value adjustment board. The board clerk shall perform his or her duties in a manner to avoid the appearance of a conflict of interest. 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.

(2) 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. 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.024 Procedures for Commencement of a Hearing.**

(1) If all parties are present and the petition is not withdrawn or settled, a hearing on the petition shall commence.

(2) The hearing shall be open to the public.

(3) 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.

(4) 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.

(5) 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:

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(a) States the board or special magistrate is an independent, impartial, and unbiased hearing body or officer, as applicable;

(b) 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;

(c) States the hearing will be conducted in an orderly, fair, and unbiased manner;

(d) 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

(e) 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.

(6) 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.

(7) After the opening statement, and clarification of any questions with the parties, the board or special magistrate shall proceed with the hearing. The property appraiser shall indicate for the record his or her determination of just value, classified use value, tax exemption, property classification, or "portability" assessment difference, or deferral or penalties. Under subsection 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. The property appraiser shall present evidence on this issue first.

(8) 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. 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.

(9)(a) 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 subsection 12D-9.021(6), F.A.C., 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. Requirements specific to hearings on such petitions are set forth in subsection 12D-9.028(6), F.A.C.; 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.

(b) 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.

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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.

(10) 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. 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. If the petitioner elects to have the hearing rescheduled, the board clerk shall reschedule the hearing. 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.

(11) 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses.**

(1) As part of administrative reviews, the board or special magistrate must:

(a) Review the evidence presented by the parties;

(b) Determine whether the evidence presented is admissible;

(c) Admit the evidence that is admissible, and identify the evidence presented to indicate that it is admitted or not admitted; and

(d) Consider the admitted evidence.

(2)(a) In these rules, the term "admitted evidence" means evidence that has been admitted into the record for consideration by the board or special magistrate. Board and special magistrate proceedings are not controlled by strict rules of evidence and procedure. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

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(b) 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. 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.

(c) Rebuttal evidence is relevant evidence used solely to disprove or contradict the original evidence presented by an opposing party.

(d) As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence. 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. The basis for any ruling on admissibility of evidence must be reflected in the record. The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.

(3)(a) 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. The property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination.

(b) Under Section 194.301, F.S., "preponderance of the evidence" is the standard of proof that applies in assessment challenges. The "clear and convincing evidence" standard of proof no longer applies, starting with 2009 assessments. 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.

(4)(a) 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. The petitioner may still present evidence if he or she does not participate in the evidence exchange. 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. These requirements are more specifically described in paragraph (f) below.

(b) 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.

(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. This requirement 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. Requirements specific to hearings on such petitions are set forth in subsection 12D-9.028(6), F.A.C.; or

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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.

(d) 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.

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.

(e) 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. 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.

(f)1. 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. 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 Rule 12D-9.020, F.A.C., and, if provided to the property appraiser less than fifteen (15) days before the hearing, shall be considered timely if the board or special magistrate determines they were provided a reasonable time before the hearing. 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 this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser. For purposes of this rule and Rule 12D-9.020, F.A.C., reasonableness shall be assumed if the property appraiser does not object. 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. 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.

2. 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. The remedy

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for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(5) When testimony is presented at a hearing, each party shall have the right to cross-examine any witness.

(6)(a) 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. 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. 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.

(b) 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.

(c) 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.

(7)(a) 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. Upon agreement of the parties, the board clerk is authorized to make an electronic representation of evidence that is difficult to store or maintain.

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(b) 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. When asking questions, the board or special magistrate shall not show bias for or against any party or witness. 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.

(c) Representatives of interested municipalities may be heard as provided in Section 193.116, F.S.

(8) 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. 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.

(a) 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.

(b) 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 to a time as scheduled and noticed by the board clerk.

(9) 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. 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.

(10) For purposes of reporting board action on decisions and on the notice of tax impact, the value as reflected on the initial roll shall mean the property appraiser's determination 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 the special magistrate. See Rule 12D-9.038, F.A.C.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.092, 194.011, 194.032, 194.034 FS. History–New 3-30-10, Amended 6-14-16, 9-19-17.*

**12D-9.026 Procedures for Conducting a Hearing by Electronic Media.**

(1) Hearings conducted by electronic media shall occur only under the conditions set forth in this rule section.

(a) The board must approve and have available the necessary equipment and procedures.

(b) The special magistrate, if one is used, must agree in each case to the electronic hearing.



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(c) The board must reasonably accommodate parties that have hardship or lack necessary equipment or ability to access equipment. The board must provide a physical location at which a party may appear, if requested.

(2) 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.

(3) Consistent with board equipment and procedures:

(a) Any party may request to appear at a hearing before a board or special magistrate, using telephonic or other electronic media. 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. 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.

(b) 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. 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.

(4) Such hearings 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.035, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.027 Process of Administrative Review.**

(1) This section sets forth the sequence of general procedural steps for administrative reviews. This order of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. The board or special magistrate shall follow this general sequence in order to fulfill the procedural requirements of Section 194.301, F.S. The following subsections set forth the steps for administrative reviews of:

(a) Just valuations in subsection (2);

(b) Classified use valuations, and assessed valuations of limited increase property, in subsection (3); and

(c) Exemptions, classifications, and portability assessment transfers in subsection (4).

(2) In administrative reviews of the just valuation of property, the board or special magistrate shall follow this sequence of general procedural steps:

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(a) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's just valuation methodology is appropriate. The 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)1. In administrative reviews of just valuations, if the property appraiser establishes a presumption of correctness, 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.

2. If one or both of the conditions in subparagraph (b)1. above are determined to exist, the property appraiser's presumption of correctness is overcome.

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 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 shall 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 shall remand the assessment to the property appraiser with appropriate directions for establishing just value.

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

(3) In administrative reviews of the classified use valuation of property or administrative reviews of the assessed valuation of limited increase property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Identify the statutory criteria that apply to the classified use valuation of the property or to the assessed valuation of limited increase property, as applicable.

(b) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's classified use or assessed valuation methodology is appropriate. The presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property

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appraiser's valuation methodology complies with the statutory criteria that apply to the classified use valuation or assessed valuation, as applicable, of the petitioned property.

(c)1. In administrative reviews of classified use valuations, if the property appraiser establishes a presumption of correctness, 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 classified use valuation practices that are different from the classified use valuation practices generally applied by the property appraiser to comparable property of the same property classification within the same county.

2. If one or both of the conditions in subparagraph (c)1. above are determined to exist, the property appraiser's presumption of correctness is overcome.

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 presumption of correctness is not overcome as described in subparagraph (c)1. above, the assessment stands.

(d)1. In administrative reviews of assessed valuations of limited increase property, if the property appraiser establishes a presumption of correctness, 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 assessed valuation practices that are different from the assessed valuation practices generally applied by the property appraiser to comparable property within the same county.

2. If one or both of the conditions in subparagraph (d)1. above are determined to exist, the property appraiser's presumption of correctness is overcome.

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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 assessed value which cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned 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.

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

(4) In administrative reviews of exemptions, classifications, and portability assessment transfers, the board or special magistrate shall follow this sequence of general procedural steps:

(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.

4. If the denial is found to be valid, proceed with steps in paragraphs (b) through (g) below.

(b) Consider the admitted evidence presented by the parties.

(c) Identify the particular exemption, property classification, or portability assessment transfer issue that is the subject of the petition.

(d) Identify the statutory criteria that apply to the particular exemption, property classification, or portability assessment difference transfer that was identified as the issue under administrative review.

(e) 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.

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(f) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption, classification, or portability assessment transfer should be granted because all of the applicable statutory criteria are satisfied. Where necessary and where the context will permit in these rules, the term "statutory criteria" includes any constitutional criteria that do not require implementation by legislation.

(5) "Standard of proof" means the level of proof needed by the board or special magistrate to reach a particular conclusion. The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence."

(6) When applied to evidence, the term "sufficient" is a test of adequacy. Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. 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. The board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the standard of proof that applies to the issue under consideration. 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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.084, 195.096, 196.011, 196.151, 196.193, 197.122, 213.05 FS. History–New 3-30-10.*

**12D-9.028 Petitions on Transfer of "Portability" Assessment Difference.**

(1) This rule section applies to the review of denials of assessment limitation difference transfers or of 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 this rule.

(2) A petitioner may file a petition with the value adjustment board, in the county where the new homestead is located, to petition either a denial of a transfer or the amount



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of the transfer, on Form DR-486PORT. Form DR-486PORT is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. Such petition must be filed at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes as provided in Section 194.011, F.S. If only a part of a transfer of assessment increase differential is granted, the notice of proposed property taxes shall function as notice of the taxpayer's right to appeal to the board.

(3) The petitioner may petition to the board the decision of the property appraiser refusing to allow the transfer of an assessment difference, and the board shall review the application and evidence presented to the property appraiser upon which the petitioner based the claim and shall hear the petitioner on behalf of his or her right to such assessment. Such petition shall be heard by an attorney special magistrate if the board uses special magistrates.

(4) This subsection will apply to value adjustment board proceedings in a county in which the previous homestead is located. Any petitioner desiring to appeal the action of a property appraiser in a county in which the previous homestead is located must so designate on Form DR-486PORT.

(5) If the petitioner does not agree with the amount of the assessment limitation difference for which the petitioner qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the petitioner qualifies to transfer any assessment limitation difference, upon the petitioner filing a petition to the value adjustment board in the county where the new homestead property is located, the board clerk in that county shall, upon receiving the petition, send a notice using Form DR-486XCO, to the board clerk in the county where the previous homestead was located, which shall reconvene if it has already adjourned. Form DR-486XCO is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C.

(6)(a) If a cross county petition is filed as described in subsection (5), such notice operates as a timely petition and creates an appeal to the value adjustment board in the county where the previous homestead was located on all issues surrounding the previous assessment differential for the taxpayer involved. However, the petitioner may not petition to have the just, assessed, or taxable value of the previous homestead changed.

(b) The board clerk in the county where the previous homestead was located shall set the petition for hearing and notify the petitioner, the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located, and the value adjustment board in that county, and shall hear the petition.

(c) The board clerk in the county in which the previous homestead was located must note and file the petition from the county in which the new homestead is located. No filing fee is required. The board clerk shall notify each petitioner of the scheduled time of appearance. The notice shall be in writing and delivered by regular or certified U.S. mail, or personal delivery, or delivered in the manner requested by the petitioner on Form DR-

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486PORT, 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. 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.

(d) Such petition shall be heard by an attorney special magistrate if the value adjustment board in the county where the previous homestead was located uses special magistrates. The petitioner may attend such hearing and present evidence, but need not do so. If the petitioner does not appear at the hearing, the hearing shall go forward. The board or special magistrate shall obtain the petition file from the board clerk. The board or special magistrate shall consider deeds, property appraiser records that do not violate confidentiality requirements, and other documents that are admissible evidence. The petitioner may submit a written statement for review and consideration by the board or special magistrate explaining why the "portability" assessment difference should be granted based on applications and other documents and records submitted by the petitioner.

(e) The value adjustment board in the county where the previous homestead was located shall issue a decision and the board clerk shall send a copy of the decision to the board clerk in the county where the new homestead is located.

(f) In hearing the petition in the county where the new homestead is located, that value adjustment board shall consider the decision of the value adjustment board in the county where the previous homestead was located on the issues pertaining to the previous homestead and on the amount of any assessment reduction for which the petitioner qualifies. The value adjustment board in the county where the new homestead is located may not hold its hearing until it has received the decision from the value adjustment board in the county where the previous homestead was located.

(7) This rule does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

(8) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.029 Procedures for Remanding Value Assessments to the Property Appraiser.**

(1) The board or appraiser special magistrate shall remand a value assessment to the property appraiser when the board or special magistrate has concluded that:

(a) 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

(b) The record does not contain the competent substantial evidence necessary for the

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board or special magistrate to establish a revised just value, classified use value, or assessed value, as applicable.

(2) 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.

(3) The board shall remand an assessment to the property appraiser for a classified use valuation when the board:

(a) Has concluded that a property classification will be granted; and

(b) Has concluded that the record does not contain the competent substantial evidence necessary for the board to establish classified use value.

(4) The board or special magistrate shall, on the appropriate decision form from the Form DR-485 series, 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 subsection (9). The Form DR-485 series is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C.

(5) 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. 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. When the value adjustment board remands an assessment to the property appraiser, the board retains authority to make a final decision on the petition in accordance with law.

(6) For remanding an assessment to the property appraiser, the board or special magistrate shall produce a written remand decision which shall include appropriate directions to the property appraiser.

(7) 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. 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 Form DR-486, Petition to the Value Adjustment Board Request for Hearing. Form DR-486 is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(8)(a) 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.

(b) 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.

(9)(a) 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

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by regular or certified U.S. mail or by personal delivery, or in the manner requested by the taxpayer on Form DR-486, and shall send a copy to the board or special magistrate. The board clerk shall retain, as part of the petition file, the property appraiser's written remand review. Together with the petitioner's copy of the written remand review, the board clerk shall send to the petitioner a copy of this rule subsection.

(b) 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. 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 such scheduled appearance, as described in subsection 12D-9.019(3), 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. Such 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.

The petition shall be treated and listed as board action for purposes of the notice required by Rule 12D-9.038, F.A.C.

(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. Also, the board or special magistrate may consider evidence admitted at the original hearing.

(10) 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.

(11) In no case shall a board or special magistrate remand to the property appraiser an exemption, "portability" assessment difference transfer, or property classification determination.

(12) Copies of all evidence shall remain with the board clerk and be available during the remand process.

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

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(14) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 194.301 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.030 Recommended Decisions.**

(1) 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. Conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, findings of fact must identify the corresponding admitted evidence, or lack thereof. Each recommended 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 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. After producing a recommended decision, the special magistrate shall provide it to the board clerk.

(2) 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, and if the board clerk:

(a) 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; or

(b) 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.

(3) 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. 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. Value adjustment 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.

(4) 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. The Form DR-485 series is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C. All recommended

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decisions of special magistrates, and all forms used for the recommended decisions, must contain the following required elements:

(a) Findings of fact;

(b) Conclusions of law; and

(c) Reasons for upholding or overturning the determination of the property appraiser.

(5) As used in this section, 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.

(6) 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. If not in writing, such advice shall be documented within the findings of fact and conclusions of law.

(7) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 194.035, 195.022 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews.**

(1) All recommended decisions shall comply with Sections 194.301, 194.034(2) and 194.035(1), F.S. 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.

(2) 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. If the board holds further hearing for such consideration, the board clerk shall send notice of the hearing to the parties. Any notice of hearing shall be in the same form as specified in subsection 12D-9.019(3), F.A.C., but need not include items specified in subparagraphs 6. through 9. of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination. Adoption of recommended decisions need not include a review of the underlying record.

(3) If the board determines that a recommended decision meets the requirements of subsection (1), the board shall adopt the recommended decision. When a recommended decision is adopted and rendered by the board, it becomes final.

(4) If the board determines that a recommended decision does not comply with the requirements of subsection (1), the board shall proceed as follows:

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(a) 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 subsection (1).

(b) The board may direct a special magistrate to produce a recommended decision that complies with subsection (1) based on, if necessary, a review of the entire record.

(c) The board shall retain any recommended decisions and all other records of actions under this rule section.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.032, 194.034, 194.035, 194.301 FS. History–New 3-30-10, Amended 6-14-16.*

**12D-9.032 Final Decisions.**

(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. Conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, findings of fact must identify the corresponding admitted evidence, or lack thereof. 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 board may adopt the special magistrate's recommended decision as the decision of the board incorporating the recommended decision, using a postcard or similar notice. The board shall ensure regular and timely approval of recommended decisions.

(b) 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. If not in writing, such advice shall be documented within the findings of fact and conclusions of law.

(2) A final decision of the board shall state the just, assessed, taxable, and exempt value, for the county both before and after board action. Board action shall not include changes made as a result of action by the property appraiser. 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.

(3) 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.

(4) 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. Notice of the final decision may be made by providing a copy of the decision. The board shall issue all final decisions within 20 calendar days of the last day the board is in

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session pursuant to Section 194.034, F.S.

(5) 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. The Form DR-485 series is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C. 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. Before using any form to notify petitioners of the final decision, the board shall submit the proposed form to the department for approval. The board shall not use a form to notify the petitioner unless the department has approved the form. 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:

(a) Findings of fact;

(b) Conclusions of law; and

(c) Reasons for upholding or overturning the determination of the property appraiser.

(6)(a) 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. No such communication shall be furnished to the board or a special magistrate unless a copy is immediately furnished to all parties. A party may waive notification or furnishing of copies under this subsection.

(b) The board legal counsel shall respond to such communication and may advise the board concerning any action the board should take concerning the communication.

(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.

(d) 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.

(7) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.033 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, F.S.

*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, 194.036, 195.022, 213.05 FS. History–New 3-30-10.*



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**12D-9.034 Record of the Proceeding.**

(1) The board clerk shall maintain a record of the proceeding. The record shall consist of:

(a) The petition;

(b) All filed documents, including all tangible exhibits and documentary evidence presented, whether or not admitted into evidence; and

(c) Meeting minutes and a verbatim record of the hearing.

(2) The verbatim record of the hearing may be kept by any electronic means which is easily retrieved and copied. 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. In counties that do not use special magistrates, the board clerk shall accurately and completely preserve the verbatim record during the hearing. At the conclusion of each hearing, the board clerk shall retain the verbatim record as part of the petition file.

(3) 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.

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

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035 FS. History–New 3-30-10, Amended 9-19-17.*

**12D-9.035 Duty of Clerk to Prepare and Transmit Record.**

(1) When a change in the tax roll made by the board becomes subject to review by the Circuit Court pursuant to Section 194.036(1)(c), F.S., it shall be the duty of the board clerk, when requested, to prepare the record for review. The record shall consist of a copy of each paper, including the petition and each exhibit in the proceeding together with a copy of the board's decision and written findings of fact and conclusions of law. The board clerk shall transmit to the Court this record, and the board clerk's certification of the record which shall be in the following form:

Certification of Record

I hereby certify that the attached record, consisting of sequentially numbered pages one through ____, consists of true copies of all papers, exhibits, and the Board's findings of fact and conclusions of law, in the proceeding before the_____County Value Adjustment Board upon petition numbered_____filed by_____.

_____

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Clerk of Value Adjustment Board By:

_____

Deputy Clerk

Should the verbatim transcript be prepared other than by a court reporter, the board clerk shall also make the following certification:

CERTIFICATION OF VERBATIM TRANSCRIPT

I hereby certify that the attached verbatim transcript consisting of sequentially numbered pages ____ through ____ is an accurate and true transcript of the hearing held on__in the proceeding before the County Value Adjustment Board petition numbered_____filed by:

_____

Clerk of Value Adjustment Board By:

_____

Deputy Clerk

(2) The board clerk shall provide the petitioner and property appraiser, upon their request, a copy of the record at no more than actual cost.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 213.05 FS. History–New 3-30-10.*

**12D-9.036 Procedures for Petitions on Denials of Tax Deferrals.**

(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.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 197.2425, 197.301, 213.05 FS. History–New 3-30-10, Amended 11-1-12.*

## PART III

## UNIFORM CERTIFICATION OF ASSESSMENT ROLLS

**12D-9.037 Certification of Assessment Rolls.**

(1)(a) When the tax rolls have been extended pursuant to Section 197.323, F.S., the initial certification of the value adjustment board shall be made on Form DR-488P. Form DR-488P is adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C.

(b) After all hearings have been held, the board shall certify an assessment roll or part



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of an assessment roll that has been finally approved pursuant to Section 193.1142, F.S. The certification shall be on the form prescribed by the department referenced in subsection (2) of this rule. 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.

(2) The form shall include a certification signed by the board chair, on behalf of the entire board, on Form DR-488, adopted, and incorporated by reference, in Rule 12D-16.002, F.A.C., designated for this purpose, that all requirements in Chapter 194, F.S., and department rules, were met as follows:

(a) 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.;

(b) The qualifications of special magistrates were verified, including whether special magistrates completed the department's training;

(c) 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;

(d) All petitions considered were either timely filed, or good cause was found for late filing after proper review by the board or its designee;

(e) All board meetings were duly noticed pursuant to Section 286.011, F.S., and were held in accordance with law;

(f) No ex parte communications were considered unless all parties were notified and allowed to rebut;

(g) All petitions were reviewed and considered as required by law unless withdrawn or settled as defined in this rule chapter;

(h) All decisions contain required findings of fact and conclusions of law in compliance with Chapter 194, F.S., and this rule chapter;

(i) The board allowed opportunity for public comment at the meeting at which special magistrate recommended decisions were considered and adopted;

(j) All board members and the board's legal counsel have read this certification and a copy of the statement in subsection (1) is attached; and

(k) All complaints of noncompliance with Part I, Chapter 194, F.S., or this rule chapter called to the board's attention have been appropriately addressed to conform with the provisions of Part I, Chapter 194, F.S., and this rule chapter.

(3) The board shall provide a signed original of the certification required under this rule section to the department before publication of the notice of the findings and results of the board required by Section 194.037, F.S. See Form DR-529, Notice Tax Impact of Value Adjustment Board.

(4) Copies of the forms incorporated in Section 12D-16.002, F.A.C., may be obtained

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at the Department's Internet site: http://floridarevenue.com/property/Pages/Forms.aspx.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 195.022, 195.084, 213.05 FS. History–New 3-30-10.*

**12D-9.038 Public Notice of Findings and Results of Value Adjustment Board.**

(1) 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. Such notice shall be published to permit filing within the timeframe in subsections 12D-17.004(1) and (2), F.A.C., where provided. 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. This section shall not prevent the property appraiser from providing data to assist the board clerk with the notice of tax impact. The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice". The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board, incorporated by reference in Rule 12D-16.002, F.A.C.

(2) The size of the notice shall be at least a quarter page size advertisement of a standard or tabloid size newspaper. The newspaper notice shall include all of the above information and no change shall be made in the format or content without department approval. The notice shall be published in a part of the paper where legal notices and classified ads are not published.

(3) The notice of the findings and results of the value adjustment board shall be published in a newspaper of paid general circulation within the county. It shall be the specific intent of the publication of notice to reach the largest segment of the total county population. 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.

(4) The headline of the notice shall be set in a type no smaller than 18 point and shall read "TAX IMPACT OF VALUE ADJUSTMENT BOARD."

(5) It shall be the duty of the board clerk to insure publication of the notice after the board has heard all petitions, complaints, appeals, and disputes.

(6) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: http://floridarevenue.com/property/Pages/Forms.aspx.

*Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented Ch. 50, 194.032, 194.034, 194.037, 213.05 FS. History–New 3-30-10.*

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# FLORIDA ADMINISTRATIVE CODE
# CHAPTER 12D-10

## VALUE ADJUSTMENT BOARD

12D-10.003 Powers, Authority, Duties and Functions of Value Adjustment Board

### 12D-10.003 Powers, Authority, Duties and Functions of Value Adjustment Board.

(1) The board has no power to fix the original valuation of property for ad valorem tax purposes or to grant an exemption not authorized by law and the board is bound by the same standards as the county property appraiser in determining values and the granting of exemptions. The board has no power to grant relief either by adjustment of the value of a property or by the granting of an exemption on the basis of hardship of a particular taxpayer. The board, in determining the valuation of a specific property, shall not consider the ultimate amount of tax required.

(2) 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).

(3) Every decision of the board must contain specific and detailed findings of fact which shall include both ultimate findings of fact and basic and underlying findings of fact. Each basic and underlying finding must be properly annotated to its supporting evidence. For purposes of these rules, the following are defined to mean:

(a) An ultimate finding is a determination of fact. An ultimate finding is usually expressed in the language of a statutory standard and must be supported by and flow rationally from adequate basic and underlying findings.

(b) Basic and underlying findings are those findings on which the ultimate findings rest and which are supported by evidence. Basic and underlying findings are more detailed than the ultimate findings but less detailed than a summary of the evidence.

(c) Reasons are those clearly stated grounds upon which the board or property appraiser acted.

*Rulemaking Authority 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History–New 10-12-76, Amended 11-10-77, 9-30-82, Formerly 12D-10.03, Amended 12-31-98, 3-30-10.*

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# FLORIDA STATUTES
# CHAPTER 194
# ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES (EXCERPT)

## PART I ADMINISTRATIVE REVIEW (ss. 194.011-194.037)
## PART III ASSESSMENT: PRESUMPTION OF CORRECTNESS (ss. 194.301, 194.3015)

## PART I
## ADMINISTRATIVE REVIEW

194.011 Assessment notice; objections to assessments.
194.013 Filing fees for petitions; disposition; waiver.
194.014 Partial payment of ad valorem taxes; proceedings before value adjustment board.
194.015 Value adjustment board.
194.032 Hearing purposes; timetable.
194.034 Hearing procedures; rules.
194.035 Special magistrates; property evaluators.
194.036 Appeals.
194.037 Disclosure of tax impact.

**194.011 Assessment notice; objections to assessments.—**

(1) Each taxpayer whose property is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069.

[1](2) Any taxpayer who objects to the assessment placed on any property taxable to him or her, including the assessment of homestead property at less than just value under s. 193.155(8), may request the property appraiser to informally confer with the taxpayer. Upon receiving the request, the property appraiser, or a member of his or her staff, shall confer with the taxpayer regarding the correctness of the assessment. At this informal conference, the taxpayer shall present those facts considered by the taxpayer to be supportive of the taxpayer's claim for a change in the assessment of the property appraiser. The property appraiser or his or her representative at this conference shall present those facts considered by the property appraiser to be supportive of the correctness of the assessment. However, nothing herein shall be construed to be a prerequisite to administrative or judicial review of property assessments.

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization or power of attorney, unless the person filing the petition is listed in s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on behalf of the taxpayer. If a taxpayer notifies the value adjustment board that a petition has been filed for the taxpayer's property without his or her consent, the value adjustment board may require the person filing the petition to provide written authorization from the taxpayer authorizing the person to proceed with the appeal before a hearing is held. If the value adjustment board finds that a person listed in s. 194.034(1)(a) willfully and knowingly filed a petition that was not authorized by the taxpayer, the value adjustment board shall require such person to provide the taxpayer's written authorization for representation to the value adjustment board clerk before any petition filed by that person is heard, for 1 year after imposition of such requirement by the value adjustment board. A power of attorney or written authorization is valid for 1 assessment year, and a new power of attorney or written authorization by the taxpayer is required for each subsequent assessment year. A petition shall also describe the property by parcel number and shall be filed as follows:

(a) The clerk of the value adjustment board and the property appraiser shall have available and shall distribute forms prescribed by the Department

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of Revenue on which the petition shall be made. Such petition shall be sworn to by the petitioner.

(b) The completed petition shall be filed with the clerk of the value adjustment board of the county, who shall acknowledge receipt thereof and promptly furnish a copy thereof to the property appraiser.

(c) The petition shall state the approximate time anticipated by the taxpayer to present and argue his or her petition before the board.

[2](d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173, or s. 196.193 or notice by the tax collector under s. 197.2425.

(e) A condominium association, cooperative association, 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 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. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

(f) An owner of contiguous, undeveloped parcels may file with the value adjustment board a single joint petition if the property appraiser determines such parcels are substantially similar in nature.

(g) 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.

(h) The individual, agent, or legal entity that signs the petition becomes an agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser pursuant to s. 194.036. This paragraph does not authorize the individual, agent, or legal entity to receive or access the taxpayer's confidential information without written authorization from the taxpayer.

(4)(a) At least 15 days before the hearing the petitioner shall provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses.

(b) No later than 7 days before the hearing, if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner, the property appraiser shall provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. The evidence list must contain the property appraiser's property record card. Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.

(5)(a) The department shall by rule prescribe uniform procedures for hearings before the value adjustment board which include requiring:

1. Procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032.

2. That the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

(b) The department shall develop a uniform policies and procedures manual that shall be used

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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.

(6) The following provisions apply to petitions to the value adjustment board concerning the assessment of homestead property at less than just value under s. 193.155(8):

(a) If the taxpayer does not agree with the amount of the assessment limitation difference for which the taxpayer qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the taxpayer qualifies to transfer any assessment limitation difference, upon the taxpayer filing a petition to the value adjustment board in the county where the new homestead property is located, the value adjustment board in that county shall, upon receiving the appeal, send a notice to the value adjustment board in the county where the previous homestead was located, which shall reconvene if it has already adjourned.

(b) Such notice operates as a petition in, and creates an appeal to, the value adjustment board in the county where the previous homestead was located of all issues surrounding the previous assessment differential for the taxpayer involved. However, the taxpayer may not petition to have the just, assessed, or taxable value of the previous homestead changed.

(c) The value adjustment board in the county where the previous homestead was located shall set the petition for hearing and notify the taxpayer, the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located, and the value adjustment board in that county, and shall hear the appeal. Such appeal shall be heard by an attorney special magistrate if the value adjustment board in the county where the previous homestead was located uses special magistrates. The taxpayer may attend such hearing and present evidence, but need not do so. The value adjustment board in the county where the previous homestead was located shall issue a decision and send a copy of the decision to the value adjustment board in the county where the new homestead is located.

(d) In hearing the appeal in the county where the new homestead is located, that value adjustment board shall consider the decision of the value adjustment board in the county where the previous homestead was located on the issues pertaining to the previous homestead and on the amount of any assessment reduction for which the taxpayer qualifies. The value adjustment board in the county where the new homestead is located may not hold its hearing until it has received the decision from the value adjustment board in the county where the previous homestead was located.

(e) In any circuit court proceeding to review the decision of the value adjustment board in the county where the new homestead is located, the court may also review the decision of the value adjustment board in the county where the previous homestead was located.

**History.—**s. 25, ch. 4322, 1895; GS 525; s. 1, ch. 5605, 1907; ss. 23, 66, ch. 5596, 1907; RGS 723, 724; CGL 929, 930; s. 1, ch. 67-415; ss. 1, 2, ch. 69-55; s. 1, ch. 69-140; ss. 21, 35, ch. 69-106; s. 25, ch. 70-243; s. 34, ch. 71-355; s. 11, ch. 73-172; s. 5, ch. 76-133; s. 1, ch. 76-234; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 2, ch. 78-354; s. 36, ch. 80-274; s. 13, ch. 82-208; ss. 8, 55, 80, ch. 82-226; s. 209, ch. 85-342; s. 1, ch. 86-175; s. 1, ch. 88-146; s. 143, ch. 91-112; s. 1, ch. 92-32; s. 977, ch. 95-147; s. 6, ch. 95-404; s. 4, ch. 96-204; s. 3, ch. 97-117; s. 2, ch. 2002-18; s. 1, ch. 2004-349; s. 7, ch. 2008-173; s. 3, ch. 2008-197; s. 2, ch. 2011-93; s. 54, ch. 2011-151; s. 1, ch. 2015-115; s. 8, ch. 2016-128.

**Note.—**Former s. 193.25.

**194.013 Filing fees for petitions; disposition; waiver.—**

(1) If required by resolution of the value adjustment board, a petition filed pursuant to s. 194.011 shall be accompanied by a filing fee to be paid to the clerk of the value adjustment board in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal, covered by the petition and subject to appeal. However, such filing fee may not be required with respect to an appeal from the disapproval of homestead exemption under s. 196.151 or from the denial of tax deferral under s. 197.2425. Only a single filing fee shall be charged

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under this section as to any particular parcel of real property or tangible personal property account despite the existence of multiple issues and hearings pertaining to such parcel or account. For joint petitions filed pursuant to s. 194.011(3)(e), (f), or (g), a single filing fee shall be charged. Such fee shall be calculated as the cost of the special magistrate for the time involved in hearing the joint petition and shall not exceed $5 per parcel of real property or tangible property account. Such fee is to be proportionately paid by affected parcel owners.

(2) The value adjustment board shall waive the filing fee with respect to a petition filed by a taxpayer who demonstrates at the time of filing, by an appropriate certificate or other documentation issued by the Department of Children and Families and submitted with the petition, that the petitioner is then an eligible recipient of temporary assistance under chapter 414.

(3) All filing fees imposed under this section shall be paid to the clerk of the value adjustment board at the time of filing. If such fees are not paid at that time, the petition shall be deemed invalid and shall be rejected.

(4) All filing fees collected by the clerk shall be allocated and utilized to defray, to the extent possible, the costs incurred in connection with the administration and operation of the value adjustment board.

**History.**—s. 19, ch. 83-204; s. 210, ch. 85-342; s. 2, ch. 86-175; s. 4, ch. 86-300; s. 2, ch. 88-146; s. 144, ch. 91-112; s. 55, ch. 96-175; s. 18, ch. 99-8; s. 3, ch. 2000-262; s. 70, ch. 2004-11; s. 55, ch. 2011-151; s. 41, ch. 2014-19; s. 2, ch. 2015-115.

**194.014 Partial payment of ad valorem taxes; proceedings before value adjustment board.—**

(1)(a) A petitioner before the value adjustment board who challenges the assessed value of property must pay all of the non-ad valorem assessments and make a partial payment of at least 75 percent of the ad valorem taxes, less the applicable discount under s. 197.162, before the taxes become delinquent pursuant to s. 197.333.

(b)1. A petitioner before the value adjustment board who challenges the denial of a classification or exemption, or the assessment based on an argument that the property was not substantially complete as of January 1, must pay all of the non-ad valorem assessments and the amount of the tax which the taxpayer admits in good faith to be owing, less the applicable discount under s. 197.162, before the taxes become delinquent pursuant to s. 197.333.

2. If the value adjustment board determines that the amount of the tax that the taxpayer has admitted to be owing pursuant to this paragraph is grossly disproportionate to the amount of the tax found to be due and that the taxpayer's admission was not made in good faith, the tax collector must collect a penalty at the rate of 10 percent of the deficiency per year from the date the taxes became delinquent pursuant to s. 197.333.

(c) The value adjustment board must deny the petition by written decision by April 20 if the petitioner fails to make the payment required by this subsection. The clerk, upon issuance of the decision, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

(2) If the value adjustment board or the property appraiser determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at an annual percentage rate equal to the bank prime loan rate on July 1, or the first business day thereafter if July 1 is a Saturday, Sunday, or legal holiday, of the year, beginning on the date the taxes became delinquent pursuant to s. 197.333 until the unpaid amount is paid. If the value adjustment board or the property appraiser determines that a refund is due, the overpaid amount accrues interest at an annual percentage rate equal to the bank prime loan rate on July 1, or the first business day thereafter if July 1 is a Saturday, Sunday, or legal holiday, of the tax year, beginning on the date the taxes became delinquent pursuant to s. 197.333 until a refund is paid. Interest on an overpayment related to a petition shall be funded proportionately by each taxing authority that was overpaid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued pursuant to s. 197.322. For purposes of this subsection, the term "bank prime loan rate" means



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the average predominant prime rate quoted by commercial banks to large businesses as published by the Board of Governors of the Federal Reserve System.

(3) This section does not apply to petitions for ad valorem tax deferrals pursuant to chapter 197.

**History.**—s. 1, ch. 2011-181; s. 9, ch. 2016-128.

**194.015 Value adjustment board.**—There is hereby created a value adjustment board for each county, which shall consist of two members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district. A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. 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. No meeting of the board shall take place unless counsel to the board is present. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

**History.**—s. 2, ch. 69-140; s. 1, ch. 69-300; s. 26, ch. 70-243; s. 22, ch. 73-172; s. 5, ch. 74-234; s. 1, ch. 75-77; s. 6, ch. 76-133; s. 2, ch. 76-234; s. 1, ch. 77-69; s. 145, ch. 91-112; s. 978, ch. 95-147; s. 4, ch. 2008-197.

**194.032 Hearing purposes; timetable.—**

(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 s. 194.011(1); however, no board hearing shall be held before approval of all or any part of the assessment rolls by the Department of Revenue. The board shall meet for the following purposes:

1. Hearing petitions relating to assessments filed pursuant to s. 194.011(3).

2. Hearing complaints relating to homestead exemptions as provided for under s. 196.151.

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

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

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

(b) Notwithstanding the provisions of paragraph (a), the value adjustment board may meet prior to the approval of the assessment rolls by the Department of Revenue, but not earlier than July 1, to hear appeals pertaining to the denial by the property appraiser of exemptions, tax abatements under s. 197.318, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, and deferrals under subparagraphs (a)2., 3., and 4. In such event, however, the board may not certify any assessments under s. 193.122 until the Department of Revenue has approved the assessments in accordance with s. 193.1142 and all

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hearings have been held with respect to the particular parcel under appeal.

(c) In no event may a hearing be held pursuant to this subsection relative to valuation issues prior to completion of the hearings required under s. 200.065(2)(c).

(2)(a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance at least 25 calendar days before the day of the scheduled appearance. The notice must indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. The property appraiser must provide a copy of the property record card containing information relevant to the computation of the current assessment, with confidential information redacted, to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser, in which case the property appraiser must notify the petitioner that the property record card is available online. The petitioner and the property appraiser may each reschedule the hearing a single time for good cause. As used in this paragraph, the term "good cause" means circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing. If the hearing is rescheduled by the petitioner or the property appraiser, the clerk shall notify the petitioner of the rescheduled time of his or her appearance at least 15 calendar days before the day of the rescheduled appearance, unless this notice is waived by both parties.

(b) A petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the scheduled time for the hearing to commence. If the hearing is not commenced within that time, the petitioner may inform the chairperson of the meeting that he or she intends to leave. If the petitioner leaves, the clerk shall reschedule the hearing, and the rescheduling is not considered to be a request to reschedule as provided in paragraph (a).

(c) Failure on three occasions with respect to any single tax year to convene at the scheduled time of meetings of the board is grounds for removal from office by the Governor for neglect of duties.

(3) The board shall remain in session from day to day until all petitions, complaints, appeals, and disputes are heard. If all or any part of an assessment roll has been disapproved by the department pursuant to s. 193.1142, the board shall reconvene to hear petitions, complaints, or appeals and disputes filed upon the finally approved roll or part of a roll.

**History.**—s. 4, ch. 69-140; ss. 21, 35, ch. 69-106; s. 27, ch. 70-243; s. 12, ch. 73-172; s. 6, ch. 74-234; s. 7, ch. 76-133; s. 3, ch. 76-234; s. 1, ch. 77-174; s. 13, ch. 77-301; ss. 1, 9, 37, ch. 80-274; s. 5, ch. 81-308; ss. 14, 16, ch. 82-208; ss. 9, 11, 23, 26, 80, ch. 82-226; ss. 20, 21, 22, 23, 24, 25, ch. 83-204; s. 146, ch. 91-112; s. 979, ch. 95-147; s. 5, ch. 96-204; s. 4, ch. 97-117; s. 2, ch. 98-52; s. 3, ch. 2002-18; s. 2, ch. 2004-349; s. 11, ch. 2012-193; s. 8, ch. 2013-109; s. 10, ch. 2016-128; s. 14, ch. 2018-118.

### 194.034 Hearing procedures; rules.—

(1)(a) Petitioners before the board may be represented by an employee of the taxpayer or an affiliated entity, an attorney who is a member of The Florida Bar, a real estate appraiser licensed under chapter 475, a real estate broker licensed under chapter 475, or a certified public accountant licensed under chapter 473, retained by the taxpayer. Such person may present testimony and other evidence.

(b) A petitioner before the board may also be represented by a person with a power of attorney to act on the taxpayer's behalf. Such person may present testimony and other evidence. The power of attorney must conform to the requirements of part II of chapter 709, is valid only to represent a single petitioner in a single assessment year, and must identify the parcels for which the taxpayer has

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granted the person the authority to represent the taxpayer. The Department of Revenue shall adopt a form that meets the requirements of this paragraph. However, a petitioner is not required to use the department's form to grant the power of attorney.

(c) A petitioner before the board may also be represented by a person with written authorization to act on the taxpayer's behalf, for which such person receives no compensation. Such person may present testimony and other evidence. The written authorization is valid only to represent a single petitioner in a single assessment year and must identify the parcels for which the taxpayer authorizes the person to represent the taxpayer. The Department of Revenue shall adopt a form that meets the requirements of this paragraph. However, a petitioner is not required to use the department's form to grant the authorization.

(d) The property appraiser or his or her authorized representatives may be represented by an attorney in defending the property appraiser's assessment or opposing an exemption and may present testimony and other evidence.

(e) The property appraiser, each petitioner, and all witnesses shall be required, upon the request of either party, to testify under oath as administered by the chair of the board. Hearings shall be conducted in the manner prescribed by rules of the department, which rules shall include the right of cross-examination of any witness.

(f) Nothing herein shall preclude an aggrieved taxpayer from contesting his or her assessment in the manner provided by s. 194.171, regardless of whether he or she has initiated an action pursuant to s. 194.011.

(g) The rules shall provide that no evidence shall be considered by the board except when presented during the time scheduled for the petitioner's hearing or at a time when the petitioner has been given reasonable notice; that a verbatim record of the proceedings shall be made, and proof of any documentary evidence presented shall be preserved and made available to the Department of Revenue, if requested; and that further judicial proceedings shall be as provided in s. 194.036.

(h) Notwithstanding the provisions of this subsection, a petitioner may not present for consideration, and a board or special magistrate may not accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser of which the petitioner had knowledge but denied to the property appraiser.

(i) Chapter 120 does not apply to hearings of the value adjustment board.

(j) An assessment may not be contested unless a return as required by s. 193.052 was timely filed. For purposes of this paragraph, the term "timely filed" means filed by the deadline established in s. 193.062 or before the expiration of any extension granted under s. 193.063. If notice is mailed pursuant to s. 193.073(1)(a), a complete return must be submitted under s. 193.073(1)(a) for the assessment to be contested.

(2) In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. Findings of fact must be based on admitted evidence or a lack thereof. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

(3) Appearance before an advisory board or agency created by the county may not be required as a prerequisite condition to appearing before the value adjustment board.



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(4) A condominium homeowners' association may appear before the board to present testimony and evidence regarding the assessment of condominium units which the association represents. Such testimony and evidence shall be considered by the board with respect to hearing petitions filed by individual condominium unit owners, unless the owner requests otherwise.

(5) For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods.

(6) For purposes of hearing joint petitions filed pursuant to s. 194.011(3)(e), each included parcel shall be considered by the board as a separate petition. Such separate petitions shall be heard consecutively by the board. If a special magistrate is appointed, such separate petitions shall all be assigned to the same special magistrate.

**History.**—s. 21, ch. 83-204; s. 12, ch. 83-216; s. 3, ch. 86-175; s. 147, ch. 91-112; s. 2, ch. 92-32; s. 980, ch. 95-147; s. 71, ch. 2004-11; s. 2, ch. 2011-181; s. 12, ch. 2012-193; s. 4, ch. 2013-192; s. 11, ch. 2016-128.

**194.035 Special magistrates; property evaluators.—**

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions, classifications, and determinations that a change of ownership, a change of ownership or control, or a qualifying improvement has occurred shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. 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. Before appointing a special magistrate, a value adjustment board shall verify the special magistrate's qualifications. The value adjustment



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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. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board. When appointing special magistrates or when scheduling special magistrates for specific hearings, the board, the board attorney, and the board clerk may not consider the dollar amount or percentage of any assessment reductions recommended by any special magistrate in the current year or in any previous year.

(2) The value adjustment board of each county may employ qualified property appraisers or evaluators to appear before the value adjustment board at that meeting of the board which is held for the purpose of hearing complaints. Such property appraisers or evaluators shall present testimony as to the just value of any property the value of which is contested before the board and shall submit to examination by the board, the taxpayer, and the property appraiser.

(3) The department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the department's standard measures of value, including the guidelines for real and tangible personal property. Notwithstanding subsection (1), a person who has 3 years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training shall be open to the public. The department shall charge tuition fees to any person attending this training in an amount sufficient to fund the department's costs to conduct all aspects of the training. The department shall deposit the fees collected into the Certification Program Trust Fund pursuant to s. 195.002(2).

**History.**—s. 22, ch. 83-204; s. 148, ch. 91-112; s. 981, ch. 95-147; s. 4, ch. 2002-18; s. 72, ch. 2004-11; s. 5, ch. 2008-197; s. 12, ch. 2016-128; s. 4, ch. 2020-10.

**194.036 Appeals.—**Appeals of the decisions of the board shall be as follows:

(1) If the property appraiser disagrees with the decision of the board, he or she may appeal the decision to the circuit court if one or more of the following criteria are met:

(a) The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the board, except that nothing herein shall authorize the property appraiser to institute any suit to challenge the validity of any portion of the constitution or of any duly enacted legislative act of this state;

(b) There is a variance from the property appraiser's assessed value in excess of the following: 15 percent variance from any assessment of $50,000 or less; 10 percent variance from any assessment in excess of $50,000 but not in excess of $500,000; 7.5 percent variance from any assessment in excess of $500,000 but not in excess of $1 million; or 5 percent variance from any assessment in excess of $1 million; or

(c) There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the value adjustment board in its decisions. The property appraiser shall notify the department of those portions of the tax roll for which the assertion is made. The department shall thereupon notify the clerk of the board who shall, within 15 days of the notification by the department, send the written decisions of the board to the department. Within 30 days of the receipt of the decisions by the department, the department shall notify the property appraiser of its decision relative to further judicial proceedings. If the department finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it shall so inform the property appraiser, who may thereupon bring

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suit in circuit court against the value adjustment board for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the tax roll to its just value in such amount as determined by judicial proceeding. However, when a final judicial decision is rendered as a result of an appeal filed pursuant to this paragraph which alters or changes an assessment of a parcel of property of any taxpayer not a party to such procedure, such taxpayer shall have 60 days from the date of the final judicial decision to file an action to contest such altered or changed assessment pursuant to s. 194.171(1), and the provisions of s. 194.171(2) shall not bar such action.

(2) Any taxpayer may bring an action to contest a tax assessment pursuant to s. 194.171.

(3) The circuit court proceeding shall be de novo, and the burden of proof shall be upon the party initiating the action.

**History.—**s. 23, ch. 83-204; s. 149, ch. 91-112; s. 982, ch. 95-147.

**194.037 Disclosure of tax impact.—**

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. The newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. The headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

(2) There must be a line entry in each of the columns described in subsection (1), for each of the following property classes:

(a) Improved residential property, which must be identified as "Residential."

(b) Improved commercial property, which must be identified as "Commercial."

(c) Improved industrial property, utility property, leasehold interests, subsurface rights, and other property not properly attributable to other classes listed in this section, which must be identified as "Industrial and Misc."

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(d) Agricultural property, which must be identified as "Agricultural."

(e) High-water recharge property, which must be identified as "High-Water Recharge."

(f) Historic property used for commercial or certain nonprofit purposes, which shall be identified as "Historic Commercial or Nonprofit."

(g) Tangible personal property, which must be identified as "Business Machinery and Equipment."

(h) Vacant land and nonagricultural acreage, which must be identified as "Vacant Lots and Acreage."

(3) The form of the notice, including appropriate narrative and column descriptions, shall be prescribed by department rule and shall be brief and nontechnical to minimize confusion for the average taxpayer.

**History.**—s. 24, ch. 83-204; s. 150, ch. 91-112; s. 6, ch. 96-204; s. 5, ch. 97-117; s. 6, ch. 2007-321; s. 6, ch. 2008-197.

## PART III
## ASSESSMENT:
## PRESUMPTION OF CORRECTNESS

194.301 Challenge to ad valorem tax assessment.
194.3015 Burden of proof.

**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.

**History.**—s. 1, ch. 97-85; s. 1, ch. 2009-121.



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**194.3015 Burden of proof.—**

(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.

**History.**—s. 2, ch. 2009-121.

## FLORIDA STATUTES
## CHAPTER 286
## (EXCERPT)

## PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.0105 Notices of meetings and hearing must advise that a record is required to appeal.
286.011 Public meetings and records; public inspection; criminal and civil penalties.
286.0113 General exemptions from public meetings.
286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.

**286.0105 Notices of meetings and hearings must advise that a record is required to appeal.**—Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

**History.**—s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148.

**286.011 Public meetings and records; public inspection; criminal and civil penalties.—**

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding $500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the

provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree,

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punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting



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shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

**History.**—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

**286.0113 General exemptions from public meetings.**—

(1) That portion of a meeting that would reveal a security or firesafety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(3)(a) That portion of a meeting held by a utility owned or operated by a unit of local government which would reveal information that is exempt under s. 119.0713(5) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting are exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, following an in-camera review, determines that the meeting was not restricted to the discussion of data and information made exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication services, or other 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraph (a) or paragraph (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, the term "public safety radio" is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. part 90 for public safety purposes.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

**History**.—s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284; s. 13, ch. 2010-151; s. 2, ch. 2011-140; s. 2, ch. 2016-49; s. 3, ch. 2018-146; s. 1, ch. 2019-37; s. 2, ch. 2020-13.

**286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—**

(1) For purposes of this section, "board or commission" means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History.—s. 1, ch. 2013-227.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

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Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# VAB Related Forms
# Prescribed by the Department of Revenue

The following section contains forms included by the Department of Revenue in the Uniform Policies and Procedures Manual for Value Adjustment Boards pursuant to Section 194.011(4)(b), F.S. to be used by value adjustment boards, special magistrates, and taxpayers in proceedings before value adjustment boards.

**NOTE:** These forms are included in numerical order. See Table of Contents of this manual for groupings of the forms by users.

Copies of these forms may be obtained at the Department's Internet site: http://floridarevenue.com/dor/property/forms/.

DR-474. R. 11/12
Rule 12D-16.002, F.A.C., Eff. 11/12

**Owner Name**
**Owner Address**
**Owner City, State**

Legal Description of Property:

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION. Each taxing authority may AMEND or ALTER its proposals at the hearing.

## NOTICE OF PROPOSED PROPERTY TAXES

***DO NOT PAY. THIS IS NOT A BILL***

| Taxing Authority | Your Property Taxes Last Year | Last Year's Adjusted Tax Rate (Millage) | Your Taxes This Year IF NO Budget Change Is Adopted | Your Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage) | Your Taxes This Year IF PROPOSED Budget Change Is Adopted | A Public Hearing on the Proposed Taxes and Budget Will Be Held: |
|---|---|---|---|---|---|---|
| County | | | | | | Enter date, time, and location |
| Public Schools:<br>By State Law<br>By Local Board | | | | | | |
| Municipality | | | | | | |
| Water Management | | | | | | |
| Independent Districts | | | | | | |
| Voted Levies For Debt Service | | | | | | |
| Total Property Taxes | | | | | | |
| | Column 1* | | Column 2* | | Column 3* | |

***SEE REVERSE SIDE FOR EXPLANATION**

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474
R. 11/12

EXPLANATION

*Column 1—YOUR PROPERTY TAXES LAST YEAR
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.

*Column 2—YOUR TAXES THIS YEAR IF NO BUDGET CHANGE IS ADOPTED
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.

*Column 3—YOUR TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS ADOPTED
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.

NOTE: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive. (Discounts are a maximum of 4 percent of the amounts shown on this form.)

**Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district.**

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474
R. 11/12

## PROPERTY VALUATION

| | Last Year | This Year |
|---|---|---|
| **Market Value** | | |

| **Taxing Authority*** | **Assessed Value** | | **Exemptions** | | **Taxable Value** | |
|---|---|---|---|---|---|---|
| | Last Year | This Year | Last Year | This Year | Last Year | This Year |
| County | | | | | | |
| Public Schools<br>By State Law<br>By Local Law | | | | | | |
| Municipality | | | | | | |
| Water Management | | | | | | |
| Independent Districts | | | | | | |
| Voted Levies for Debt Service | | | | | | |

| **Assessment Reductions** | **Applies to** | **Value** |
|---|---|---|
| ***List each assessment reduction applicable to property.** | | |
| | | |
| | | |

| **Exemptions** | **Applies to** | **Value** |
|---|---|---|
| ***List each exemption applicable to property.** | | |
| | | |
| | | |

If you feel that the market value of your property is inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at_____ (phone number) or _____ (location).

If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE _____ (date).

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474
R. 11/12

**Market Value:**

Market value in Florida is also known as “just value” as provided by the constitution and described in state law. It is the amount a purchaser willing but not obliged to buy would pay to one willing but not obliged to sell, after proper consideration of all eight factors in section 193.011, F.S.

**Assessed Value:**
Assessed value is the market value of your property minus the amount of any assessment reductions. The assessed value may be different for millage levies made by different taxing authorities.

**Assessment Reductions:**
Properties can receive an assessment reduction for a number of reasons. Some of the common reasons are below.

- There are limits on how much the assessment of your property can increase each year. The Save Our Homes program and the limitation for non-homestead property are examples.
- Certain types of property, such as agricultural land and land used for conservation, are valued on their current use rather than their market value.
- Some reductions lower the assessed value only for levies of certain taxing authorities.

If your assessed value is lower than your market value because limits on increases apply to your property or because your property is valued based on its current use, the amount of the difference and reason for the difference are listed in the third box on page 2.

**Exemptions:**
Exemptions are specific dollar or percentage amounts that reduce assessed value. These are usually based on characteristics of the property or property owner. Examples include the homestead exemption, veterans’ disability exemptions and charitable exemptions. The discount for disabled veterans is included in this box. Many exemptions apply only to tax levies by the taxing authority granting the exemption.

**Taxable Value:**
Taxable value is the value used to calculate the tax due on your property. Taxable value is the assessed value minus the value of exemptions and discounts.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474M, R. 11/12
Rule 12D-16.002, F.A.C., Eff. 11/12

**Owner Name**
**Owner Address**
**Owner City, State**

**AMENDED**

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION. Each taxing authority may AMEND or ALTER its proposals at the hearing.

Legal Description of Property:

## **AMENDED** NOTICE OF PROPOSED PROPERTY TAXES

***DO NOT PAY. THIS IS NOT A BILL***

| Taxing Authority | Your Property Taxes Last Year | Last Year's Adjusted Tax Rate (Millage) | Your Taxes This Year IF NO Budget Change Is Adopted | Your Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage) | Your Taxes This Year IF PROPOSED Budget Change Is Adopted | A Public Hearing on the Proposed Taxes and Budget Will Be Held: |
|---|---|---|---|---|---|---|
| County | | | | | | **Enter date, time, and location**. |
| Public Schools:<br>By State Law<br>By Local Board | | | | | | |
| Municipality | | | | | | |
| Water Management | | | | | | |
| Independent Districts | | | | | | |
| Voted Levies For Debt Service | | | | | | |
| Total Property Taxes | | | | | | |
| | Column 1* | | Column 2* | | Column 3* | |

EXPLANATION

*Column 1—YOUR PROPERTY TAXES LAST YEAR
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.

*Column 2—YOUR TAXES THIS YEAR IF NO BUDGET CHANGE IS ADOPTED
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.

*Column 3—YOUR TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS ADOPTED
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.

NOTE: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive. (Discounts are a maximum of 4 percent of the amounts shown on this form.)

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474M
R. 11/12

## PROPERTY VALUATION

| | Last Year | This Year |
|---|---|---|
| **Market Value** | | |

| **Taxing Authority*** | **Assessed Value** | | **Exemptions** | | **Taxable Value** | |
|---|---|---|---|---|---|---|
| | Last Year | This Year | Last Year | This Year | Last Year | This Year |
| County | | | | | | |
| Public Schools<br>By State Law<br>By Local Law | | | | | | |
| Municipality | | | | | | |
| Water Management | | | | | | |
| Independent Districts | | | | | | |
| Voted Levies for Debt Service | | | | | | |

| **Assessment Reductions** | **Applies to** | **Value** |
|---|---|---|
| ***List each assessment reduction applicable to property.** | | |
| | | |
| | | |

| **Exemptions** | **Applies to** | **Value** |
|---|---|---|
| ***List each exemption applicable to property.** | | |
| | | |
| | | |

If you feel that the market value of your property is inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at_____ (phone number) or _____ (location).

If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE _____ (date).

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474M
R. 11/12

## Market Value:

Market value in Florida is also known as “just value” as provided by the constitution and described in state law. It is the amount a purchaser willing but not obliged to buy would pay to one willing but not obliged to sell, after proper consideration of all eight factors in section 193.011, F.S.

## Assessed Value:

Assessed value is the market value of your property minus the amount of any assessment reductions. The assessed value may be different for millage levies made by different taxing authorities.

## Assessment Reductions:

Properties can receive an assessment reduction for a number of reasons. Some of the common reasons are below.

- There are limits on how much the assessment of your property can increase each year. The Save Our Homes program and the limitation for non-homestead property are examples.
- Certain types of property, such as agricultural land and land used for conservation, are valued on their current use rather than their market value.
- Some reductions lower the assessed value only for levies of certain taxing authorities.

If your assessed value is lower than your market value because limits on increases apply to your property or because your property is valued based on its current use, the amount of the difference and reason for the difference are listed in the third box on page 2.

## Exemptions:

Exemptions are specific dollar or percentage amounts that reduce assessed value. These are usually based on characteristics of the property or property owner. Examples include the homestead exemption, veterans’ disability exemptions and charitable exemptions. The discount for disabled veterans is included in this box. Many exemptions apply only to tax levies by the taxing authority granting the exemption.

## Taxable Value:

Taxable value is the value used to calculate the tax due on your property. Taxable value is the assessed value minus the value of exemptions and discounts.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474N, R. 11/12
Rule 12D-16.002, F.A.C., Eff. 11/12

**Owner Name**
**Owner Address**
**Owner City, State**

The taxing authorities which levy property taxes against your property will soon hold PUBLIC HEARINGS to adopt budgets and tax rates for the next year.

The purpose of these PUBLIC HEARINGS is to receive opinions from the general public and to answer questions on the proposed tax change and budget PRIOR TO TAKING FINAL ACTION. Each taxing authority may AMEND or ALTER its proposals at the hearing.

Legal Description of Property:

## NOTICE OF PROPOSED PROPERTY TAXES AND PROPOSED OR ADOPTED NON-AD VALOREM ASSESSMENTS

***DO NOT PAY. THIS IS NOT A BILL***

| Taxing Authority | Your Property Taxes Last Year | Last Year's Adjusted Tax Rate (Millage) | Your Taxes This Year IF NO Budget Change Is Adopted | Your Tax Rate This Year IF PROPOSED Budget Is Adopted (Millage) | Your Taxes This Year IF PROPOSED Budget Change Is Adopted | A Public Hearing on the Proposed Taxes and Budget Will Be Held: |
|---|---|---|---|---|---|---|
| County | | | | | | Enter date, time, and location. |
| Public Schools:<br>By State Law<br>By Local Board | | | | | | |
| Municipality | | | | | | |
| Water Management | | | | | | |
| Independent Districts | | | | | | |
| Voted Levies For Debt Service | | | | | | |
| Total Property Taxes | | | | | | |
| | Column 1* | | Column 2* | | Column 3* | |

***SEE REVERSE SIDE FOR EXPLANATION**

## NON-AD VALOREM ASSESSMENTS

| Levying Authority | Purpose of Assessment | Units | Rate | Assessment |
|---|---|---|---|---|
| | | | | |
| Total Non-Ad Valorem Assessment | | | | |

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474N
R. 11/12

Reverse of Page 1:

EXPLANATION

*Column 1—YOUR PROPERTY TAXES LAST YEAR
This column shows the taxes that applied last year to your property. These amounts were based on budgets adopted last year and your property's previous taxable value.

*Column 2—YOUR TAXES THIS YEAR IF NO BUDGET CHANGE IS ADOPTED
This column shows what your taxes will be this year IF EACH TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These amounts are based on last year's budgets and your current assessment.

*Column 3—YOUR TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS ADOPTED
This column shows what your taxes will be this year under the BUDGET ACTUALLY PROPOSED by each local taxing authority. The proposal is NOT final and may be amended at the public hearings shown on the front side of this notice. The difference between columns 2 and 3 is the tax change proposed by each local taxing authority and is NOT the result of higher assessments.

NOTE: Amounts shown on this form do NOT reflect early payment discounts you may have received or may be eligible to receive. (Discounts are a maximum of 4 percent of the amounts shown on this form.)

Non-Ad Valorem Assessments:

Non-ad valorem assessments are placed on this notice at the request of the respective local governing boards. Your tax collector will be including them on the November tax notice. For details on particular non-ad valorem assessments, contact the levying local governing board.

**If the Notice does not include all of the non-ad valorem assessments that will be included on the tax bill, the following statement must be on the bottom of the first page in bold, conspicuous print:**

**Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district.**

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474N
R. 11/12

## PROPERTY VALUATION

| | Last Year | This Year |
|---|---|---|
| **Market Value** | | |

| **Taxing Authority*** | **Assessed Value** | | **Exemptions** | | **Taxable Value** | |
|---|---|---|---|---|---|---|
| | Last Year | This Year | Last Year | This Year | Last Year | This Year |
| County | | | | | | |
| Public Schools<br>By State Law<br>By Local Law | | | | | | |
| Municipality | | | | | | |
| Water Management | | | | | | |
| Independent Districts | | | | | | |
| Voted Levies for Debt Service | | | | | | |

| **Assessment Reductions** | **Applies to** | **Value** |
|---|---|---|
| ***List each assessment reduction applicable to property.** | | |
| | | |
| | | |

| **Exemptions** | **Applies to** | **Value** |
|---|---|---|
| ***List each exemption applicable to property.** | | |
| | | |
| | | |

If you feel that the market value of your property is inaccurate or does not reflect fair market value, or if you are entitled to an exemption or classification that is not reflected above, contact your county property appraiser at_____ (phone number) or _____ (location).

If the property appraiser's office is unable to resolve the matter as to market value, classification, or an exemption, you may file a petition for adjustment with the Value Adjustment Board. Petition forms are available from the county property appraiser and must be filed ON OR BEFORE _____ (date).

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-474N
R. 11/12

**Market Value:**

Market value in Florida is also known as “just value” as provided by the constitution and described in state law. It is the amount a purchaser willing but not obliged to buy would pay to one willing but not obliged to sell, after proper consideration of all eight factors in section 193.011, F.S.

**Assessed Value:**
Assessed value is the market value of your property minus the amount of any assessment reductions. The assessed value may be different for millage levies made by different taxing authorities.

**Assessment Reductions:**
Properties can receive an assessment reduction for a number of reasons. Some of the common reasons are below.

- There are limits on how much the assessment of your property can increase each year. The Save Our Homes program and the limitation for non-homestead property are examples.
- Certain types of property, such as agricultural land and land used for conservation, are valued on their current use rather than their market value.
- Some reductions lower the assessed value only for levies of certain taxing authorities.

If your assessed value is lower than your market value because limits on increases apply to your property or because your property is valued based on its current use, the amount of the difference and reason for the difference are listed in the third box on page 2.

**Exemptions:**
Exemptions are specific dollar or percentage amounts that reduce assessed value. These are usually based on characteristics of the property or property owner. Examples include the homestead exemption, veterans’ disability exemptions and charitable exemptions. The discount for disabled veterans is included in this box. Many exemptions apply only to tax levies by the taxing authority granting the exemption.

**Taxable Value:**
Taxable value is the value used to calculate the tax due on your property. Taxable value is the assessed value minus the value of exemptions and discounts.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

DR-481
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

# VALUE ADJUSTMENT BOARD
# NOTICE OF HEARING

Section 194.032, Florida Statutes

| | | |
|---|---|---|
| County Select County | Petition # | Petition type |
| Petitioner name | | VAB contact |
| Address | | Address |
| Parcel number, account number, or legal address | | Phone<br>Email |

☐ A hearing has been scheduled for

- ☐ your petition
- ☐ the continuation of your hearing after remand
- ☐ other _____

## YOUR HEARING INFORMATION

| | | |
|---|---|---|
| Hearing date | | Hearing address and room |
| Time (if block of time, beginning and end times) | | |
| Time reserved | | |

Bring _____ copies of your evidence, in addition to what you have provided to the property appraiser. Evidence becomes part of the record and will not be returned.

Please arrive 15 minutes before the scheduled hearing time or start of block of time with any witnesses. If you or your witnesses are unable to attend, or you need help finding the hearing room, contact the VAB clerk as soon as possible.

You have the right to reschedule your hearing one time for good cause as defined in section 194.032(2)(a), F.S As defined in that section, "good cause" means circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing

You have the right to exchange evidence with the property appraiser. To initiate the exchange, you must submit your evidence directly to the property appraiser at least 15 days before the hearing and make a written request for the property appraiser's evidence. If you want to participate in the evidence exchange, your evidence is due by _____ at _____. At the hearing, you have the right to have witnesses sworn.

_____ _____
Signature, deputy clerk Date

| | | |
|---|---|---|
| For a list of potential magistrates | Phone | Web |
| For a copy of the value adjustment board uniform rules of procedure | Phone | Web |

If you are disabled and need accommodations to participate in the hearing, you are entitled to assistance with no cost to you. Please contact the value adjustment board at the number above within 2 days of receiving this notice. If you are hearing or voice impaired, call _____.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA Department of Revenue

# DECISION OF THE VALUE ADJUSTMENT BOARD
# DENIAL FOR NON-PAYMENT

Section 194.014, Florida Statutes

_____ County

DR-485D
N. 3/12 TC
Rule 12D-16.002
Florida Administrative Code
Provisional

| | | | |
|---|---|---|---|
| Petitioner | | Petition # | |
| Mailing address | | Property address, if different | |
| Parcel ID | | Tax year | |
| Appeal of | ☐ Assessment ☐ Denial of classification or exemption<br>☐ Whether the property was substantially complete on Jan 1 | | |

**The Value Adjustment Board (VAB) has denied your petition.**

According to the tax collector's records your taxes became delinquent on _____. The tax collector's records also reflect that the payment requirements for petitions pending before the VAB have not been met.

If you have evidence that your required payment was made before the delinquent date, please contact our office immediately at _____

If you are not satisfied with this decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (Ss. 193.155(8)(l), 194.036, 194.171(2), and 196.151, F.S.)

| Signature, chair, value adjustment board | Print name | Date of decision |
|---|---|---|
| Signature, VAB clerk or representative | Print name | Date mailed to parties |

## INFORMATION ABOUT PAYMENTS

Florida law requires the value adjustment board to deny a petition if the petitioner does not make the payment required below before the taxes become delinquent, usually on April 1. These payment requirements are summarized below.

### Required Payment for Appeal of Assessment

For petitions on the value, including portability, the required payment must include:

- All of the non-ad valorem assessments, and
- A partial payment of at least 75 percent of the ad valorem taxes,
- Less applicable discounts under s. 197.162, F.S. (s. 194.014 (1)(a), F.S.)

### Required Payment for Other Appeals

For petitions on the denial of a classification or exemption, or based on an argument that the property was not substantially complete on January 1, the required payment must include:

- All of the non-ad valorem assessments, and
- The amount of the tax that the taxpayer admits in good faith to owe,
- Less applicable discounts under s. 197.162, F.S. (s. 194.014 (1)(b), F.S.)

cc: County Property Appraiser
Department of Revenue, Property Tax Oversight, P.O. Box 3000, Tallahassee, FL 32315-3000

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

Tax year:
Agenda or petition number:
Account or parcel number:
Date of decision:
Date notice mailed:
Certification date:

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DR-485M, R. 11/12
Rule 12D-16.002, F.A.C., Eff. 11/12

**NOTICE OF DECISION OF THE VALUE ADJUSTMENT BOARD**
**County, Florida**

The Value Adjustment Board (VAB) approved and adopted as its decision the special magistrate's written recommendations, previously mailed to you on the "Decision of the Value Adjustment Board" form.

The Special Magistrate's written recommendations indicate whether tax relief has been granted by the VAB. This assessment(s) was certified on the date on the reverse side of this notice and has been incorporated into the final tax roll.

If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, Florida Statutes.)

Value Adjustment Board

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Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# VALUE ADJUSTMENT BOARD
# REMAND TO PROPERTY APPRAISER

DR-485R
N. 12/09
Rule 12D-16.002
Florida Administrative Code

## Section 1. Completed by Value Adjustment Board or Special Magistrate

| Petition # | County Select County | Parcel ID | Date |
|---|---|---|---|

| To: Property Appraiser | From: Clerk or Special Magistrate |
|---|---|
| Name | Name |
| Address | Address |

The value adjustment board or special magistrate has:

☐ Determined that the property appraiser's value is incorrect (section 194.301, F.S.).

☐ Granted a property classification.

Include findings of fact on which this remand decision is based or reference and attach Form DR-485V, Form DR-485XC, or other document with these items completed.

Include conclusions of law on which this remand decision is based or reference and attach Form DR-485V, Form DR-485XC, or other document with these items completed.

Appropriate remand directions to property appraiser:

The board retains authority to make a final decision on this petition.

## Section 1. Completed by Property Appraiser

Provide a revised just value or a classified use value and return this form to the clerk of the board.

| Just Valuation | | OR | Classified Use Valuation |
|---|---|---|---|
| Previous $ | Revised $ | | $ |

Signature, property appraiser | Print name | Date

Use additional pages, if needed.





Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# DECISION OF THE VALUE ADJUSTMENT BOARD
## VALUE PETITION

_____ County

DR-485V
R. 01/17
Rule 12D-16.0(
F.A.(
Eff. 01/:

The actions below were taken on your petition.

☐ These actions are a recommendation only, not final ☐ These actions are a final decision of the VAB

If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425 Florida Statutes.)

| Petition # | Parcel ID |
|---|---|
| Petitioner name _____<br>The petitioner is: ☐ taxpayer of record ☐ taxpayer's representative<br>☐ other, explain: _____ | Property address |

**Decision Summary** ☐ Denied your petition ☐ Granted your petition ☐ Granted your petition in part

| Value<br>Lines 1 and 4 must be completed | Value from TRIM Notice | Before Board Action<br>Value presented by property appraiser<br>Rule 12D-9.025(10), F.A.C. | After Board Action |
|---|---|---|---|
| 1. Just value, required | | | |
| 2. Assessed or classified use value,* if applicable | | | |
| 3. Exempt value,* enter "0" if none | | | |
| 4. Taxable value,* required | | | |

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

**Reasons for Decision** Fill-in fields will expand, or add pages as needed.

Findings of Fact

Conclusions of Law

☐ **Recommended Decision of Special Magistrate** Finding and conclusions above are recommendations.

Signature, special magistrate | Print name | Date

Signature, VAB clerk or special representative | Print name | Date

If this is a recommended decision, the board will consider the recommended decision on _____ at _____
Address _____
If the line above is blank, the board does not yet know the date, time, and place when the recommended decision will be considered. To find the information, please call _____ or visit our website at _____.

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board | Print name | Date of decision

Signature, VAB clerk or representative | Print name | Date mailed to parties

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# VALUE ADJUSTMENT BOARD
# CLERK'S NOTICE

Select County County

DR-485WCN
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17
TC

| To | From _____<br>Clerk, Value Adjustment Board<br>Address |
|---|---|
| Petition # | Phone |
| Representative # | Email |

This notice will inform the parties of the following action taken on the petition.

- ☐ You have 10 days to complete the petition and return it to the value adjustment board. (Rule 12D-9.015(12), F.A.C.)
- ☐ The petition will not be set for hearing because it was not completed and filed as specified in the previous clerk's notice. (Rule 12D-9.015(12), F.A.C.)
- ☐ The board found good cause for your failure to file your petition on time. The clerk will schedule a hearing by separate notice (Rule 12D-9.015(14), F.A.C.)
- ☐ The board did not find good cause for your failure to file your petition on time. Your petition will not be scheduled for hearing. (Rule 12D-9.015(14), F.A.C.)
- ☐ Your petition was returned. There was no filing fee included with the petition.
- ☐ We received duplicate petitions for this property. The VAB is trying to resolve this issue. Please contact the clerk when you receive this notice.
- ☐ The property appraiser has produced a revised assessment after remand (attached). If you do not agree with the revised assessment, you have the right to present additional evidence at a continuation hearing. You must notify the VAB clerk and request a continuation hearing within 25 days of the date of this notice. (Rule 12D-9.029, F.A.C.)
- ☐ The board found good cause to reschedule your hearing. Your new hearing date will be sent to you.
- ☐ The board did not find good cause to reschedule your hearing. Your hearing will be held on _____ at _____.
- ☐ Other, specify

Certificate of Service

I certify a true copy was served by US mail or the method requested on the petitioner's form on:

- ☐ petitioner _____
- ☐ other _____
- ☐ A copy was provided to the property appraiser.

_____ _____
Signature, deputy clerk Date

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# VALUE ADJUSTMENT BOARD
# WITHDRAWAL OF PETITION

DR-485WI
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

| To the value adjustment board of | County |
|---|---|
| Address | |

| | | | |
|---|---|---|---|
| From | | ☐ Taxpayer ☐ Representative | |
| Parcel ID | | Petition # | |
| Property address | | Mailing address | |
| Email | | Phone | |

**I do not wish to have a decision entered by the board or special magistrate. I understand that withdrawing this petition may mean I lose my right to file an appeal of the assessment in circuit court.***
The petition is withdrawn for the reason below.

☐ The petitioner agrees with the determination of the property appraiser or tax collector.

☐ The petitioner and property appraiser or tax collector have reached a settlement.
Value settled on $

☐ The 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.

☐ Other reason, specify:

OR

| Signature, taxpayer | | Signature, petitioner or representative<br>If signed by a representative, I am authorized to withdraw this petition. | |
|---|---|---|---|
| Print name | Date | Print name | Date |

*If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment (sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, F.S.).

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# DECISION OF THE VALUE ADJUSTMENT BOARD

EXEMPTION, CLASSIFICATION, ASSESSMENT DIFFERENCE TRANSFER, CHANGE OF OWNERSHIP OR CONTROL, OR QUALIFYING IMPROVEMENT PETITION

DR-485XC
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

The actions below were taken on your petition in _____ County.

☐ These actions are a recommendation only, not final. ☐ These actions are a final decision of the VAB.

If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), 196.151, and 197.2425, Florida Statutes.)

| Petition # | Parcel ID |
|---|---|
| Petitioner name _____<br>The petitioner is: ☐ taxpayer of record ☐ representative<br>☐ other, explain: _____ | Property address |

**Decision Summary** ☐ Denied your petition ☐ Granted your petition ☐ Granted your petition in part

| Lines 1 and 4 must be completed | Value from TRIM Notice | Value before Board Action<br>Value presented by property appraiser<br>Rule 12D-9.025(10), F.A.C. | Value after Board Action |
|---|---|---|---|
| 1. Just value, required | | | |
| 2. Assessed or classified use value,* if applicable | | | |
| 3. Exempt value,* enter "0" if none | | | |
| 4. Taxable value,* required | | | |

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Reason for Petition

☐ Homestead ☐ Widow/er ☐ Blind ☐ Totally and permanently disabled veteran
☐ Low-income senior ☐ Disabled ☐ Disabled veteran ☐ Use classification, specify _____
☐ Parent/grandparent assessment reduction ☐ Deployed military ☐ Use exemption, specify _____
☐ Transfer of homestead assessment difference ☐ Qualifying improvement
☐ Change of ownership or control ☐ Other, specify _____

**Reasons for Decision** Fill-in fields will expand, or add pages as needed.

Findings of Fact

Conclusions of Law

☐ **Recommended Decision of Special Magistrate** The finding and conclusions above are recommendations.

Signature, special magistrate | Print name | Date

Signature, VAB clerk or special representative | Print name | Date

If this is a recommended decision, the board will consider the recommended decision on _____ at _____ ☐ AM ☐ PM.
Address _____
If the line above is blank, please call _____ or visit our website at _____.

☐ **Final Decision of the Value Adjustment Board**

Signature, chair, value adjustment board | Print name | Date of decision

Signature, VAB clerk or representative | Print name | Date mailed to parties

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# PETITION TO THE VALUE ADJUSTMENT BOARD
# REQUEST FOR HEARING

Section 194.011, Florida Statutes

DR-486
R. 04/18
Rule 12D-16.002
F.A.C.
Eff. 04/18

You have the right to an informal conference with the property appraiser. This conference is not required and does not change your filing due date. You can present facts that support your claim and the property appraiser can present facts that support the correctness of the assessment. To request a conference, contact your county property appraiser.

For portability of homestead assessment difference, use Form DR-486PORT. For deferral or penalties, use DR-486DP.

**COMPLETED BY CLERK OF THE VALUE ADJUSTMENT BOARD (VAB)**

| Petition # | County | Tax year 20 __ | Date received |
|---|---|---|---|

**COMPLETED BY THE PETITIONER**

PART 1. Taxpayer Information

| Taxpayer name | Representative |
|---|---|
| Mailing address for notices | Parcel ID and physical address or TPP account # |
| Phone | Email |

The standard way to receive information is by US mail. If possible, I prefer to receive information by ☐ email ☐ fax.

☐ I am filing this petition after the petition deadline. I have attached a statement of the reasons I filed late and any documents that support my statement.

☐ I will not attend the hearing but would like my evidence considered. (In this instance only, you must submit duplicate copies o your evidence to the value adjustment board clerk. Florida law allows the property appraiser to cross examine or object to your evidence. The VAB or special magistrate ruling will occur under the same statutory guidelines as if you were present.)

**Type of Property**
☐ Res. 1-4 units ☐ Industrial and miscellaneous ☐ High-water recharge ☐ Historic, commercial or nonprofi
☐ Commercial ☐ Res. 5+ units ☐ Agricultural or classified use ☐ Vacant lots and acreage ☐ Business machinery, equipmen

PART 2. Reason for Petition Check one. If more than one, file a separate petition.

☐ Real property value
☐ Denial of classification
☐ Parent/grandparent reduction
☐ Property was not substantially complete on January 1
☐ Tangible personal property value (You must have timely filed a return required by s.193.052. (s.194.034, F.S.))
☐ Denial of exemption Select or enter type:
☐ Denial for late filing of exemption or classification (Include a date-stamped copy of application.)
☐ Qualifying improvement (s. 193.1555(5), F.S.) or change of ownership or control (s. 193.155(3), 193.1554(5), or 193.1555(5), F.S.)

☐ Check here if this is a joint petition. Attach a list of parcels or accounts with the property appraiser's determination tha they are substantially similar. (s. 194.011(3)(e), (f), and (g), F.S.)

☐ Enter the time (in minutes) you think you need to present your case. Most hearings take 15 minutes. The VAB is not bound by the requested time. For single joint petitions for multiple parcels or accounts, provide the time needed for the entire grou

☐ My witnesses or I will not be available to attend on specific dates. I have attached a list of dates.

You have the right to exchange evidence with the property appraiser. To initiate the exchange, you must submit your evidence directly to the property appraiser at least 15 days before the hearing and make a written request for the property appraiser's evidence. At the hearing, you have the right to have witnesses sworn.

You have the right, regardless of whether you initiate the evidence exchange, to receive from the property appraiser a copy of your property record card containing information relevant to the computation of your current assessment, with confidentia information redacted. When the property appraiser receives the petition, he or she will either send the property record card to you or notify you how to obtain it online.

Your petition will not be complete until you pay the filing fee. When the VAB has reviewed and accepted it, they will assign a number, send you a confirmation, and give a copy to the property appraiser. Unless the person filing the petition is completing part 4, the taxpayer must sign the petition in part 3. Alternatively, the taxpayer's written authorization or power of attorney must accompany the petition at the time of filing with the signature of the person filing the petition in part 5 (s. 194.011(3), F.S.). **Please complete one of the signatures below.**

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

## PART 3. Taxpayer Signature

Complete part 3 if you are representing yourself or if you are authorizing a representative listed in part 5 to represent you without attaching a completed power of attorney or authorization for representation to this form.
Written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

☐ I authorize the person I appoint in part 5 to have access to any confidential information related to this petition.
Under penalties of perjury, I declare that I am the owner of the property described in this petition and that I have read this petition and the facts stated in it are true.

| Signature, taxpayer | Print name | Date |
|---|---|---|

## PART 4. Employee, Attorney, or Licensed Professional Signature

Complete part 4 if you are the taxpayer's or an affiliated entity's employee or you are one of the following licensed representatives.

I am (check any box that applies):

☐ An employee of _____ (taxpayer or an affiliated entity).

☐ A Florida Bar licensed attorney (Florida Bar number _____).

☐ A Florida real estate appraiser licensed under Chapter 475, Florida Statutes (license number _____

☐ A Florida real estate broker licensed under Chapter 475, Florida Statutes (license number _____

☐ A Florida certified public accountant licensed under Chapter 473, Florida Statutes (license number _____

I understand that written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

Under penalties of perjury, I certify that I have authorization to file this petition on the taxpayer's behalf, and I declare that I am the owner's authorized representative for purposes of filing this petition and of becoming an agent for service of proces under s. 194.011(3)(h), Florida Statutes, and that I have read this petition and the facts stated in it are true.

| Signature, representative | Print name | Date |
|---|---|---|

## PART 5. Unlicensed Representative Signature

Complete part 5 if you are an authorized representative not listed in part 4 above.

☐ I am a compensated representative not acting as one of the licensed representatives or employees listed in part 4 abov AND (check one)

☐ Attached is a power of attorney that conforms to the requirements of Part II of Chapter 709, F.S., executed with the taxpayer's authorized signature OR ☐ the taxpayer's authorized signature is in part 3 of this form.

☐ I am an uncompensated representative filing this petition AND (check one)

☐ the taxpayer's authorization is attached OR ☐ the taxpayer's authorized signature is in part 3 of this form.

I understand that written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

Under penalties of perjury, I declare that I am the owner's authorized representative for purposes of filing this petition and c becoming an agent for service of process under s. 194.011(3)(h), Florida Statutes, and that I have read this petition and the facts stated in it are true.

| Signature, representative | Print name | Date |
|---|---|---|

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

## Informal Conference with Property Appraiser

You have the right to an informal conference with the property appraiser. This conference is not required and does not change your filing due date. You can present facts that support your claim and the property appraiser can present facts that support the assessment. To request a conference, contact your county property appraiser.

## PART 1. Taxpayer Information

**If you will not attend the hearing** but would like your evidence considered, you must submit two copies of your evidence to the VAB clerk before the hearing. The property appraiser may respond or object to your evidence. The ruling will occur under the same statutory guidelines as if you were present.

The information in this section will be used by the VAB clerk to contact you regarding this petition.

## PART 2. Petition Information and Hearing

**Provide the time** you think you will need on page 1. The VAB is not bound by the requested time.

**Exchange of Evidence** Rule 12D-9.020(1)(a)-(c), F.A.C.:

(1)(a)1. At least 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.

2. 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.

(b) A petitioner's noncompliance with paragraph (1)(a) 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.

(c) A petitioner's noncompliance with paragraph (1)(a) does not authorize a value adjustment board or special magistrate to exclude the petitioner's evidence. However, 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. 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. These requirements are more specifically described in subsection (8) of this rule and in paragraphs 12D-9.025(4)(a) and (f), F.A.C.

**If you provide this** evidence and make a written request for the property appraiser's evidence, the property appraiser must give you his or her evidence at least seven days before the hearing.

**At the hearing**, you have the right to have witnesses sworn.

## ADDITIONAL INFORMATION

### Required Partial Payment of Taxes (Section 194.014, F.S.)

You are required to make a partial payment of taxes if you have a VAB petition pending on or after the payment delinquency date (normally April 1, following the assessment year under review). If the required partial payment is not made before the delinquency date, the VAB will deny your petition. The last day to make a partial payment before the delinquency date is generally March 31. Review your tax bill or contact your tax collector to determine your delinquency date.

You should be aware that even if a special magistrate's recommended decision has been issued, a partial payment is still required before the delinquency date. A special magistrate's recommended decision is not a final decision of the VAB. A partial payment is not required only if the VAB makes a final decision on your petition before April 1. The payment amount depends on the type of petition filed on the property. The partial payment requirements are summarized below.

**Value Appeals:**

For petitions on the value of property and portability, the payment must include:

* All of the non-ad valorem assessments, and
* A partial payment of at least 75 percent of the ad valorem taxes,
* Less applicable discounts under s. 197.162, F.S.

**Other Assessment Appeals:**

For petitions on the denial of a classification or exemption, or based on an argument that the property was not substantially complete on January 1, the payment must include:

- All of the non-ad valorem assessments, and
- The amount of the ad valorem taxes the taxpayer admits in good faith to owe,
- Less applicable discounts under s. 197.162, F.S.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-486A
N. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

FLORIDA DEPARTMENT OF REVENUE

# WRITTEN AUTHORIZATION FOR REPRESENTATION BEFORE THE VALUE ADJUSTMENT BOARD

Section 194.034(1)(c), Florida Statutes

You may use this form to authorize an uncompensated representative to represent you in value adjustment board proceedings. This form or other written authorization accompanies the petition at the time of filing.

## COMPLETED BY PETITIONER

I, _____ (name), authorize _____ (name) to, without compensation, act on my behalf and present testimony and other evidence before the _____ County Value Adjustment Board.

This written authorization is effective immediately and is valid only for one assessment year.

This written authorization is limited to the 20__ assessment year concerning the parcel(s) or account(s) below.

☐ I authorize the person I appointed above to have access to confidential information related to the following parcel(s) or account(s).

| | | | |
|---|---|---|---|
| Parcel ID/Account # | | Parcel ID/Account # | |
| Parcel ID/Account # | | Parcel ID/Account # | |
| Parcel ID/Account # | | Parcel ID/Account # | |
| Parcel ID/Account # | | Parcel ID/Account # | |

_____ Signature of taxpayer/owner

_____ Print name

_____ Date

_____ Taxpayer's/owner's phone number

Note: Correspondence will be sent to the mailing or email address on the petition.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# PETITION TO THE VALUE ADJUSTMENT BOARD
# TAX DEFERRAL OR PENALTIES
# REQUEST FOR HEARING

DR-486DP
R. 01/17
Rule 12D-16.002
F.A.C.
Eff. 01/17

| COMPLETED BY CLERK OF THE VALUE ADJUSTMENT BOARD (VAB) | | | |
|---|---|---|---|
| Petition # | County | Tax year 20___ | Date received |

## COMPLETED BY THE PETITIONER

### PART 1. Taxpayer Information

| | |
|---|---|
| Taxpayer name | Representative |
| Mailing address for notices | Parcel ID and physical address or TPP account # |
| Phone | Email |

The standard way to receive information is by US mail. If possible, I prefer ☐ email ☐ fax.

☐ I am filing this petition after the petition deadline. I have attached a statement of the reasons I filed late and any documents that support my statement.

☐ I will not attend the hearing but would like my evidence considered. You must submit duplicate copies of your evidence to the value adjustment board clerk. Florida law allows the tax collector to cross examine or object to your evidence. The ruling will occur under the same statutory guidelines as if you were present.

### PART 2. Type of Deferral or Penalty Appeal

☐ Disapproval of homestead tax deferral

☐ Disapproval of affordable rental tax deferral

☐ Disapproval of recreational and commercial working waterfront tax deferral

☐ Penalties imposed under section 197.301, F.S., homestead, affordable rental housing property, or recreational and commercial working waterfront

You must submit a copy of the original application for tax deferral filed with the tax collector and related documents.

☐ Enter the time (in minutes) you will need to present your case. Most hearings take 15 minutes. The VAB is not bound by the requested time. For single joint petitions for multiple parcels, enter the time needed for the entire group.

☐ There are specific dates my witnesses or I will not be available to attend. I have attached a list of dates.

At the hearing, you have the right to have witnesses sworn.

Your petition will not be complete until you pay the filing fee. When the VAB has reviewed and accepted it, they will assign a number, send you a confirmation, and give a copy to the tax collector. Unless the person filing the petition is completing part 4, the taxpayer must sign the petition in part 3. Alternatively, the taxpayer's written authorization or power of attorney must accompany the petition at the time of filing with the signature of the person filing the petition in part 5 (s. 194.011(3), F.S.). **Please complete one of the signatures below.**

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

## PART 3. Taxpayer Signature

Complete part 3 if you are representing yourself or if you are authorizing a representative listed in part 5 to represent you without attaching a completed power of attorney or authorization for representation to this form.
Written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

☐ I authorize the person I appoint in part 5 to have access to any confidential information related to this petition.

Under penalties of perjury, I declare that I am the owner of the property described in this petition and that I have read this petition and the facts stated in it are true.

| Signature, taxpayer | Print name | Date |
|---|---|---|

## PART 4. Employee, Attorney, or Licensed Professional Signature

Complete part 4 if you are the taxpayer's or an affiliated entity's employee or you are one of the following licensed representatives.

I am (check any box that applies):

☐ An employee of _____ (taxpayer or an affiliated entity).

☐ A Florida Bar licensed attorney (Florida Bar number _____).

☐ A Florida real estate appraiser licensed under chapter 475, Florida Statutes (license number _____

☐ A Florida real estate broker licensed under chapter 475, Florida Statutes (license number _____

☐ A Florida certified public accountant licensed under chapter 473, Florida Statutes (license number _____

I understand that written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

Under penalties of perjury, I certify that I have authorization to file this petition on the taxpayer's behalf, and I declare that I am the owner's authorized representative for purposes of filing this petition and of becoming an agent for service of process under s. 194.011(3)(h), Florida Statutes, and that I have read this petition and the facts stated in it are true.

| Signature, representative | Print name | Date |
|---|---|---|

## PART 5. Unlicensed Representative Signature

Complete part 5 if you are an authorized representative not listed in part 4 above.

☐ I am a compensated representative not acting as one of the licensed representatives or employees listed in part 4 above AND (check one)

☐ Attached is a power of attorney that conforms to the requirements of Part II of Chapter 709, F.S., executed with the taxpayer's authorized signature OR ☐ the taxpayer's authorized signature is in part 3 of this form.

☐ I am an uncompensated representative filing this petition AND (check one)

☐ the taxpayer's authorization is attached OR ☐ the taxpayer's authorized signature is in part 3 of this form.

I understand that written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

Under penalties of perjury, I declare that I am the owner's authorized representative for purposes of filing this petition and of becoming an agent for service of process under s. 194.011(3)(h), Florida Statutes, and that I have read this petition and the facts stated in it are true.

| Signature, representative | Print name | Date |
|---|---|---|

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-486MU
R. 6/16

Page ___ of ___

Suggested Form

# ATTACHMENT TO A VALUE ADJUSTMENT BOARD PETITION FOR MULTIPLE PARCELS AND ACCOUNTS

Sections 194.011 and 194.013, Florida Statutes

Each petition to the value adjustment board must be filed with required attachment(s) and a proper filing fee or it will be invalid and rejected. Each parcel of real property or tangible personal property account being appealed must be identified by a separate folio or account number. This attachment should be used for substantially similar parcels or substantially similar accounts and attached to Form DR-486, when used.

| | | | |
|---|---|---|---|
| Taxpayer name | | Agent or contact | |
| Mailing address for notices | | Corporation Name for TPP | |
| Phone | | Email | |
| ☐ Multiple parcels of real property | | ☐ Multiple tangible personal property accounts | |

*For joint petitions filed by condominium, cooperative, or homeowners' association or an owner of contiguous, undeveloped parcels*, please provide the first 9 digits of real estate folio number here _____ and enter the last 4 digits of each folio number in the spaces below.

*For joint petitions filed by an owner of multiple tangible personal property accounts*, enter each account number in the spaces below.

| | | | | | | | | | |
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| | | |
|---|---|---|
| Use additional pages, if needed. | Total number of parcels or accounts on this page | |
| | Grand total of parcels or accounts filed on all pages | |
| | Number of pages, including this one | |

Joint petitions filed by condominium, cooperative, or homeowners' associations as agents according to s. 194.011(3)(e), F.S., should include a copy of the board of administration or directors' resolution authorizing this filing, and the following information:

| **For Complex Only** | |
|---|---|
| Name | Address |
| Mail notices to: ☐ owner ☐ agent | |

## Signatures and Certification

Under penalties of perjury, I declare that I have read this attachment and the facts in it are true. By signing and filing this attachment and the related petition as an agent of the taxpayer/owner, I certify that I am duly authorized to do so.

_____ _____

Signature, petitioner/agent Date

The signature below indicates that the property appraiser has determined that the parcels or accounts are substantially similar as required by s. 194.011(3)(e), (f) or (g), F.S.

_____ _____

Signature, property appraiser Date

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# ATTACHMENT TO PETITION

DR-486MU
R. 6/16
Page ___ of ___

For parcels of property, enter the last 4 digits of each folio number in the spaces below.
For tangible personal property accounts, enter each account number in the spaces below.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
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| | | | | | | | | | |

DR
R. 12/20
Rule 12D-16.002
F.A.C.
Eff. 12/20

FLORIDA
DEPARTMENT OF REVENUE

# POWER OF ATTORNEY FOR REPRESENTATION BEFORE THE VALUE ADJUSTMENT BOARD

Section 194.034(1)(b), Florida Statutes

You may use this form to grant power of attorney for representation in value adjustment board proceedings. This form or other power of attorney accompanies the petition at the time of filing.

## COMPLETED BY PETITIONER

I, _____ (name), appoint _____ (name) as my attorney-in-fact to present evidence and testimony and act on my behalf in any lawful way before the _____ County Value Adjustment Board.

This power of attorney is effective immediately and is valid only for one assessment year.
This power of attorney is limited to the 20__ assessment year concerning the parcel(s) or account(s) below.

☐ I authorize the person I appointed above to have access to confidential information related to the following parcel(s) or account(s).

| | | | |
|---|---|---|---|
| Parcel ID/Account # | | Parcel ID/Account # | |
| Parcel ID/Account # | | Parcel ID/Account # | |
| Parcel ID/Account # | | Parcel ID/Account # | |
| Parcel ID/Account # | | Parcel ID/Account # | |

This power of attorney is further limited as follows:

_____ Signature of taxpayer/owner

_____ Print name

_____ Date

_____ Witness signature

_____ Witness signature

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization on this _____ day of _____ (year), by _____ (name), who signed in the presence of the witnesses.

Personally known_____ OR
Produced identification _____
Type of identification produced _____

_____ Signature of Notary Public

_____ Print, Type, or Stamp Commissioned Name of Notary Public

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# PETITION TO THE VALUE ADJUSTMENT BOARD
# TRANSFER OF HOMESTEAD ASSESSMENT DIFFERENCE
# REQUEST FOR HEARING

DR-486PORT
R. 04/18
Rule 12D-16.002
F.A.C.
Eff. 04/18

This petition does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead.

You have the right to an informal conference with the property appraiser. This conference is not required and does not change your filing due date. You can present facts that support your claim and the property appraiser can present facts that support the correctness of the assessment. To request a conference, contact your county property appraiser.

## COMPLETED BY THE CLERK OF THE VALUE ADJUSTMENT BOARD (VAB)

| Petition # | County WASHINGTON | Tax year 20__ | Date received |
|---|---|---|---|

## COMPLETED BY THE PETITIONER

### PART 1. Taxpayer Information

| | |
|---|---|
| Taxpayer name | Representative |
| Mailing address for notices | Email |
| | Phone |

The standard way to receive information is by US mail. If possible, I prefer to receive information by ☐ email ☐ fax.

☐ I am filing this petition after the petition deadline. I have attached a statement of the reasons I filed late and any documents that support my statement.

☐ I will not attend the hearing but would like my evidence considered. In this instance only, you must submit duplicate copies of your evidence to the value adjustment board clerk. Florida law allows the property appraiser to cross examine or object to your evidence. The VAB or special magistrate ruling will occur under the same statutory guidelines as if you were present.

| | PREVIOUS HOMESTEAD | NEW HOMESTEAD |
|---|---|---|
| Parcel ID | | |
| Physical address | | |
| County | WASHINGTON | WASHINGTON |

### PART 2. Reason for Petition

Check all that apply.

☐ I was denied the transfer of the assessment difference from my previous homestead to my new homestead.

☐ I disagree with the assessment difference calculated by the property appraiser for transfer to my new homestead. I believe the amount that should be transferred is: $ _____

☐ I filed late with the property appraiser for the transfer of my homestead assessment difference. Late-filed homestead assessment difference petitions must include a copy of the application filed with, and date-stamped by, the property appraiser.

☐ My previous homestead is in a different county. I am appealing action of the property appraiser in that county.

☐ Enter the time (in minutes) you will need to present your case. Most hearings take 15 minutes. The VAB is not bound by the requested time.

☐ There are specific dates my witnesses or I will not be available to attend. I have attached a list of dates.

You have the right to exchange evidence with the property appraiser. To initiate the exchange, you must submit your evidence directly to the property appraiser at least 15 days before the hearing and make a written request for the property appraiser's evidence. At the hearing, you have the right to have witnesses sworn.

You have the right, regardless of whether you initiate the evidence exchange, to receive from the property appraiser a copy of your property record card containing information relevant to the computation of your current assessment, with confidential information redacted. When the property appraiser receives the petition, he or she will either send the property record card to you or notify you how to obtain it online.

Your petition will not be complete until you pay the filing fee. When the VAB has reviewed and accepted it, they will assign a number, send you a confirmation, and give a copy to the property appraiser. Unless the person filing the petition is completing part 4, the taxpayer must sign the petition in part 3. Alternatively, the taxpayer's written authorization or power of attorney must accompany the petition at the time of filing with the signature of the person filing the petition in part 5 (s. 194.011(3), F.S.). **Please complete one of the signatures below.**

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

## PART 3. Taxpayer Signature

Complete part 3 if you are representing yourself or if you are authorizing a representative listed in part 5 to represent you without attaching a completed power of attorney or authorization for representation to this form.

Written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

☐ I authorize the person I appoint in part 5 to have access to any confidential information related to this petition.

Under penalties of perjury, I declare that I am the owner of the property described in this petition and that I have read this petition and the facts stated in it are true.

| Signature, taxpayer | Print name | Date |
|---|---|---|

## PART 4. Employee, Attorney, or Licensed Professional Signature

Complete part 4 if you are the taxpayer's or an affiliated entity's employee or you are one of the following licensed representatives.

I am (check any box that applies):

☐ An employee of _____ (taxpayer or an affiliated entity).

☐ A Florida Bar licensed attorney (Florida Bar number _____).

☐ A Florida real estate appraiser licensed under chapter 475, Florida Statutes (license number _____).

☐ A Florida real estate broker licensed under chapter 475, Florida Statutes (license number _____).

☐ A Florida certified public accountant licensed under chapter 473, Florida Statutes (license number _____).

I understand that written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

Under penalties of perjury, I certify that I have authorization to file this petition on the taxpayer's behalf, and I declare that I am the owner's authorized representative for purposes of filing this petition and of becoming an agent for service of process under s. 194.011(3)(h), Florida Statutes, and that I have read this petition and the facts stated in it are true.

| Signature, representative | Print name | Date |
|---|---|---|

## PART 5. Unlicensed Representative Signature

Complete part 5 if you are an authorized representative not listed in part 4 above.

☐ I am a compensated representative not acting as one of the licensed representatives or employees listed in part 4 above AND (check one)

☐ Attached is a power of attorney that conforms to the requirements of Part II of Chapter 709, F.S., executed with the taxpayer's authorized signature OR ☐ the taxpayer's authorized signature is in part 3 of this form.

☐ I am an uncompensated representative filing this petition AND (check one)

☐ the taxpayer's authorization is attached OR ☐ the taxpayer's authorized signature is in part 3 of this form.

I understand that written authorization from the taxpayer is required for access to confidential information from the property appraiser or tax collector.

Under penalties of perjury, I declare that I am the owner's authorized representative for purposes of filing this petition and of becoming an agent for service of process under s. 194.011(3)(h), Florida Statutes, and that I have read this petition and the facts stated in it are true.

| Signature, representative | Print name | Date |
|---|---|---|

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

## Informal Conference with Property Appraiser

You have the right to an informal conference with the property appraiser. This conference is not required and does not change your filing due date. You can present facts that support your claim and the property appraiser can present facts that support the assessment. To request a conference, contact your county property appraiser.

## PART 1. Taxpayer Information

**If you will not attend the hearing** but would like your evidence considered, you must submit two copies of your evidence to the VAB clerk before the hearing. The property appraiser may respond or object to your evidence. The ruling will occur under the same statutory guidelines as if you were present.

The information in this section will be used by the VAB clerk to contact you regarding this petition.

## PART 2. Petition Information and Hearing

**Provide the time** you think you will need on page 1. The VAB is not bound by the requested time.

**Exchange of Evidence** Rule 12D-9.020(1)(a)-(c), F.A.C.:

(1)(a)1. At least 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.

2. 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.

(b) A petitioner's noncompliance with paragraph (1)(a) 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.

(c) A petitioner's noncompliance with paragraph (1)(a) does not authorize a value adjustment board or special magistrate to exclude the petitioner's evidence. However, 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. 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. These requirements are more specifically described in subsection (8) of this rule and in paragraphs 12D-9.025(4)(a) and (f), F.A.C.

**If you provide this** evidence and make a written request for the property appraiser's evidence, the property appraiser must give you his or her evidence at least seven days before the hearing.

**At the hearing**, you have the right to have witnesses sworn.

## ADDITIONAL INFORMATION

### Required Partial Payment of Taxes (Section 194.014, F.S.)

You are required to make a partial payment of taxes if you have a VAB petition pending on or after the payment delinquency date (normally April 1, following the assessment year under review). If the required partial payment is not made before the delinquency date, the VAB will deny your petition. The last day to make a partial payment before the delinquency date is generally March 31. Review your tax bill or contact your tax collector to determine your delinquency date.

You should be aware that even if a special magistrate's recommended decision has been issued, a partial payment is still required before the delinquency date. A special magistrate's recommended decision is not a final decision of the VAB. A partial payment is not required only if the VAB makes a final decision on your petition before April 1. The payment amount depends on the type of petition filed on the property. The partial payment requirements are summarized below.

**Value Appeals:**

For petitions on the value of property and portability, the payment must include:

* All of the non-ad valorem assessments, and
* A partial payment of at least 75 percent of the ad valorem taxes,
* Less applicable discounts under s. 197.162, F.S.

**Other Assessment Appeals:**

For petitions on the denial of a classification or exemption, or based on an argument that the property was not substantially complete on January 1, the payment must include:

- All of the non-ad valorem assessments, and
- The amount of the ad valorem taxes the taxpayer admits in good faith to owe,
- Less applicable discounts under s. 197.162, F.S.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# CROSS-COUNTY NOTICE OF APPEAL AND PETITION TRANSFER OF HOMESTEAD ASSESSMENT DIFFERENCE

DR-486XCO
R. 12/09
Rule 12D-16.002
Florida Administrative Code

For use by the Clerk of the Value Adjustment Board (VAB)

| Completed by VAB Clerk in the County of the New Homestead | |
|---|---|
| To: Clerk of the VAB, County of | From: Clerk of the VAB, County of |
| Contact<br>Name | Contact<br>Name |
| Address | Address |
| Phone ext. | Phone ext. |
| Email | Email |
| Fax | Fax |

The attached petition appeals actions of the property appraiser in your county.

I certify that this petition to the Value Adjustment Board was filed with me on _____(Date)

_____
Signature, clerk of the value adjustment board

## INSTRUCTIONS

### Clerk of the VAB, County of the New Homestead

Use this form if a petition is filed because:

1. A taxpayer does not agree with the amount of the assessment limitation difference for which the taxpayer qualifies as stated by the property appraiser in the county of the previous homestead, or
2. The property appraiser in the county of the previous homestead
   a. has said that the taxpayer does not qualify to transfer any assessment limitation difference, or
   b. has not provided sufficient information to grant the assessment difference transfer.

When a taxpayer files a petition to the VAB in the county of the new homestead property, the clerk of the VAB in that county will send this notice, Form DR-486XCO, to the clerk of the VAB in the county of the previous homestead if the petition form DR-486PORT check box indicates there is an issue with the homestead in the previous county. Attach the taxpayer's petition form.

### Clerk of the VAB, County of the Previous Homestead

The attached petition appeals the actions of the property appraiser in your county. If your VAB has already adjourned, it must reconvene. When the VAB makes a decision on the attached petition, promptly send a copy of the decision to the petitioner and the clerk of the VAB in the county of the new homestead.

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

DR-488
R. 12/09

## Section 193.122, Florida Statutes

Rule 12D-16.002
Florida Administrative Code

Tax Roll Year 20 __

The Value Adjustment Board of _____ County, after approval of the assessment roll below by the Department of Revenue, certifies that all hearings required by section 194.032, F.S., have been held and the Value Adjustment Board is satisfied that the

(Check one.) ☐ Real Property ☐ Tangible Personal Property

assessment for our county includes all property and information required by the statutes of the State of Florida and the requirements and regulations of the Department of Revenue.

On behalf of the entire board, I certify that we have ordered this certification to be attached as part of the assessment roll. The roll will be delivered to the property appraiser of this county on the date of this certification. The property appraiser will adjust the roll accordingly and make all extensions to show the tax attributable to all taxable property under the law.

The following figures* are correct to the best of our knowledge:

| | |
|---|---|
| 1. Taxable value of ☐ real property ☐ tangible personal property assessment roll as submitted by the property appraiser to the value adjustment board | $ _____ |
| 2. Net change in taxable value due to actions of the Board | $ _____ |
| 3. Taxable value of ☐ real property ☐ tangible personal property assessment roll incorporating all changes due to action of the value adjustment board | $ _____ |

*All values entered should be county taxable values. School and other taxing authority values may differ.

_____ _____
Signature, Chair of the Value Adjustment Board Date

Continued on page 2

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# CERTIFICATION OF THE VALUE ADJUSTMENT BOARD



PROCEDURES Tax Roll Year 20 __

The value adjustment board has met the requirements below. Check all that apply.

The board:

| | |
|---|---|
| ☐ 1. | Followed the prehearing checklist in Chapter 12D-9, Florida Administrative Code. Took all actions reported by the VAB clerk or the legal counsel to comply with the checklist. |
| ☐ 2. | Verified the qualifications of special magistrates, including if special magistrates completed the Department's training. |
| ☐ 3. | Based the selection of special magistrates solely on proper qualifications and the property appraiser did not influence the selection of special magistrates. |
| ☐ 4. | Considered only petitions filed by the deadline or found to have good cause for filing late. |
| ☐ 5. | Noticed all meetings as required by section 286.011, F.S. |
| ☐ 6. | Did not consider ex parte communications unless all parties were notified and allowed to object to or address the communication. |
| ☐ 7. | Reviewed and considered all petitions as required, unless withdrawn or settled by the petitioner. |
| ☐ 8. | Ensured that all decisions contained the required findings of fact and conclusions of law. |
| ☐ 9. | Allowed the opportunity for public comment at the meetings where the recommended decisions of special magistrates were considered or board decisions were adopted. |
| ☐ 10. | Addressed all complaints of noncompliance with the provisions of Chapter 194, Part I, Florida Statutes, and rule Chapter 12D-9, F.A.C., that were called to the board's attention. |

All board members and the board's legal counsel have read this certification.

The board must submit this certification to the Department of Revenue before it publishes the notice of the findings and results required by section 194.037, F.S.

On behalf of the entire value adjustment board, I certify that the above statements are true and that the board has met all the requirements in Chapter 194, F.S., and Department rules.

After all hearings have been held, the board shall certify an assessment roll or part of an assessment roll that has been finally approved according to section 193.011, F.S. A sufficient number of copies of this certification shall be delivered to the property appraiser to attach to each copy of the assessment roll prepared by the property appraiser.

_____ _____
Signature, Chair of the Value Adjustment Board Date

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# INITIAL CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

**Section 193.122, Florida Statutes**

DR-488P
N. 12/09
Rule 12D-16.002
Florida Administrative Code

Tax Roll Year 20__

The Value Adjustment Board of _____ County has not completed its hearings and certifies on order of the Board of County commissioners according to sections 197.323 and 193.122(1), F.S., that the

(Check one.) ☐ Real Property ☐ Tangible Personal Property

assessment roll for our county has been presented by the property appraiser to include all property and information required by the statutes of the State of Florida and the requirements and regulations of the Department of Revenue.

On behalf of the entire board, I certify that we have ordered this certification to be attached as part of the assessment roll. We will issue a Certification of the Value Adjustment Board (Form DR-488) under section 193.122(1) and (3), F.S., when the hearings are completed. The property appraiser will make all extensions to show the tax attributable to all taxable property under the law.

_____ _____

Signature, Chair of the Value Adjustment Board Date

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# NOTICE OF DISAPPROVAL OF APPLICATION FOR PROPERTY TAX EXEMPTION OR CLASSIFICATION BY THE COUNTY PROPERTY APPRAISER

DR-490
R. 11/12
Rule 12D-16.002
Florida Administrative Code
Effective 11/12

| To: | | County Select County |
|---|---|---|
| | | Parcel ID or property description |

**YOUR APPLICATION FOR THE ITEM(S) BELOW WAS DENIED**

EXEMPTION DENIED

| | |
|---|---|
| ☐ Homestead – up to $50,000 | ☐ Total and permanent disability (quadriplegics) |
| ☐ Additional homestead – age 65 and older | ☐ Total and permanent disability (paraplegic, hemiplegic, wheelchair required for mobility, legally blind) |
| ☐ Widowed - $500 ☐ Blind - $500 | |
| ☐ Disabled - $500 ☐ Disabled veteran - $5,000 | ☐ Veteran's service connected (total and permanent disability) |
| ☐ Deployed military | ☐ Disabled veteran discount |

☐ Other exemptions, explain:

CLASSIFICATION DENIED ☐ Agricultural ☐ High-water recharge ☐ Historic ☐ Conservation

OTHER DENIAL ☐ describe:

THIS DENIAL IS ☐ Total ☐ Partial If partial, explain.

| REASON FOR DENIAL OR PARTIAL DENIAL | On January 1 of the tax year you did not: |
|---|---|
| ☐ Make the property claimed as homestead your permanent residence. (ss. 196.011 and 196.031, F.S.) | ☐ Meet income requirements for additional homestead, age 65 and older. (s. 196.075, F.S.). |
| ☐ Have legal or beneficial title to your property. | ☐ Use the property for the specified purpose. (Ch. 193, F.S.) |

☐ Meet other statutory requirements, specifically:

If you disagree with this denial, the Florida Property Taxpayer's Bill of Rights recognizes your right to an informal conference with the local property appraiser. You may also file an appeal with the county value adjustment board, according to sections 196.011 and 196.193, Florida Statutes. Petitions involving denials of exemptions or classifications are due by the 30th day after the mailing of this notice, whether or not you schedule an informal conference with the property appraiser.

Signature, property appraiser or deputy — Select County — County — Date

**PROPERTY APPRAISER CONTACT**

| | |
|---|---|
| Print name | Web site |
| Mailing address | Email john@property-specialists.com |
| | Phone |
| | Fax |

**VALUE ADJUSTMENT BOARD CONTACT**

| | |
|---|---|
| Web site | Phone |
| Email | Fax |

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

FLORIDA DEPARTMENT OF REVENUE

# NOTICE OF DENIAL OF TRANSFER OF HOMESTEAD ASSESSMENT DIFFERENCE

DR-490PORT
R. 12/09
Rule 12D-16.002
Florida Administrative Code
TC

| To: | | From Property Appraiser, County of |
|---|---|---|
| | | Contact name |
| | | Address |

| | PREVIOUS HOMESTEAD | NEW HOMESTEAD |
|---|---|---|
| Parcel ID | | |
| Physical address | | |
| County | | |

Your application to transfer an assessment difference from our previous homestead to your new homestead was not approved because:

☐ 1. The information provided on your application was inaccurate or incomplete and could not be verified.

☐ 2. The property appraiser from the county of your previous homestead could not verify your homestead information.

☐ 3. The property appraiser from the county of your previous homestead did not provide sufficient information to grant a transfer of assessment difference to the new homestead.

☐ 4. The property identified as your previous homestead did not have homestead exemption in either of the two preceding years.

☐ 5. The homestead exemption is still being claimed on your previous homestead and is inconsistent with your transfer of a homestead assessment difference.

☐ 6. You did not establish your new homestead within the required time, or otherwise do not qualify for homestead exemption.

☐ 7. You did not meet other statutory requirements, specifically:

If you disagree with this denial, the Florida Property Taxpayer's Bill of Rights recognizes your right to an informal conference with the local property appraiser. You may also file an appeal with the county value adjustment board, according to section 193.155(8)(j), Florida Statutes. Petitions involving denials of transfer of homestead assessment difference are due by the 25th day after the mailing of the Notice of Proposed Property Taxes.

Signature, property appraiser or deputy _____ County _____ Date _____

| PROPERTY APPRAISER CONTACT | |
|---|---|
| Print name | Email |
| Mailing address | Phone |
| | Fax |

| VALUE ADJUSTMENT BOARD CONTACT | | |
|---|---|---|
| Email | Phone | Fax |

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-493
R. 11/12
Rule 12D-16.002
Florida Administrative Code
Eff. 11/12

FLORIDA DEPARTMENT OF REVENUE

# ADJUSTMENTS MADE TO RECORDED SELLING PRICES OR FAIR MARKET VALUE IN ARRIVING AT ASSESSED VALUE

Sections 193.011(8) and 192.001(18), Florida Statutes
Rule 12D-8.002(4), F.A.C.

_____ County Assessment Roll 20__

Enter the percent of adjustment on each line. Do not use ditto (“) marks. If the property appraiser reports an adjustment of zero, the Department will use zero for that property group in its ratio studies.

| | % Adjustment | | % Adjustment |
|---|---|---|---|
| Use Code 00 | | Use Code 03 | |
| Use Code 10 | | Use Code 08 | |
| Use Code 40 | | Use Code 11 – 39 | |
| Use Code 99 | | Use Code 41 – 49 | |
| Use Code 01 | | Use Code 50 – 69 | |
| Use Code 02 | | Use Code 70 – 79 | |
| Use Code 04 | | Use Code 80 – 89 | |
| Use Code 05 | | Use Code 90 | |
| Use Code 06 & 07 | | Use Code 91 – 97 | |

INSTRUCTIONS

The property appraiser must complete this form stating the eighth criterion adjustments made by the property appraiser to recorded selling prices or fair market value, based on Section 193.011(8), F.S., in arriving at assessed value. The property appraiser must provide to the Executive Director complete, clear, and accurate documentation justifying any eighth criterion adjustments that exceed fifteen percent (Rule 12D-8.002(4), Florida Administrative Code).

This submission is required pursuant to Section 192.001(18), F.S. The property appraiser must send this completed form to the Department annually with the preliminary assessment roll.

Witness my hand and signature at _____

on this _____ day of _____, _____.
(month) (year)

_____
Signature, property appraiser

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# NOTICE

## TAX IMPACT OF VALUE ADJUSTMENT BOARD

DR-529
R. 12/09
Rule 12D-16.002
Florida Administrative Code

County Tax Year _____

| Members of the Board | |
|---|---|
| Honorable | Board of County Commissioners, District No. |
| Honorable | Board of County Commissioners, District No. |
| Honorable | School Board, District No. |
| Citizen Member | Business owner within the school district |
| Citizen Member | Homestead property owner |

The Value Adjustment Board (VAB) meets each year to hear petitions and make decisions relating to property tax assessments, exemptions, classifications, and tax deferrals.

**Summary of Year's Actions**

| Type of Property | Number of Parcels | | | | | Reduction in County Taxable Value Due to Board Actions | Shift in Taxes Due to Board Actions |
|---|---|---|---|---|---|---|---|
| | Exemptions | | Assessments* | | Both | | |
| | Granted | Requested | Reduced | Requested | Withdrawn or settled | | |
| Residential | | | | | | | |
| Commercial | | | | | | | |
| Industrial and miscellaneous | | | | | | | |
| Agricultural or classified use | | | | | | | |
| High-water recharge | | | | | | | |
| Historic commercial or nonprofit | | | | | | | |
| Business machinery and equipment | | | | | | | |
| Vacant lots and acreage | | | | | | | |
| **TOTALS** | | | | | | | |

All values should be county taxable values. School and other taxing authority values may differ.

*Includes transfer of assessment difference (portability) requests.

| If you have a question about these actions, contact the Chair or the Clerk of the Value Adjustment Board. | |
|---|---|
| Chair's name | Phone |
| Clerk's name | Phone |

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

DR-571A
R. 11/12
Rule 12D-16.002
Florida Administrative Code
Effective 11/12

FLORIDA DEPARTMENT OF REVENUE

# DISAPPROVAL OF APPLICATION FOR TAX DEFERRAL

Homestead, Affordable Rental Housing, or Working Waterfront

| Parcel ID | | County | |
|---|---|---|---|
| To | | Type of Property<br>☐ Homestead<br>☐ Affordable rental housing<br>☐ Recreational or commercial working waterfront | |

Your application for deferral of tax payments was denied because

☐ The total of deferred taxes, non-ad valorem assessments and interest, and all other unsatisfied liens on the property is more than 85% of the just value of the property.

☐ The total of the primary mortgage financing is more than 70% of the just value of the property.

☐ You did not meet other statutory requirements, specifically: Field will expand online or add pages, if needed.

If you disagree with this denial, the Florida Property Taxpayer's Bill of Rights recognizes your right to an informal conference with the local tax collector. You may also file an appeal with the county value adjustment board, according to section 197.2425, Florida Statutes. Petitions involving denials of tax deferrals are due by the 30th day after the mailing of this notice, whether or not you schedule an informal conference with the tax collector.

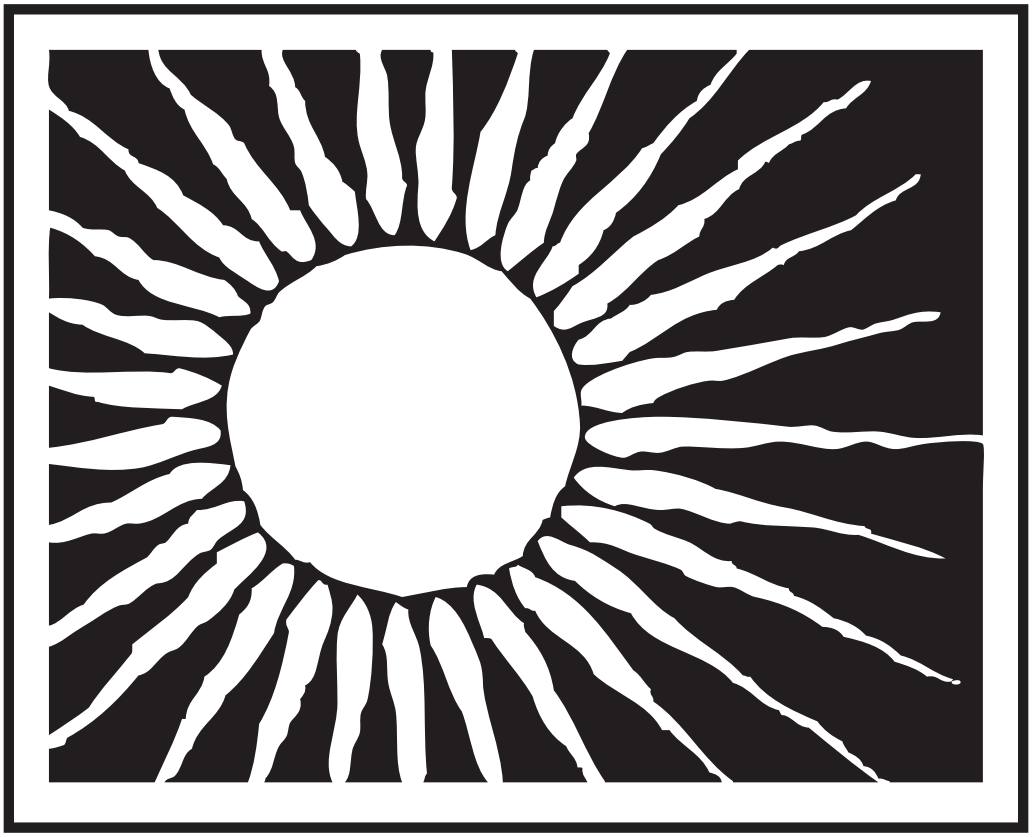
A copy of this notice was ☐ personally delivered or ☐ sent by registered mail to the applicant.

Signature, tax collector _____ Date mailed _____

| Contact name | | Email | |
|---|---|---|---|
| Address | | Phone | |
| | | Fax | |

Attachment: UniformPoliciesManual2020 (15118 : Informational: Value Adjustment Board Rules and Guidelines)

# GOVERNMENT-IN-THE-SUNSHINE MANUAL



# 2021 Edition

***A Reference For Compliance with Florida's Public Records and Open Meetings Laws***

**Volume 43**

# FLORIDA'S GOVERNMENT-IN-THE-SUNSHINE MANUAL AND PUBLIC RECORDS LAW MANUAL

Questions and Answers on Section 286.011 F.S. (Open Meetings) and on Chapter 119 F.S. (Public Records)

Prepared by the
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The interior of this book is printed on recycled paper.

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**A Public Policy of Open Government**

## INTRODUCTION

Our system of open government is a valued and intrinsic part of the heritage of our state. Each day, Floridians use these laws to inform themselves as citizens, to attend government meetings and to review government records. As a result of these efforts, government leaders can be held accountable for their actions.

The Founding Fathers of our country recognized this fundamental truth during our nation's infancy and it remains just as valid today. As James Madison said: "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

Florida is nationally recognized for its strong support for government in the sunshine and this commitment is reflected in our statutes and Constitution. As Attorney General, I remain committed to the principles of transparency embodied in these laws and the benefits they secure for our state.

This year's edition of the Government in the Sunshine Manual incorporates laws, judicial decisions, and Attorney General opinions in place as of October 1, 2020. Additional information about Florida's Sunshine Laws, including answers to frequently asked questions, is available through the Office of the Attorney General's Internet homepage, which may be reached at www.myfloridalegal.com.

Suggestions from those who use this Manual are welcome and appreciated. Please forward comments to: Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399.

**Ashley Moody**
**Attorney General**



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## Legislative Highlights

The following are some of the more significant actions which occurred during the 2020 legislative session relating to the public's right of access to meetings and records.

**Disaster recovery assistance** – Creates an exemption for property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster. **Chapter 20-34, Laws of Florida, amending s. 119.071, F.S.**

**Financial technology** – Creates an exemption for certain records submitted as part of the Financial Technology Sandbox Act, a new law designed to allow financial technology innovators to test new products and services under specified conditions. **Chapter 20-162, Laws of Florida, amending s. 559.952, F.S.**

**Information technology security** – Expands the existing exemption in s. 282.318, FS., to include portions of records held by a state agency which contain network schematics hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information security incidents. Also creates an exemption of portions of meetings at which exempt information is discussed, provided that the closed portions are recorded. **Chapter 20-25, Laws of Florida, amending s. 282.318, F.S.**

**Insurer records** – Creates an exemption for a consumer's personal financial and health information and certain underwriting files made or received by the Department of Financial Services when acting as a receiver pursuant to cited statute. Also provides an exemption for information obtained from the National Association of Insurance Commissioners or another governmental entity that is confidential or exempt. **Chapter 20-142, Laws of Florida, creating s. 631.195, F.S.**

**911 and E911 communication systems** – Creates a public records exemption for building plans, blueprints, schematic drawings, and diagrams, including draft formats, depicting the structural elements of 911 or E911 communication infrastructure used to provide 911 and E911 communications systems owned and operated by an agency. Also establishes an exemption for geographical maps indicating the actual or proposed locations of these systems. Creates an exemption for portions of meetings that would reveal exempt information, provided that the meetings must be recorded. **Chapter 20-13, Laws of Florida, amending ss. 119.071(3) and 286.0113, F.S.**

**Regional planning council meetings** – Amends the Administrative Procedure Act to allow a voting member of a regional planning council that covers three or more counties who participates via telephone or videoconferencing to be counted towards a quorum. Stipulates that at least one third of the voting members of such agencies or councils must be present at the meeting location and that notice of intent to participate remotely be provided at least 24 hours prior to the scheduled meeting. **Chapter 20-122, Laws of Florida, amending s. 120.525, F.S.**

**Termination of pregnancy** – Establishes an exemption for any information that could be used to identify a minor seeking a waiver of the consent requirements in the Parental Consent for Abortion Act. **Chapter 20-148, Laws of Florida, creating s. 390.01118, F.S.**

**Threatened or endangered species** – Establishes a public records exemption for site specific information about animals listed on the federal threatened or endangered list held by an agency. **Chapter 20-129, Laws of Florida, creating s. 379.1026, F.S.**



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# PART I

# GOVERNMENT IN THE SUNSHINE LAW

## A. SCOPE OF THE SUNSHINE LAW

Florida's Government in the Sunshine Law, s. 286.011, F.S., commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards, and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. Members-elect to such boards or commissions are also subject to the Sunshine Law, even though they have not yet taken office. There are three basic requirements of s. 286.011, F.S.:

(1) meetings of public boards or commissions must be open to the public;

(2) reasonable notice of such meetings must be given; and

(3) minutes of the meetings must be taken and promptly recorded.

The complete text of the Government in the Sunshine Law and related statutes may be found in Appendix B.

A constitutional right of access to meetings of collegial public bodies is recognized in Art. I, s. 24, Fla. Const. *See Frankenmuth Mutual Insurance Company v. Magaha,* 769 So. 2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law "is of both constitutional and statutory dimension." Virtually all collegial public bodies are covered by the open meetings mandate of this constitutional provision with the exception of the judiciary and the state Legislature, which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution. The complete text of Art. I, s. 24, Fla. Const., may be found in Appendix A of this manual.

The Government in the Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision." The statute thus applies to public collegial bodies within this state, at the local as well as state level. *City of Miami Beach v. Berns,* 245 So. 2d 38 (Fla. 1971). "All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted." *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 762 (Fla. 2010).

The Sunshine Law is equally applicable to elected and appointed boards or commissions. AGO 73-223. Special district boards (AGO 74-169) and boards created by interlocal agreement (AGO 84-16) are also included. *And see* Inf. Op. to Martelli, July 20, 2009 (State Fair Authority, created by statute as a public corporation, subject to Sunshine Law). *Cf. Turner v. Wainwright,* 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded,* 389 So. 2d 1181 (Fla. 1980) (legislative requirement that certain board meetings must be open to the public does not imply that the board could meet privately to discuss other matters).

## B. WHAT ENTITIES ARE COVERED BY THE SUNSHINE LAW? APPLICATION OF THE SUNSHINE LAW TO:

### 1. Advisory boards

Advisory boards and committees created by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. The "dispositive question" is whether the committee has been delegated "decision-making authority," as opposed to mere "information-gathering or fact-finding authority." *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 762 (Fla. 2010). "Where



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the committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body." *Id.*

For example, in *Town of Palm Beach v. Gradison,* 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law. The *Gradison* court, concluding that the committee served as the alter ego of the council in making tentative decisions, stated that "any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law." *Id.* at 476. *See also Spillis Candela & Partners, Inc. v. Centrust Savings Bank,* 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (committee which compiled a report that was perfunctorily accepted by the board made a significant ruling affecting decision-making process and was subject to s. 286.011; an "ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law"); and *Lyon v. Lake County,* 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager). *Accord* AGOs 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), and 01-84 (school advisory council created pursuant to former s. 229.58 [now s. 1001.452], F.S).

The Sunshine Law does not establish a lesser standard for members of advisory committees that are subject to the Sunshine Law. *See Monroe County v. Pigeon Key Historical Park,* Inc., 647 So. 2d 857, 869 (Fla. 3d DCA 1994) ("[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials"). Nor is there an exception from the Sunshine Law for an advisory group created by a county commissioner and composed of volunteers. *See* Inf. Op. to Wallace, January 7, 2019, emphasizing that it is the nature of the functions of an advisory group that determines the application of the Sunshine Law, not the manner of their appointment or their volunteer status.

**a. Advisory boards appointed by a single public official**

The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by a collegial board. *See* Inf. Op. to Wallace, January 7, 2019 ("In the first place, advisory groups appointed by a single public official are not immunized from the public meetings requirement").

For example, in *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), the Florida Supreme Court determined that the Sunshine Law applied to an ad hoc advisory committee appointed by a university president to screen applications and make recommendations for the position of law school dean, because the committee, in deciding which applicants to reject from further consideration, performed a policy-based, decision-making function. *See also Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by agency purchasing director to consider and rank various contract proposals subject to Sunshine Law); and *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018) (Sunshine Law applies to committee formed by school board planning director to develop and recommend to the superintendent proposed new school attendance boundaries). *Accord* AGOs 05-05 (fact that advisory group was created by chief of police and not city commission and its recommendations were made to police chief would not remove group from ambit of the Sunshine Law); 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce and draft proposal for transfer of city property); and Inf. Op. to Lamar, August 2, 1993 (transition team appointed by mayor to make recommendations regarding governmental reorganization).

**b. Fact-finding committees**



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A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). *See also National Council on Compensation Insurance v. Fee,* 219 So. 3d 172 (Fla. 1st DCA 2017); and *Cape Publications, Inc. v. City of Palm Bay,* 473 So. 2d 222 (Fla. 5th DCA 1985). *Accord* AGO 95-06 (when a group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision-making authority, no "board or commission" subject to the Sunshine Law is created).

"In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body." Inf. Op. to Randolph, June 10, 2010. Thus, if an advisory committee has a decision-making function in addition to fact-finding, the Sunshine Law is applicable. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983), recognizing that while a "search and screen" committee had a fact-gathering role in soliciting and compiling applications, the committee also "had an equally undisputed decision-making function in screening the applicants" by deciding which of the applicants to reject from further consideration, and thus was subject to the Sunshine Law. *And see* AGO 94-21 (application of Sunshine Law to members of a negotiating team created by a city commission).

Accordingly, the determination as to whether an advisory committee created by a public official is subject to the Sunshine Law will necessarily depend on the duties and responsibilities performed by the committee. *See* Inf. Op. to Wallace, January 7, 2019, noting that the mere designation of a committee's function as "providing feedback" to the public official is not dispositive of the status of the committee for Sunshine Law purposes; instead, "the key determination will be the exact nature of the feedback being requested and provided." *See also* AGO 98-13 (application of the Sunshine Law to a community advisory committee appointed by a city commission).

Moreover, the "fact-finding exception" applies only to advisory committees and not to boards that have "ultimate decision-making governmental authority." *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1071-1072 (Fla. 5th DCA 2008). In *Finch*, the court held that the "fact-finding exception" did not apply to a school board as the ultimate decision-making body; thus the board could not take a fact-finding bus tour without complying with the Sunshine Law even though school board members were separated from each other by several rows of seats, did not discuss their preferences or opinions, and no vote was taken during the trip. *And see* Inf. Op. to Sugarman, August 5, 2015 (pension board not authorized to travel out of state to meet with financial consultants).

**c. Staff committees**

The Sunshine Law applies to meetings of elected or appointed boards; it does not ordinarily apply to staff committees or meetings. *See, e.g., Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977), *disapproved in part on other grounds, Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992); *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996); and AGO 89-39.

Thus, a committee composed of staff that is responsible for advising and informing the decision-maker through fact-finding consultations is not subject to the Sunshine Law. *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (meetings of committee appointed by public college president to report on employee working conditions not subject to Sunshine Law). *Cf.* AGO 08-63 (although Sunshine Law does not apply to orientation sessions held by counties for special magistrates hired to hear value adjustment board petitions, "nothing would preclude a county from allowing the public to attend such orientations in order to enhance the knowledge of citizens who appear before value adjustment boards").



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Accordingly, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a licensee's alleged failure to follow state law, and an assistant director made the decision to file a complaint as "[c]ommunication among administrative staff in fulfilling investigatory, advisory, or charging functions does not constitute a 'Sunshine' Law violation." *Baker v. Florida Department of Agriculture and Consumer Services,* 937 So. 2d 1161 (Fla. 4th DCA 2006), *review denied,* 954 So. 2d 27 (Fla. 2007). *And see Knox v. District School Board of Brevard,* 821 So. 2d 311, 315 (Fla. 5th DCA 2002), holding that the Sunshine Law did not apply to a group of school board employees meeting with an area superintendent to review applications, which were then sent by the area superintendent to the school superintendent with her recommendation: "[A] Sunshine violation does not occur when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties."

Similarly, the court in *Lyon v. Lake County,* 765 So. 2d 785 (Fla. 5th DCA 2000), ruled that the Sunshine Law did not apply to informal meetings of staff where the discussions were "merely informational," where none of the individuals attending the meetings had any decision-making authority during the meetings, and where no formal action was taken or could have been taken at the meetings. *See also Molina v. City of Miami,* 837 So. 2d 462, 463 (Fla. 3d DCA 2002) (police discharge of firearms committee not subject to Sunshine Law because the committee "is nothing more than a meeting of staff members who serve in a fact-finding advisory capacity to the chief"); and *J.I. v. Department of Children and Families,* 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law not applicable to Department of Children and Families permanency staffing meetings conducted to determine whether to file a petition to terminate parental rights); and *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017) (Sunshine Law inapplicable to meetings "held solely for the purpose of gathering information").

However, if a staff committee has been delegated decision-making authority as opposed to mere fact-finding or information-gathering, the Sunshine Law applies to the committee. *See Wood v. Marston,* 442 So. 2d 934, 938 (Fla. 1983). It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law. *Id. See News-Press Publishing Company, Inc. v. Carlson,* 410 So. 2d 546, 548 (Fla. 2d DCA 1982), concluding that it would be "ludicrous" to hold that "a certain committee is governed by the Sunshine Law when it consists of members of the public, who are presumably acting for the public, but hold that a committee may escape the Sunshine Law if it consists of individuals who owe their allegiance to, and receive their salaries from, the governing authority;" and *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners,* 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002) (staff committee members delegated decision-making authority from public officials no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

Thus, in *Silver Express Company v. District Board of Lower Tribunal Trustees,* 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee's job to "weed through the various proposals, to determine which were acceptable and to rank them accordingly" was sufficient to bring the committee within the scope of the Sunshine Law. *See also Roscow v. Abreu,* No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004) (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway); AGO 05-06 (city development review committee, composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law); and AGO 86-51 (land selection committee appointed by water management district and delegated decision-making authority to consider projects for inclusion on a list of proposed acquisition projects must comply with Sunshine Law "even though such committee may be



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composed entirely of district staff and its decisions and recommendations are subject to further action by the district's governing board").

Similarly, in *Dascott v. Palm Beach County,* 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to a county ordinance and composed of a department head, personnel director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel. *And see Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018) (Sunshine Law applied to committee formed by school board planning director, which was composed of parents, principals, and the director, and charged with making recommendations to the superintendent on proposed school attendance boundaries).

By contrast, in *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 763 (Fla. 2010), the Court found that a county administrator's discussions with staff and consultants while negotiating a memorandum of understanding with a baseball team did not violate the Sunshine Law because the administrator's "so-called negotiations team only served an informational role." According to the Court, "[t]his is not a situation where [the administrator] and the individuals he consulted made joint decisions. *Cf. Dascott v. Palm Beach County,* [supra]." *See also McDougall v. Culver,* 3 So. 3d 391 (Fla. 2d DCA 2009) and *Jordan v. Jenne,* 938 So. 2d 526 (Fla. 4th DCA 2006).

**2. Candidates or members-elect**

**a. Candidates**

The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. AGO 92-05.

**b. Members-elect**

The requirements of the Sunshine Law apply not only to meetings of covered boards or commissions but also to "meetings with or attended by any person elected to such board or commission, but who has not yet taken office." Section 286.011(1), F.S. Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. *See also Hough v. Stembridge,* 278 So. 2d 288, 289 (Fla. 3d DCA 1973) (individual, upon election to public office, loses his or her status as a private individual and acquires a position more akin to that of a public trustee and therefore is subject to s. 286.011, F.S.). *Cf.* Inf. Op. to Lamar, August 2, 1993 (Sunshine Law applies to transition team made up of citizens appointed by the mayor to make recommendations on city government reorganization). *And see Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018) (Sunshine Law applied to advisory committee members "from the moment each member was selected to be on the [committee])."

A candidate who is unopposed is not considered to be a member-elect subject to the Sunshine Law until the election has been held. AGO 98-60. *Accord* Inf. Op. to Popowitz, August 12, 2016. The Popowitz opinion references a 2010 opinion from the Division of Elections (Div. of Elections Op. 10-09, July 26, 2010), finding that the date of a candidate's election to office could be deemed to be either the date specified by a court in an election case, election day itself, the date the final canvassing board certifies the election results, or some other date, depending upon the particular factual situation involved.

**3. Commissions created by the Florida Constitution**

Boards or commissions created by the Constitution which prescribes the manner of the exercise of their constitutional powers are not subject to s. 286.011, F.S., when carrying out such constitutionally prescribed duties. *See Kanner v. Frumkes,* 353 So. 2d 196 (Fla. 3d DCA 1977)



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(judicial nominating commissions are not subject to s. 286.011, F.S.). *Cf. In re Advisory Opinion of the Governor,* 334 So. 2d 561 (Fla. 1976) (clemency power does not exist by virtue of legislative enactment; rather Constitution sufficiently prescribes rules for the manner of exercise of the power); and AGO 77-65 (Ch. 120, F.S., inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const.). *Compare Turner v. Wainwright,* 379 So. 2d 148 (Fla. 1st DCA), *affirmed and remanded,* 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission [now known as the Florida Commission on Offender Review, *see* s. 1, Ch. 14-191, Laws of Florida] which Art. IV, s. 8(c), Fla. Const., recognizes may be created by *law*, is subject to s. 286.011, F.S.

However, Art. I, s. 24, Fla. Const., establishes a constitutional right of access to meetings of any collegial public body of the executive branch of state government by providing that such meetings must be open and noticed to the public unless exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution.

**4. Ex officio board members**

An ex officio board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. AGO 05-18. *And see Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018) (finding that the Sunshine Law applied equally to all members of an advisory committee, including a staff member appointed as a non-voting member of the committee whose role was only to advise the voting committee members).

**5. Federal entities**

Federal agencies, *i.e.*, agencies created under federal law, operating within the state, do not come within the purview of the state Sunshine Law. AGO 71-191. Thus, meetings of a federally-created council are not subject to s. 286.011, F.S. AGO 84-16.

However, if a board is created pursuant state law, the Sunshine Law applies even if federal officials serve on the board. *See* Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by state agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law); and Inf. Op. to Green, December 11, 1998 (tri-state river commission established pursuant to *state and* federal law is subject to the Sunshine Law). *See also* Inf. Op. to Knox, January 6, 2005 (St. Johns River Alliance, Inc., a non-profit corporation formed to help carry out the federal American Heritage Rivers Initiative and the associated intergovernmental Partnership Agreement among state, local and federal governmental entities, is subject to s. 286.011, F.S., requirements); and *Roscow v. Abreu,* No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004) (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway). *Cf. Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

**6. Governor and Cabinet**

Article IV, s. 4 of the Florida Constitution, establishes "a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture." The Governor and Cabinet serve as the head of certain departments within the executive branch. In addition, the Governor and Cabinet have responsibilities that arise under the Constitution. *See* Art. IV, s. 8, Fla. Const. (clemency).

The Sunshine Law does not apply to those powers of the Governor and Cabinet which derive from the Constitution; thus, the Governor and Cabinet in dispensing pardons and the other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to s. 286.011,



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F.S. *Cf. In re Advisory Opinion of the Governor,* 334 So. 2d 561 (Fla. 1976) (Constitution sufficiently prescribes rules for the manner of exercise of gubernatorial clemency power; legislative intervention is, therefore, unwarranted).

Section 286.011, F.S., however, does apply to those functions of the Governor and Cabinet which are statutory responsibilities as opposed to duties arising under the Constitution. Thus, the Governor and Cabinet are subject to the Sunshine Law when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund or the Florida Department of Law Enforcement. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the "dominion and control" of the Legislature.

Moreover, Art. I, s. 24, Fla. Const., requires that meetings of "any collegial public body of the executive branch of state government" be open and noticed to the public. The only exceptions to this constitutional right of access are those meetings which have been exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or which are specifically closed by the Constitution. *And see* Article III s. 4(e), Fla. Const., providing, in relevant part that "all prearranged gatherings, between . . . the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

**7. Individual board members**

Section 286.011, F.S., applies to public boards and commissions, *i.e.*, collegial bodies, and has been applied to meetings of "two or more members" of the same board or commission when discussing some matter which foreseeably will come before the board or commission. Therefore, the statute does not ordinarily apply to an *individual* member of a public board or commission or to public officials who are not board or commission members. *See National Council of Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017); and *Mitchell v. School Board of Leon County,* 335 So. 2d 354 (Fla. 1st DCA 1976). *See also* Inf. Op. to Dillener, January 5, 1990 (Sunshine Law not normally applicable to meeting of town council member with private citizens). *Cf. Jennings v. Dade County,* 589 So. 2d 1337 (Fla. 3d DCA 1991), *review denied,* 598 So. 2d 75 (Fla. 1992), stating that ex parte (*i.e.*, from one side only) communications in quasi-judicial proceedings raise a presumption that the contact was prejudicial to the decision-making process; and s. 286.0115, F.S., enacted in response to the *Jennings* case, relating to access to local public officials in quasi-judicial proceedings.

However, there have been circumstances where the application of the Sunshine Law to individual board members has been considered. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison,* 296 So. 2d 473, 477 (Fla. 1974). *And see* AGO 89-39 (aides to county commissioners are not subject to the Sunshine law unless they have been delegated decision-making functions outside of the ambit of normal staff functions, are acting as liaisons between board members, or are acting in place of the board or its members at their direction).

**a. Individual board member meeting with a member of another public board**

The Sunshine Law does not apply to a meeting between individuals who are members of *different* boards *unless* one or more of the individuals has been delegated the authority to act on behalf of his or her board. *Rowe v. Pinellas Sports Authority,* 461 So. 2d 72 (Fla. 1984). *Accord* AGO 84-16 (meeting between the chair of a private industry council created pursuant to federal law and the chair of a five-county employment and training consortium created pursuant to state law is not subject to Sunshine Law, unless there is a delegation of decision-making authority to the chair of the consortium); and Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization). *And see News-Press Publishing Company, Inc. v. Lee County, Florida,* 570 So. 2d



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1325 (Fla. 2d DCA 1990) (Sunshine Law not applicable to mediation proceeding attended by individual members of city and county boards who were in litigation because only one member of each board was present at the proceedings and no final settlement negotiations could be made during the mediation conference).

An individual city council member may, therefore, meet privately with an individual member of the municipal planning and zoning board to discuss a recommendation made by that board since two or more members of either board are not present, provided that no delegation of decision-making authority has been made and neither member is acting as a liaison. AGO 87-34. *Accord* AGOs 99-55 (school board member meeting with member of advisory committee established by school board), and 97-52 (discussions between individual member of community college board of trustees and school board member regarding acquisition of property by school board).

**b. Mayor meeting with individual city commissioner or city council member**

If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. AGOs 83-70 and 75-210. However, if a decision falls within the administrative functions of the mayor and would not come before the city council for consideration, discussions between an individual member of the city council and the mayor are not subject to the Sunshine Law since such discussions do not relate to a matter which will foreseeably come before the city council for action. *Id.*

On the other hand, if the mayor is *not* a member of the city council and does not possess any power to vote even in the case of a tie vote but possesses only the power to veto legislation, the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided the mayor is not acting as a liaison between members and neither individual has been delegated the authority to act on behalf of the council. AGOs 90-26 and 85-36. *And see* Inf. Op. to Cassady, April 7, 2005 (mayor who is not a member of the city council and cannot vote even in the event of a tie, may meet with an individual council member to discuss the mayor's recommendations to the council concerning prospective appointees). *Cf. City of Sunrise v. News and Sun-Sentinel Company,* 542 So. 2d 1354 (Fla. 4th DCA 1989) (since mayor was responsible under the city charter for disciplining city employees, mayor in carrying out this function was not subject to s. 286.011, F.S.).

**c. Use of nonboard members or staff to act as liaisons or to conduct a de facto meeting of the board**

As a general rule, individual board members "may call upon staff members for factual information and advice without being subject to the Sunshine Law's requirements." *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 764 (Fla. 2010). *And see* AGO 81-42 (the fact that a city council member has expressed his or her views or voting intent on an upcoming matter to a news reporter prior to the scheduled public meeting does not violate the Sunshine Law so long as the reporter is not being used by the member as an intermediary in order to circumvent the requirements of s. 286.011, F.S.). *Compare, State v. Dorworth,* No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), *affirmed,* No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

However, because the Sunshine Law must be construed to "frustrate all evasive devices," the law is implicated by a meeting between a board member and a nonboard member who is



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being used as a liaison for board members. *See Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), citing to AGOs 96-35 (city manager may not ask each commissioner to state his or her position on a specific matter that will foreseeably be considered by the commission at a public meeting, in order to provide the information to the members of the commission) and 75-59 (city manager may meet individually with city council members "to discuss city business provided that the manager does not act as a liaison for board members by circulating information and thoughts of individual councilmembers to the rest of the board").

Therefore, a city manager should refrain from asking each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide the information to the members of the commission. AGO 89-23. *See also* Inf. Op. to Goren, October 28, 2009 (while individual city commissioners may seek advice or information from staff, city should be cognizant of the potential that commissioners seeking clarification by follow-up with staff when staff responses are provided to all commissioners could be considered to have participated in a de facto meeting of the commissioners by using staff as a conduit between commissioners). *Compare Sarasota Citizens for Responsible Government v. City of Sarasota, supra* at 765 (private staff meetings with individual county commissioners in preparation for a public hearing on a proposed memorandum of understanding [MOU] did not violate the Sunshine Law because the meetings were "informational briefings regarding the contents of the MOU" and "[t]here is no evidence that [county] staff communicated what any commissioner said to any other commissioner").

Additionally, in *Blackford v. School Board of Orange County,* 375 So. 2d 578 (Fla. 5th DCA 1979), the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to s. 286.011, F.S., these meetings were held in "rapid--fire succession" in order to avoid a public airing of a controversial redistricting problem. Thus, even though the superintendent was "adamant that he did not act as a go-between during these discussions and [denied] that he told any one board member the opinions of the others," the one-to-one meetings amounted to a de facto meeting of the school board in violation of s. 286.011, F.S. *Id.* at 580. *See also Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (4th DCA 2018) (evidence did not "conclusively refute" allegations that a series of telephone calls between the city attorney and individual city councilmembers to discuss termination of and severance pay to, the city manager did not constitute a Sunshine Law violation; accordingly, trial court should not have entered summary judgment in favor of the city). *Cf. State v. Foster,* 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), in which the court rejected the argument that the Sunshine Law permitted city commissioners to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. The court denied the commissioners' motion for summary judgment and ruled that the discussion should have been held in the Sunshine because the sheriff was a "common facilitator" who received comments from each commissioner in front of the other commissioners.

Similarly, in *Citizens for a Better Royal Palm Beach, Inc. v. Village of Royal Palm Beach,* No. CL 9114417 AA (Fla. 15th Cir. Ct. May 14, 1992), the court invalidated a contract for the sale of municipal property when it determined that after the proposal to sell the property which had been discussed and approved at a public meeting collapsed, the city manager met individually with council members and from those discussions the property was sold to another group. The circuit court found that these meetings resulted in a substantial change in the terms of sale and that the execution of the contract, therefore, violated the Sunshine Law. *See also Sentinel Communications Company v. School Board of Osceola County,* No. CI92-0045 (Fla. 9th Cir. Ct. April 3, 1992) (series of private meetings between school superintendent and individual school board members to consider staff recommendations concerning administrative structure of the



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school system and to privately address any of the board's concerns, should have been held in the sunshine; while individual board members are not prohibited from meeting privately with staff or the superintendent for informational purposes or on an ad hoc basis, the Sunshine Law "shall be construed to prohibit the scheduling of a series of such meetings which concern a specific agenda"); and AGO 93-90 (board that is responsible for assessing the performance of its chief executive officer [CEO] should not use a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO).

Not all staff decisions, however, are required to be made or approved by a board. Thus, the district court concluded in *Florida Parole and Probation Commission v. Thomas,* 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of that board was not subject to the Sunshine Law. *And see* Inf. Op. to Biasco, July 2, 1997 (administrative officers or staff who serve public boards should not poll board members on issues which will foreseeably come before the board although an administrative officer is not precluded from contacting individual board members for their views on a matter when the officer, and not the board, has been vested with the authority to take action).

**d. Delegation of authority to individual to act on behalf of the board**

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego." *IDS Properties, Inc. v. Town of Palm Beach*, 279 So. 2d 353, 359 (Fla. 4th DCA 1973), *certified question answered sub nom., Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *See also News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate de facto authority to act on their behalf in the formulation, preparation, and promulgation of plans on which foreseeable action will be taken by those public officials, those delegated that authority stand in the shoes of such public officials insofar as the Sunshine Law is concerned).

In *News-Press Publishing Company v. Lee County*, 570 So. 2d 1325 (Fla. 2d DCA 1990), a newspaper challenged the trial court's decision to require the parties (two cities and a county) to participate in mediation and to each appoint a representative "with full authority to bind them." The judge then amended the order to allow the parties to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court concluded that the mediation's narrow scope did not give rise to a substantial delegation affecting the board's decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. *And see Broward County v. Conner*, 660 So. 2d 288, 290 (Fla. 4th DCA 1995), *review denied*, 669 So. 2d 250 (Fla. 1996) (since Sunshine Law provides that actions of a public board are not valid unless they are made at an open public meeting, a county's attorneys would not be authorized to enter into a settlement agreement on the commission's behalf "without formal action by the county commission at a meeting as required by the statute"). *Compare Lee County v. Pierpont*, 693 So. 2d 994 (Fla. 2d DCA 1997), *affirmed*, 710 So. 2d 958 (Fla. 1998) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law).Moreover, the Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. *Accord* AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. *And see* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).



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Moreover, the Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. *Accord* AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. *And see* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

However, if the board member has been authorized only to gather information or function as a fact-finder, the Attorney General's Office has concluded that the Sunshine Law does not apply. *See e.g.* AGOs 95-06, 93-78, and 90-17 (if board member is authorized only to explore various contract proposals, with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law). *Cf. State, Department of Management Services v. Lewis*, 653 So. 2d 467 (Fla. 1st DCA 1995) (issuance of an order of reconsideration by a board chair does not violate the Sunshine Law where the purpose of the order is to provide notice of a hearing to the parties and allow them an opportunity to provide argument on the issue).

More recently, the First District Court of Appeal ruled that a statute (s. 627.091[6], F.S.), requiring a "committee" of a national insurance rating organization to comply with the Sunshine Law when meeting to discuss the need to alter Florida rates, did not apply to an actuary who performed this function instead of a committee. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017). In *Fee*, the court noted that the term "committee" has been defined as a "subordinate group," not a single person, and that "the multi-person concept of the term 'committee' further finds support in well-established precedent construing the Sunshine Law."

Moreover, if the individual, rather than the board, is vested by law, charter, or ordinance with the authority to take action, such discussions are not subject to s. 286.011, F.S. *See City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since the mayor was responsible under the city charter for disciplining city employees and since the mayor was not a board or commission and was not acting for a board, meetings between the mayor and a city employee concerning the employee's duties were not subject to s. 286.011, F.S.). *Cf.* AGO 13-14 (where contract terms regarding the police chief's employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the consistent written employment contract drafted by the town attorney as directed by the commission be subsequently presented to and approved at another commission meeting).

**8. Judiciary**

The open meetings provision found in Art. I, s. 24, Fla. Const., does not include meetings of the judiciary. In addition, separation of powers principles make it unlikely that the Sunshine Law, a legislative enactment, could apply to the courts established pursuant to Art. V, Fla. Const. AGO 83-97. Thus, questions of access to judicial proceedings usually arise under other constitutional guarantees relating to open and public judicial proceedings, Amend. VI, U.S. Const., and freedom of the press, Amend. I, U.S. Const.

However, a circuit conflict committee established by the Legislature to approve attorneys handling conflict cases is subject to the Sunshine Law, even though the chief judge or his or her designee is a member, because the "circuit conflict committees are created by the *Legislature,* subject to its dominion and control." AGO 83-97. *And see Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to quasi-judicial functions; a board exercising quasi-judicial functions is not a part of the judicial branch of government).

**a. Criminal proceedings**



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A court possesses the inherent power to control the conduct of proceedings before it. *Miami Herald Publishing Company v. Lewis,* 426 So. 2d 1 (Fla. 1982); and *State ex rel. Miami Herald Publishing Company v. McIntosh,* 340 So. 2d 904 (Fla. 1976). A three-pronged test for closing criminal proceedings has been developed to provide "the best balance between the need for open government and public access, through the media, to the judicial process, and the paramount right of a defendant in a criminal proceeding to a fair trial before an impartial jury." *Lewis, supra* at 7. *And see Morris Publishing Group, LLC v. State,* 136 So. 3d 770, 779 (Fla. 1st DCA 2014); and *Miami Herald Media Company v. State*, 218 So. 3d 460 (Fla. 3d DCA 2017). The factors to be considered are whether:

1) closure is necessary to prevent a serious and imminent threat to the administration of justice;

2) no alternatives are available, other than change of venue, which would protect the defendant's right to a fair trial; and

3) closure would be effective in protecting the defendant's rights without being broader than necessary to accomplish that purpose.

**b. Civil proceedings**

Stressing that *all* trials, civil and criminal, are public events and that there is a strong presumption of public access to these proceedings, the Supreme Court in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), set forth the following factors which must be considered by a court in determining a request for closure of civil proceedings:

1) a strong presumption of openness exists for all court proceedings;

2) both the public and news media have standing to challenge any closure order with the burden of proof being on the party seeking closure;

3) closure should occur only when necessary

   a) to comply with established public policy as set forth in the Constitution, statutes, rules or case law;

   b) to protect trade secrets;

   c) to protect a compelling governmental interest;

   d) to obtain evidence to properly determine legal issues in a case;

   e) to avoid substantial injury to innocent third parties; or

   f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

4) whether a reasonable alternative is available to accomplish the desired result and if none exists, the least restrictive closure necessary to accomplish its purpose is used;

5) the presumption of openness continues through the appellate review process and the party seeking closure continues to have the burden to justify closure.

*And see Amendments to the Florida Family Law Rules of Procedure,* 723 So. 2d 208, 209 (Fla. 1998), reiterating support for the *Barron* standards and stating that "public access to court proceedings and records [is] important to assure testimonial trustworthiness; in providing a wholesome effect on all officers of the court for purposes of moving those officers to a strict conscientiousness in the performance of duty; in allowing nonparties the opportunity of learning whether they are affected; and in instilling a strong confidence in judicial remedies, which would be absent under a system of secrecy;" and *Lake v. State,* 193 So. 3d 932, 934 (Fla. 4th DCA 2016) (trial court did not depart from essential requirements of law by refusing to close Jimmy Ryce Act civil commitment review proceeding; statutory provision requiring that certain treatment records



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introduced into evidence be maintained under seal unless opened by the judge "does not require that the press and public be barred from any discussion of treatment or treatment records during a review hearing").

**c. Depositions**

While the courts have recognized that court proceedings are public events and the public generally has access to such proceedings, the general public and the press do not have a right under the First Amendment or the rules of procedure to attend discovery depositions. *See Palm Beach Newspapers, Inc. v. Burk,* 504 So. 2d 378, 380 (Fla. 1987), *cert. denied,* 108 S.Ct. 346 (1987), stating that while discovery depositions in criminal cases are judicially compelled for the purpose of allowing parties to investigate and prepare, they are not judicial proceedings. *Accord Post-Newsweek Stations, Florida, Inc. v. State,* 510 So. 2d 896 (Fla. 1987) (media not entitled to notice and opportunity to attend pretrial discovery depositions in criminal cases); and *SCI Funeral Services of Florida, Inc. v. Light,* 811 So. 2d 796 (Fla. 4th DCA 2002) (upholding protective order closing depositions to the media based on privacy concerns). *Cf. Lewis v. State,* 958 So. 2d 1027 (Fla. 5th DCA 2007) (while *Burk* applied to unfiled depositions made during an ongoing, active criminal prosecution, materials related to defendant's prosecution, including depositions, are subject to disclosure after the case becomes final).

**d. Florida Bar grievance proceedings**

An attorney's claim that the Florida Bar violated the Sunshine Law by refusing to allow him to attend a grievance committee meeting of the Bar was rejected in *Florida Bar v. Committee,* 916 So. 2d 741, 744-745 (Fla. 2005): "The grievance committee meetings of the Bar are private, and therefore the Bar is justified in prohibiting [the attorney] from attendance." The Court reiterated its statement from *The Florida Bar: In re Advisory Opinion,* 398 So. 2d 446, 447 (Fla. 1981), that "[n]either the legislature nor the governor can control what is purely a judicial function."

**e. Grand juries**

Section 905.24, F.S., provides that "[g]rand jury proceedings are secret"; thus, these proceedings are not subject to s. 286.011, F.S. *See Clein v. State,* 52 So. 2d 117, 120 (Fla. 1950) (it is the policy of the law to shield the proceedings of grand juries from public scrutiny); and *In re Getty*, 427 So. 2d 380, 383 (Fla. 4th DCA 1983) (public disclosure of grand jury proceedings "could result in a myriad of harmful effects"). The grand jury has also been referred to as a "coordinate branch of the judiciary, and as an arm, appendage, or adjunct of the circuit court." *State ex rel. Christian v. Rudd,* 302 So. 2d 821, 828 (Fla. 1st DCA 1974). *Cf. Butterworth v. Smith,* 110 S.Ct. 1376 (1990), striking down a Florida statute to the extent that it prohibited a witness from disclosing his own testimony before a grand jury after the grand jury's term has ended.

In addition, hearings on certain grand jury procedural motions are closed. The procedural steps contemplated in s. 905.28(1), F.S., for reports or presentments of the grand jury relating to an individual which are not accompanied by a true bill or indictment, are cloaked with the same degree of secrecy as is enjoyed by the grand jury in the receipt of evidence, its deliberations, and final product. Therefore, a newspaper has no right of access to grand jury procedural motions and to the related hearing. *In re Grand Jury, Fall Term 1986,* 528 So. 2d 51 (Fla. 2d DCA 1988). *And see Palm Beach Newspapers, Inc., v. Doe,* 460 So. 2d 406 (Fla. 4th DCA 1984) (hearing ancillary or related to a grand jury session constitutes a proceeding which comes within the protection of s. 905.24); and *In re Subpoena to Testify Before Grand Jury Directed to Custodian of Records,* 864 F.2d 1559 (11th Cir. 1989) (while a court must hold a hearing and give reasons for closure of criminal court proceedings, a court is not required to give newspapers a hearing and give reasons for closure of grand jury proceedings).

**f. Judicial nominating commissions/Judicial Qualifications Commission**

Judicial nominating commissions for the Supreme Court of Florida, the district courts of appeal, or for a judicial circuit for the trial courts within the circuit are not subject to the



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Sunshine Law. *Kanner v. Frumkes,* 353 So. 2d 196 (Fla. 3d DCA 1977). Article V, s. 11(d), Fla. Const., however, requires that except for its deliberations, the proceedings of a judicial nominating commission and its records are open to the public. While the deliberations of a commission are closed, such a limitation appears to be applicable to that point in the proceedings when the commissioners are weighing and examining the reasons for and against a choice. Inf. Op. to Russell, August 2, 1991.

The statewide judicial nominating commission for workers' compensation judges, however, is not a judicial nominating commission as contemplated by the Constitution; thus, such a commission created pursuant to the workers' compensation law is subject to s. 286.011, F.S. AGO 90-76.

Proceedings of the Judicial Qualifications Commission are confidential. However, upon a finding of probable cause and the filing of formal charges against a judge or justice by the commission with the Clerk of the Supreme Court, all further proceedings of the commission are public. Article V, s. 12(a)(4), Fla. Const.

**g. Mediation proceedings**

**(1) Court-ordered mediation**

Court-ordered mediation and arbitration are to be conducted according to the rules of practice and procedure adopted by the Florida Supreme Court. Sections 44.102(1) and 44.103(1), F.S. *And see* rule 10.360(a), Florida Rules For Certified and Court-Appointed Mediators ("A mediator shall maintain confidentiality of all information revealed during mediation *except* where disclosure is required or permitted by law or is agreed to by all parties."). (e.s.) *Cf. Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that written mediation communications are confidential pursuant to ss. 44.103(3) and 44. 405(1), F.S., and must be redacted from the full transcript of a closed litigation session when it becomes public pursuant to s. 286.011(8), F.S.

Public access to court-ordered mediation proceedings between two cities and a county was raised in *News-Press Publishing Company, Inc. v. Lee County, Florida,* 570 So. 2d 1325 (Fla. 2d DCA 1990). Initially, the judge required the parties to have present a representative "with full authority to bind them"; however, after the media objected to the closure of the mediation proceeding, the judge amended the order to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court noted that no two members of any of the public boards would be present at the mediation proceedings and that the mediation's narrow scope did not give rise to a substantial delegation affecting the boards' decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. *Cf. Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine; "[w]e cannot condone hiding behind federal mediation, whether intentionally or unintentionally, in an effort to thwart the requirements of the Sunshine Law.").

Similarly, in *O'Connell v. Board of Trustees,* 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb. 9, 1993), the court noted that as to public agencies, mediation is subject to the Sunshine Law; thus, no more than one member of a collegial body should attend the mediation conference. *And see* Fla. R. Civ. P. 1.720(d), stating that "[i]f a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity." *Accord* Fla. R. App. P. 9.720(a).

**(2) Other mediation proceedings**



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Mediation meetings conducted pursuant to the Florida Governmental Conflict Resolution Act, ss. 164.101-164.1061, F.S., which involve officials or representatives of local governmental entities who have the authority to negotiate on behalf of that governmental entity are subject to the Sunshine Law. Inf. Op. to McQuagge, February 13, 2002. Similarly, a closed attorney-client session may not be held to discuss settlement negotiations on an issue that is the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others which is not in litigation. AGO 06-03.

**h. Statutes providing for closed court proceedings**

Certain court proceedings may be closed in accordance with Florida Statutes as follows:

**(1)** **Adoption:** Hearings held under the Florida Adoption Act are closed. Section 63.162(1), F.S. *See In re Adoption of H.Y.T.,* 458 So. 2d 1127 (Fla. 1984) (statute providing that all adoption hearings shall be held in closed court is not unconstitutional).

**(2)** **Dependency:** Except as provided in s. 39.507, F.S., dependency adjudicatory hearings are open to the public unless, by special order, the court determines that the public interest or welfare of the child is best served by closing the hearing. Section 39.507(2), F.S. *And see Mayer v. State,* 523 So. 2d 1171 (Fla. 2d DCA), *review dismissed,* 529 So. 2d 694 (Fla. 1988) (former version of statute requiring hearings to be closed did not violate First Amendment).

**(3)** **Guardian advocate appointments:** Hearings for appointment of guardian advocates are confidential. Section 39.827(4), F.S.

**(4)** **HIV test results:** Court proceedings in cases where a person is seeking access to human immunodeficiency virus (HIV) test results are to be conducted in camera unless the person tested agrees to a hearing in open court or the court determines that a public hearing is necessary to the public interest and proper administration of justice. Section 381.004(2)(e)9., F.S.

**(5)** **Pregnancy termination notice waiver:** Hearings conducted in accordance with a petition for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall remain confidential and closed to the public, as provided by court rule. Section 390.01114(6)(f), F.S.

**(6)** **Termination of parental rights:** Hearings involving termination of parental rights are confidential and closed to the public. Section 39.809(4), F.S. *See Natural Parents of J.B. v. Florida Department of Children and Family Services,* 780 So. 2d 6 (Fla. 2001), upholding the constitutionality of the statute. *And see J.I. v. Department of Children and Families,* 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law does not apply to Department of Children and Families permanency staffing meetings conducted to determine whether to file petition to terminate parental rights). *Cf. Stanfield v. Florida Department of Children and Families,* 698 So. 2d 321 (Fla. 3d DCA 1997) (trial court may not issue "gag" order preventing a woman from discussing a termination of parental rights case because "[t]he court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have obtained independent of court documents even though the information may mirror the information contained in court documents").

**(7)** **Victim and witness testimony in certain circumstances:** Except as provided in s. 918.16(2), F.S., if any person under 16 years of age or any person with an intellectual disability is testifying in any civil or criminal trial concerning any sex offense, the judge shall clear the courtroom, except for listed individuals. Section 918.16(1), F.S. If the victim of a sex offense is testifying concerning that offense, the court shall clear the courtroom, except for listed individuals, upon request of the victim, regardless of the victim's age or mental capacity. Section 918.16(2), F.S. *Cf. Pritchett v. State,* 566 So. 2d 6 (Fla. 2d DCA), *review denied,* 570 So. 2d 1306 (Fla. 1990) (where a trial court failed to make any findings to justify closure, application of s. 918.16, F.S., to the trial of a defendant charged with



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capital sexual battery violates the defendant's constitutional right to a public trial). *Accord Kovaleski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), *cause dismissed*, 860 So. 2d 978 (Fla. 2003).

For a more complete listing of statutory exemptions, please see Appendix D and the Index.

**9. Legislature**

Article I, s. 24, Fla. Const., requires that meetings of the Legislature be open and noticed as provided in Art. III, s. 4(e), Fla. Const., except with respect to those meetings exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution. *And see* Art. III, s. 4(c), Fla. Const. (votes of members during final passage of legislation pending before a committee and, upon request of two members of a committee or subcommittee, on any other question, must be recorded).

Pursuant to Art. III, s. 4(e), Fla. Const., the rules of procedure of each house of the Legislature must provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed. Such rules must also provide:

> [A]ll prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

In accordance with Article III, s. 4(e), both the Senate and the House of Representatives have adopted rules implementing this section. Senate Rules may be found online at www.flsenate.gov. Rules of the House of Representatives may be found at www.myfloridahouse.gov.

**10. Married couple serving on the same board**

There is no *per se* violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of s. 286.011, F.S. AGO 89-06.

**11. Private organizations**

The Attorney General's Office has recognized that private organizations generally are not subject to the Sunshine Law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. AGO 07-27.

However, as discussed below, the Sunshine Law applies to private entities created by law or by public agencies, and to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.

**a. Private entities created pursuant to law or by public agencies**

The Supreme Court has stated that "[t]he Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or



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political subdivision over which [the Legislature] has dominion or control." *City of Miami Beach v. Berns,* 245 So. 2d 38, 40 (Fla. 1971).

Accordingly, if a private entity has been created by law or by a public agency to perform a public function, the Sunshine Law applies. *See National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017), noting the application of the Sunshine Law to governmental bodies and to private entities created by a public entity. *Accord* AGO 00-08 ("a board or commission created by a public agency or entity is subject to section 286.011, Florida Statutes").

For example, in AGO 04-44, the Attorney General advised that a nonprofit corporation established by state law to manage corrections work programs of the Department of Corrections, was subject to the Sunshine Law. *And see* AGOs 98-42 (association legislatively designated as the governing organization of athletics in Florida public schools), 97-17 (not-for-profit corporation created by a city redevelopment agency to assist in the implementation of its redevelopment plan), and 16-01 and 98-01 (board of trustees of an insurance trust fund created pursuant to collective bargaining agreement between a city and the employee union). *Cf.* s. 20.41(6) and (8), F.S., providing that area agencies on aging, described as "nongovernmental, independent, not-for-profit corporations" are "subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings."

**b. Private entities providing services to public agencies**

Much of the litigation regarding the application of the open government laws to private organizations doing business with public agencies has been in the area of public records, and the courts have often looked to Ch. 119, F.S., in determining the applicability of the Sunshine Law. *See Cape Coral Medical Center, Inc. v. News-Press Publishing Company, Inc.,* 390 So. 2d 1216, 1218n.5 (Fla. 2d DCA 1980) (inasmuch as the policies behind Ch. 119, F.S., and s. 286.011, F.S., are similar, they should be read together); *Wood v. Marston,* 442 So. 2d 934, 938 (Fla. 1983); and *Krause v. Reno,* 366 So. 2d 1244, 1252 (Fla. 3d DCA 1979).

As the courts have emphasized in analyzing the application of Ch. 119, F.S., to entities doing business with governmental agencies, the mere receipt of public funds by private corporations, is not, standing alone, sufficient to bring the organization within the ambit of the open government requirements. *See, e.g., News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.,* 596 So. 2d 1029 (Fla. 1992) (records of private architectural firm not subject to Ch. 119, F.S., merely because firm contracted with school board).

Similarly, a private corporation performing services for a public agency and receiving compensation for such services is not by virtue of this relationship alone subject to the Sunshine Law unless the public agency's governmental or legislative functions have been delegated to it. *McCoy Restaurants, Inc. v. City of Orlando,* 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law); and AGO 98-47 (Sunshine Law does not apply to private nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available through a city). *Cf.* AGO 80-45 (the receipt of Medicare, Medicaid, government grants and loans, or similar funds by a private nonprofit hospital does not, standing alone, subject the hospital to the Sunshine Law); and Inf. Op. to Gaetz and Coley, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

However, although private entities are generally not subject to the Sunshine Law simply because they do business with public agencies, the Sunshine Law can apply if a public entity has delegated "the performance of its public purpose" to a private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation,* 729 So. 2d 373, 382-383 (Fla. 1999). *Accord National*



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*Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017).

For example, in *Keesler v. Community Maritime Park Associates, Inc.,* 32 So. 3d 659, 660 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1289 (Fla. 2010), the court deemed it "undisputed" that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of public waterfront property "is subject to the requirements of the Sunshine Law."

In accordance with these principles, the Attorney General's Office has found meetings of the following entities to be subject to the Sunshine Law: Family Services Coalition, Inc., board of directors, performing services for the Department of Children and Families which services would normally be performed by the department, AGO 00-03; Astronauts Memorial Foundation when performing duties funded under the General Appropriations Act, AGO 96-43; nonprofit organization designated by county to fulfill role of county's dissolved cultural affairs council, AGO 98-49; nonprofit corporation specifically created to contract with county for operation of a public golf course on county property acquired by public funds, AGO 02-53; downtown redevelopment task force which, although not appointed by city commission, stood in place of the city commission when considering downtown improvement issues, AGO 85-55; and a private nonprofit corporation, if the county accepts the corporation's offer to review, recodify, and prepare draft amendments to the county zoning code, AGO 83-95. *Cf.* Inf. Op. to Bedell, December 28, 2005 (private nonprofit organization which entered into an agreement with a city to operate a theater, received city funding in the form of a loan for this purpose, and leased property from the city, should comply with the Sunshine Law when holding discussions or making decisions regarding the theater).

By contrast, the First District determined a national insurance rating organization with statutory responsibility to file proposals for changes in Florida rates was not subject to the Sunshine Law. The court determined that the state insurance agency retained the responsibility to approve or disapprove rates and "did not delegate any authority to carry out an agency function required to be performed in the sunshine." *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017). *And see Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006), in which the Fifth District applied the "totality of factors" test set forth in *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992), and determined that a private corporation that purchased a hospital it had previously leased from a public hospital authority was not "acting on behalf of" a public agency and therefore was not subject to the Public Records Act or the Sunshine Law.

**c. Application of the Sunshine Law to specific private entities**

**(1) Direct-support organizations**

In AGO 05-27, after reviewing the responsibilities of a nonprofit corporation created pursuant to statute as a direct-support organization and the organization's relationship to the public agency, the Attorney General's Office concluded that the organization was subject to the Sunshine Law. *See also* Inf. Op. to Chiumento, June 27, 1990 (Sunshine Law applies to school district direct-support organizations created pursuant to statute; although the direct-support organizations "constitute private nonprofit corporations, they seek to assist the district school board in carrying out its functions of meeting the educational needs of the students in the county"). *And see* AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions subject to Sunshine Law), and 11-01 (Sunshine Law applies to Biscayne Park Foundation, Inc., created as a nonprofit foundation to act as an instrumentality on behalf of the Village of Biscayne Park and intended to enhance the Village's opportunities to raise monies through special events, sponsorships, donations, and grants for the Village).

The Legislature has specifically exempted portions of meetings of some direct-support



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organizations. For example, any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committee of the board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S. Section 1004.28(5)(c), F.S. *See also* s. 292.055(9), F.S. (portions of meetings of Department of Veterans' Affairs direct-support organization during which the identity of a donor or potential donor who wishes to remain anonymous is discussed are exempt).

**(2) Economic development organizations**

Several Attorney General Opinions have considered whether the Sunshine Law applies to private economic development organizations. These opinions have concluded that the Sunshine Law applies when there has been a delegation of a public agency's authority to conduct public business such as carrying out the terms of the county's economic development strategic plan. AGO 10-30. *See also* AGO 10-44 (Sunshine Law applies to nonprofit corporation delegated authority to carry out the terms of the county's green economic development plan). *Compare* Inf. Op. to Gaetz and Coley, December 17, 2009 (open government laws did not apply to private economic development corporation since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of the agency). *Cf. Economic Development Commission v. Ellis,* 178 So. 3d 118, 123 (Fla. 5th DCA 2015) (trial court erred by using the "delegation of function" test to conclude that a private entity under contract with a county to provide economic development services was subject to the Public Records Act because there was "not a clear, compelling, complete delegation of a governmental function" to the entity; instead, the court should have used the "totality of factors" test to make this determination). For more information on the "delegation of function" and "totality of factors" tests, please refer to the discussion on pages 58-62.

**(3) Homeowners' associations**

The Sunshine Law does not generally apply to meetings of a homeowners' association board of directors. Inf. Op. to Fasano, June 7, 1996. Other statutes govern access to records and meetings of these associations. *See, e.g.,* s. 720.303(2), F.S. (homeowners' association board of directors); s. 718.112(2)(c), F.S. (condominium board of administration); s. 719.106(1)(c), F.S. (cooperative board of administration); and s. 723.078(2)(c), F.S. (mobile home park homeowners' association board of directors). *Cf.* AGOs 99-53 (an architectural review committee of a homeowners' association is subject to the Sunshine Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits), and 07-44 (property owners association subject to open government laws when acting on behalf of a municipal services taxing unit).

**(4) Political parties**

Meetings of political parties are not subject to s. 286.011, F.S. Inf. Op. to Armesto, September 18, 1979.

**(5) Volunteer fire departments**

In AGO 04-32, the Attorney General advised that boards of directors of volunteer fire departments that provide firefighting services to the county and use facilities and equipment acquired with county funds are subject to the Sunshine Law. *Cf.* AGO 00-08 (meetings of Lee County Fire Commissioner's Forum, a nonprofit corporation created by fire districts operating in Lee County, at which two or more members of the same district board discuss matters that may foreseeably come before the board for official action are subject to the Sunshine Law). *And see Schwartzman v. Merritt Island Volunteer Fire Department,* 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied,* 358 So. 2d 132 (Fla. 1978) (private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an "agency" for purposes of the



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Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

**12. Staff member or public official also serving as member of public board**

In some cases, staff members or public officials also serve as members of public boards. If so, discussions between those board members that involve matters which foreseeably could come before the board must be held in the Sunshine. For example, a 1993 Attorney General Opinion concluded that communications between the sheriff and the state attorney, as members of the county's criminal justice commission, would be subject to the Sunshine Law when such discussions involve matters which foreseeably would come before the commission. AGO 93-41. *Cf.* AGO 11-04, noting that if the state attorney and sheriff elect to appoint individuals to serve on a county criminal justice commission in the place of each officer, as authorized by county ordinance, neither the state attorney nor the sheriff would be a member of the commission so as to make these communications subject to the Sunshine Law. *See now,* s. 286.01141, F.S. (2013), creating a Sunshine Law exemption for that portion of a meeting of a duly constituted local advisory criminal justice commission at which members of the commission discuss active criminal intelligence or investigative information that is currently being considered by or which may foreseeably come before the commission, provided that public disclosure of the discussion is made at any public meeting of the commission at which the matter is being considered.

However, the Sunshine Law is applicable only to discussions of matters which may foreseeably come before the board. For example, the Sunshine Law would not apply to meetings between the mayor and city commissioners where a mayor performs the duties of city manager and the city commissioners individually serve as the head of a city department when the meeting is held solely by these officers in their capacity as department heads for the purpose of coordinating administrative and operational matters between executive departments of city government for which no formal action by the governing body is required or contemplated. Those matters which normally come before, or should come before, the city commission for discussion or action, however, must not be discussed at such meetings. AGO 81-88. *Accord* AGOs 83-70 and 75-210 (mayor may discuss matters with individual city council member which concern his or her administrative functions and would not come before the council for consideration and further action).

Similarly, the Sunshine Law would not apply to a school faculty meeting simply because two or more members of school advisory council who are also faculty members attend the faculty meeting as long as council members refrain from discussing matters that may come before the council for consideration. Inf. Op. to Hughes, February 17, 1995; and Inf. Op. to Boyd, March 14, 1994.

## C. WHAT MEETINGS OF MEMBERS OF BOARDS ARE COVERED? APPLICATION OF THE SUNSHINE LAW TO:

**1. Board members attending meetings or serving as members of another public board**

**a. Board members attending meetings of another public board**

Several Attorney General Opinions have considered whether one or more members of a board may attend or participate in a meeting of another public board. For example, in AGO 99-55, the Attorney General's Office said that a school board member could attend and participate in the meeting of an advisory committee appointed by the school board without prior notice of his or her attendance. However, the opinion cautioned that "if it is known that two or more members of the school board are planning to attend and participate, it would be advisable to note their attendance in the advisory committee meeting notice."

Moreover, while recognizing that commissioners may attend meetings of a second public board and comment on agenda items that may subsequently come before the commission for final action, the Attorney General Opinions have also advised that if more than one "commissioner is in attendance at such a meeting, no discussion or debate may take place among the commissioners



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on those issues." AGO 00-68. *Accord* AGO 98-79 (city commissioner may attend a public community development board meeting held to consider a proposed city ordinance and express his or her views on the proposed ordinance even though other city commissioners may be in attendance; however, the city commissioners in attendance may not engage in a discussion or debate among themselves because "the city commission's discussions and deliberations on the proposed ordinance must occur at a duly noticed city commission meeting"). *See also* AGOs 05-59 and 77-138.

**b. Board members serving as members of another public board**

Board members who also serve on a second public board may participate in the public meetings of the second board held in accordance with s. 286.011, F.S., and express their opinions without violating the Sunshine Law. AGO 07-13. In other words, "when two county commissioners are presently serving on [a regional planning] council this does not turn a meeting of the planning council into a county commission meeting, and the Sunshine Law does not require any additional or different notice of planning council meetings because of the presence of these county commission members." *Id.* Similarly, AGO 98-14 concluded that membership of three city council members on the metropolitan planning organization did not turn a council meeting into a metropolitan planning organization meeting that required separate notice. Because, however, the discussion of metropolitan planning organization matters was planned for the council meeting, the city council had properly included mention of such items in its notice of the council meeting.

Similarly, in AGO 91-95, the Attorney General's Office concluded that a county commissioner may attend and participate in the discussion at a public meeting held by the governing board of a county board on which another commissioner serves. However, "in an effort to satisfy the spirit of the Sunshine Law," the opinion also recommended that the published notice of the county board "include mention of the anticipated attendance and participation of county commission members in board proceedings." *Id.*

**2. Board member meeting with his or her alternate**

Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law. AGO 88-45.

**3. Community forums sponsored by private organizations**

A "Candidates' Night" sponsored by a private organization at which candidates for public office, including several incumbent city council members, will speak about their political philosophies, trends, and issues facing the city, is not subject to the Sunshine Law unless the council members discuss issues coming before the council among themselves. AGO 92-05. *Compare* Inf. Op. to Jove, January 12, 2009, concluding that a public forum hosted by a city council member with city council members invited to attend and participate in the discussion would be subject to s. 286.011, F.S.

Similarly, in AGO 94-62, the Attorney General's Office concluded that the Sunshine Law does not apply to a political forum sponsored by a private civic club during which county commissioners express their position on matters that may foreseeably come before the commission, so long as the commissioners avoid discussions among themselves on these issues. *And see* AGO 08-18 (participation by two city council members in a citizens police academy does not violate the Sunshine Law; "[t]he educational course is not changed into a meeting of a board or commission . . . by the attendance and participation of members of the city council in the course work of the academy").

However, caution should be exercised to avoid situations in which private political or



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community forums may be used to circumvent the statute's requirements. AGO 94-62. *See Town of Palm Beach v. Gradison,* 296 So. 2d 473, 477 (Fla. 1974) (Sunshine Law must be construed "so as to frustrate all evasive devices"). For example, in *State v. Foster,* 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the argument that the Sunshine Law permitted city commissioners to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. The court denied the commissioners' motion for summary judgment and ruled that the discussion should have been held in the Sunshine because the sheriff was a "common facilitator" who received comments from each commissioner in front of the other commissioners.

More recently, members of a city planning and zoning commission violated the Sunshine Law when they participated in discussions at meetings of a community improvement organization which involved planning and zoning matters. *City of Bradenton Beach v. Metz,* No. 2017 CA 003581 (Fla. 12th Cir. Ct. August 9, 2019). The trial judge found that the commissioners' participation in the discussions was particularly troubling because they continued to attend, despite Sunshine Law concerns expressed by the city attorney.

**4. Confidential records discussions**

The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, s. 286.011, F.S., should be construed as containing no exceptions. *City of Miami Beach v. Berns,* 245 So. 2d 38 (Fla. 1971).

The Public Records Act was amended in 1991 after several district courts held that certain proceedings could be closed when considering confidential material. Section 119.07(7), F.S., provides that an exemption from s. 119.07, F.S., "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act do not by implication allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. *See* AGOs 10-04 and 91-75 (school board), 04-44 (PRIDE), 93-41 (county criminal justice commission), and 91-88 (pension board).

For example, while s. 288.075(2), F.S., allows a private corporation to request confidentiality for certain records relating to a planned corporate relocation to Florida, this exemption "applies only to records and does not constitute an exemption from the provisions of the Government in the Sunshine Law . . . ." AGO 04-19. *Accord* AGO 80-78 and Inf. Op. to Rooney, June 8, 2011.

In AGO 05-03, the Attorney General advised that a federal law prohibiting disclosure of certain identifying information did not authorize a state committee to close its meetings, although the committee should take steps to ensure that identifying information is not disclosed at such meetings. *And see* AGO 12-20 (county transportation board designated as "appropriate local official" authorized by statute to receive and investigate whistle-blower complaints must comply with the open meetings requirements in the Sunshine Law; however, the board must also "protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the statute is present). *Cf.* AGO 96-40 ( town may not require a complainant to sign a waiver of confidentiality before accepting a whistle-blower's complaint for processing since the Legislature has provided for confidentiality of the whistle-blower's identity).

Similarly, in AGO 96-75 the Attorney General's Office advised that since under s. 286.011(8), F.S., the transcript of a closed attorney-client session is open to public inspection once the litigation is concluded, the city and its attorney should be sensitive to any discussions of confidential medical reports during such a meeting and take precautions to protect the confidentiality of such medical reports so that when the transcript is opened for inspection, the privacy of the employee will not be breached) *Compare Everglades Law Center, Inc. v. South Florida Water Management District,* 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the statements



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made in AGO 96-75, regarding taking steps to protect confidentiality and privacy applied to "an *individual's* medical record in the context of a workers' compensation claim," and did not address "the confidentiality of mediation communications involving information regarding *multiple* persons," these mediation communications are confidential pursuant to ss. 44.102(3) and 44.405(3), F.S., and should be redacted from the full public transcript). [Emphasis supplied by the court].

**5. E-mail, text messages, and other written communications between board members**

The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications. Thus, members of an advisory committee created to make recommendations to the superintendent on school attendance boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018). *See also* AGO 89-39 (members of a public board may not use computers to conduct private discussions among themselves about board business).

Similarly, city commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. Inf. Op. to Syrkus, October 31, 2000. *And see* AGO 09-19 (members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action); and Inf. Op. to Martelli, July 20, 2009 (authority should discuss business at publicly noticed meetings "rather than in a series of letters between authority members"). *Cf.* Inf. Op. to Galaydick, October 19, 1995 (school board members may share laptop computer even though computer's hard drive contains information reflecting ideas of an individual member as long as computer is not being used as a means of communication between members).

Thus, a procedure whereby a board takes official action by circulating a memorandum for each board member to sign whether the board member approves or disapproves of a particular issue, violates the Sunshine Law. Inf. Op. to Blair, May 29, 1973. *And see Leach-Wells v. City of Bradenton,* 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); *Schweickert v. Citrus County Port Authority,* No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013) (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting); and AGO 93-90 (board not authorized to use employee evaluation procedure whereby individual board members send their individual written comments to the board chair for compilation and subsequent private discussion with the employee). *Compare Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "evaluation team" members who individually evaluated competing proposals, individually assigned scores, and individually submitted their scores for consideration by others, did not take "formal action" and thus were not obligated to conduct a meeting subject to the Sunshine Law).

However, a commissioner may send a written report to other commissioners on a subject that will be discussed at a public meeting without violating the Sunshine Law, if prior to the meeting, there is no interaction related to the report among the commissioners and the report, which must be maintained as a public record, is not being used as a substitute for action at a public meeting. AGO 89-23. *And see* AGO 01-20 (e-mail communication of information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members' comments or responses on subjects involving foreseeable action by the council). *Cf.* Inf. Op. to Kessler,



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November 14, 2007 (procedural rule requiring county commissioner to make a written request to commission chair to withdraw an item from the consent agenda does not violate the Sunshine Law).

If, on the other hand, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S. AGO 90-03. Similarly, in AGO 96-35, the Attorney General's Office concluded that while a school board member may prepare and circulate an informational memorandum or position paper to other board members, the use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law. "Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input." *Id.*

In addition, the Attorney General's Office stated that while it is not a "direct violation" of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is "strongly discourage[d]." AGO 07-35. *See also* AGO 01-21 (city council's discussions and deliberations on matters coming before the council must occur at a duly noticed city council meeting and the circulation of position statements must not be used to circumvent the requirements of the statute); AGO 08-07 (city commissioner may post comment regarding city business on blog or message board; however, any subsequent postings by other commissioners on the subject of the initial posting could be construed as a response subject to the Sunshine Law); and Inf. Op. to Jove, January 22, 2009 (posting of anticipated vote on blog).

**6. Fact-finding or inspection trips**

The Sunshine Law does not prohibit *advisory* boards from conducting inspection trips provided that the board members do not discuss matters which may come before the board for official action. *See Bigelow v. Howze,* 291 So. 2d 645 (Fla. 2d DCA 1974); and AGO 02-24 (two or more members of an advisory group created by a city code to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the requirements of the Sunshine Law, provided that they do not discuss among themselves any recommendations or comments the committee may make).

The "fact-finding exception" to the Sunshine Law, however, does not apply to a board with "ultimate decision-making authority." *See Finch v. Seminole County School Board,* 995 So. 2d 1068 (Fla. 5th DCA 2008), holding that a district school board, as the ultimate decision-making body, violated the Sunshine Law when the board, together with school officials and members of the media, took a bus tour of neighborhoods affected by the board's proposed rezoning even though board members were separated from each other on the bus, did not express any opinions or their preference for any of the rezoning plans, and did not vote during the trip. *See also Citizens for Sunshine, Inc. v. School Board of Martin County,* 125 So. 3d 184 (Fla. 4th DCA 2013) (three school board members violated the Sunshine Law when they visited an adult education school and talked with a school administrator, teachers, and students, because the "undisputed evidence showed that the defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken."). *Cf. Citizens for Sunshine v. City of Sarasota*, No. 2013 CA 007532 (Fla. 12th Cir. Ct. July 8, 2016), *aff'd sub nom. Citizens for Sunshine, Inc. v. Chapman,* 225 So. 3d 810 (Fla. 2d DCA 2017), in which the trial judge held that a city commissioner did not violate the Sunshine Law when she spoke about city commission issues at a private event organized by local merchants even though another commissioner was in the audience, noting that "one cannot harmonize *Finch* with the large body of Florida law that defines 'meetings' under the Sunshine Law as gatherings of members of a governmental entity for the purpose of dialogue, decision, and action about a subject within the entity's purview."



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**7. Informal discussions, workshops, organizational sessions, election of officers**

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present or that an item be listed on a board agenda in order for a meeting of members of a public board or commission to be subject to s. 286.011, F.S. As the Florida Supreme Court said, "collective inquiry and discussion stages" are embraced within the terms of the statute. *Town of Palm Beach v. Gradison,* 296 So. 2d 474, 477 (Fla. 1974).

Accordingly, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 764 (Fla. 2010). *And see City of Miami Beach v. Berns,* 245 So. 2d 38 (Fla. 1971); and *Board of Public Instruction of Broward County v. Doran,* 224 So. 2d 693 (Fla. 1969).

It is the how and the why officials decided to so act which interests the public, not merely the final decision. As the court recognized in *Times Publishing Company v. Williams,* 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company,* 462 So. 2d 821 (Fla. 1985):

> Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012). Similarly, the Attorney General's Office advised that the following gatherings are subject to the Sunshine Law: a public forum hosted by a city council member with city council members invited to attend and participate in the discussion, Inf. to Jove, January 12, 2009; "executive work sessions" held by a board of commissioners of a housing authority to discuss policy matters, AGO 76-102; "workshop meetings" of a planning and zoning commission, AGO 74-94; and "conference sessions" held by a town council before its regular meetings, AGO 74-62. *Cf.* AGO 04-58 ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency is not subject to s. 286.011 if the issues do not require action by the county commission); and Inf. Op. to Spencer, April 23, 2003 (where city charter provides that special meeting of the council may be called by three members of the council, Sunshine Law is not violated if three members call a special meeting; "[t]he members must, however, be mindful not to discuss substantive issues which may come before the council in their consideration of whether a special meeting is necessary").

Similarly, the Sunshine Law applies to an organizational session of a board. *Ruff v. School Board of Collier County,* 426 So. 2d 1015 (Fla. 2d DCA 1983). Discussions between two members of a three-member complaint review board regarding their selection of a third member are subject to s. 286.011, F.S. AGO 93-79. Additionally, the Sunshine Law is applicable to meetings held to elect officers of the board. AGOs 72-326 and 71-32 (boards may not use secret ballots to elect officers).

The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, which relate to the affairs and duties of the board or commission. "[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *Monroe County v. Pigeon Key Historical Park,* Inc., 647 So. 2d 857, 868 (Fla. 3d DCA 1994). *See, e.g.,* Inf. Op. to Nelson, May 19, 1980 (meeting with congressman and city council members to discuss "federal budgetary matters which vitally



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concern their communities" should be held in the sunshine because "it appears extremely likely that discussion of public business by the council members [and perhaps decision making] will take place at the meeting").

**8. Investigative meetings**

The Sunshine Law is applicable to investigative inquiries of public boards or commissions. The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. AGO 74-84; and *Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973).

A number of statutory exemptions to the Sunshine Law have been enacted to close meetings of some agencies (usually state agencies) when those agencies are making investigatory determinations. For example, s. 112.324(2)(c)(d) and (e), F.S., provides that any proceeding related to a complaint, referral, or preliminary investigation conducted by the Commission on Ethics or other specified entities is exempt from open meetings requirements until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the proceedings be made public, the Commission on Ethics determines that it will not investigate a referral, or until the Commission or other specified entity determines whether probable cause exists to believe that a violation has occurred. *Compare* ss. 455.225(4) and 456.073(4), F.S. (meetings of probable cause panels of the Department of Business and Professional Regulation and Department of Health exempt from Sunshine Law until 10 days after probable cause is found to exist or until confidentiality is waived by subject of investigation).

**9. Litigation meetings**

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to s. 286.011, F.S. *Neu v. Miami Herald Publishing Company,* 462 So. 2d 821 (Fla. 1985) (s. 90.502, F.S., providing for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings; application of the Sunshine Law to such discussions does not usurp Supreme Court's constitutional authority to regulate the practice of law, nor is it at odds with Florida Bar rules providing for attorney-client confidentiality). *Cf.* s. 90.502(6), F.S., stating that a discussion or activity that is not a meeting for purposes of s. 286.011, F.S., shall not be construed to waive the attorney-client privilege. *And see Florida Parole and Probation Commission v. Thomas,* 364 So. 2d 480 (Fla. 1st DCA 1978), stating that all decisions taken by legal counsel to a public board need not be made or approved by the board; thus, the decision to appeal made by legal counsel after private discussions with the individual members of that board did not violate s. 286.011, F.S.

There are statutory exemptions, however, which apply to some discussions of pending litigation between a public board and its attorney.

**a. Settlement negotiations or strategy sessions related to litigation expenditures**

Section 286.011(8), F.S., provides:

Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, *provided* that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy



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sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation. (e.s.)

**(1) Strict compliance with statutory conditions**

It has been held that the Legislature intended a strict construction of s. 286.011(8), F.S. *City of Dunnellon v. Aran,* 662 So. 2d 1026 (Fla. 5th DCA 1995). "The clear requirements of the statute are neither onerous nor difficult to satisfy." *Id.* at 1027. *Accord School Board of Duval County v. Florida Publishing Company,* 670 So. 2d 99 (Fla. 1st DCA 1996).

While section 286.011(8), F.S., does not specify who calls the closed attorney-client meeting, it requires that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation." Thus, the exemption merely provides a governmental entity's attorney an opportunity to receive necessary direction and information from the governmental entity regarding pending litigation. AGO 04-35. Accordingly, one of the conditions that must be met prior to holding a closed attorney-client meeting is that the city attorney must indicate to the city council at a public meeting that he or she wishes the advice of the city council regarding the pending litigation to which the city is presently a party before a court or administrative agency. Inf. Op. to Vock, July 11, 2001. "If the city attorney does not advise the city council at a public meeting that he or she desires the council's advice regarding the litigation, the city council is not precluded from providing such advice to the city attorney but it must do so at a public meeting." *Id.*

The requirement that the board's attorney advise the board at a public meeting that he or she desires advice concerning litigation is not satisfied by a previously published notice of the closed session; such an announcement must be made at a public meeting of the board. AGO 04-35. The request may be made during a special meeting provided that the special meeting at which the request is made is open to the public, reasonable notice has been given, and minutes are taken. AGO 07-31.

In *City of Dunnellon v. Aran, supra,* the court said that a city council's failure to announce the names of the lawyers participating in a closed attorney-client session violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session (but did not give the names of the individuals), his "substantial compliance" was sufficient to satisfy the statute. *Cf. Zorc v. City of Vero Beach,* 722 So. 2d at 901, noting that deviation from the agenda at an attorney-client session is not authorized; while such deviation is permissible if a *public* meeting has been properly noticed, "there is no case law affording the same latitude to deviations in closed door meetings."

**(2) Permitted discussions during closed session**

Section 286.011(8)(b), F.S., states that the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures. If a board goes



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beyond the "strict parameters of settlement negotiations and strategy sessions related to litigation expenditures" and takes "decisive action," a violation of the Sunshine Law results. *Zorc v. City of Vero Beach,* 722 So. 2d at 900. *And see* AGO 99-37 (closed-meeting exemption may be used only when the attorney for a governmental entity seeks advice on settlement negotiations or strategy relating to litigation expenditures; such meetings should not be used to finalize action or discuss matters outside these two narrowly prescribed areas). *Accord* AGO 04-35.

Section 286.011(8), F.S., "simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." *School Board of Duval County v. Florida Publishing Company,* 670 So. 2d 99, 100 (Fla. 1st DCA 1996), quoting Staff of Fla. H.R. Comm. on Gov't Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement 2 (Fla. State Archives), at 3.

Thus, "[t]he settlement of a case is exactly that type of final decision contemplated by the drafters of section 286.011(8) which must be voted upon in the sunshine." *Zorc v. City of Vero Beach,* 722 So. 2d at 901. *Accord* AGO 08-17 (any action to approve a settlement or litigation expenditures must be voted on in a public meeting).

Accordingly, a court found that a city did not comply with s. 286.011(8), F.S., when it held closed meetings that "covered a wide range of political and policy issues not connected to" settlement of pending litigation regarding a comprehensive plan amendment or litigation expenses relating to the pending cases which at that point were on appeal. "While some of the discussion at these meetings did in fact involve the costs associated with the pending litigation, by and large the meetings pertained to finding a way to readopt the comprehensive plan amendment that had been invalidated by the court and to avoid future litigation regarding the readopted amendment." *Anderson v. City of St. Pete Beach,* 161 So. 3d 548, 553 (Fla. 2d DCA 2014).

Similarly, a city council violated the Sunshine Law where the "great majority" of the discussion at an attorney-client session concerned the specifics of a proposed amendment to the city's trespass ordinance which was designed to address concerns expressed in a federal court decision finding the ordinance to be unconstitutional. *City of St. Petersburg v. Wright*, 241 So. 3d 903 (Fla. 2d DCA 2018). The participants at the closed meeting "did not limit themselves to discussing settlement or litigation expenditures" in the federal litigation. *Id. See also Freeman v. Times Publishing Company,* 696 So. 2d 427 (Fla. 2d DCA 1997) (discussion of methods or options to achieve continuing compliance with a long-standing federal desegregation mandate [such as whether to modify the boundaries of a school zone to achieve racial balance] must be held in the sunshine). *Compare Bruckner v. City of Dania Beach,* 823 So. 2d 167, 172 (Fla. 4th DCA 2002) (closed city commission meeting to discuss various options to settle a lawsuit involving a challenge to a city resolution, including modification of the resolution, authorized because the commission "neither voted, took official action to amend the resolution, nor did it formally decide to settle the litigation").

**(3) Entity involved in *pending* litigation**

Section 286.011(8) permits an entity to use the exemption if the entity "is presently a party before a court or administrative agency . . . ." For example, a city council and its attorney may hold a closed-door meeting pursuant to this statute to discuss settlement negotiations or strategy related to litigation expenditures for pending litigation involving a workers' compensation suit against the city because the system prescribed in ch. 440, F.S., "operates as a means of adjudicating workers' compensation claims and would be considered litigation before an administrative agency." AGO 96-75.

In *Brown v. City of Lauderhill,* 654 So. 2d 302 (Fla. 4th DCA 1995), the court said it



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could "discern no rational basis for concluding that a city is not a 'party' to pending litigation in which it is the real party in interest." *And see Zorc v. City of Vero Beach,* 722 So. 2d at 900 (city was presently a party to ongoing litigation by virtue of its already pending claims in bankruptcy proceedings); and AGOs 09-15 (exemption applicable when city is real party in interest of a pending lawsuit despite not being a named party at the time of the meeting), and 08-17 (health care district may hold a closed attorney-client meeting to discuss settlement negotiations and strategies related to litigation expenditures for pending litigation in which its wholly-owned subsidiary holding company is the named party).

Although the *Brown* decision established that the exemption could be used by a city that was a real party in interest on a claim involved in *pending* litigation, that decision does not mean that an agency may meet in executive session with its attorney where there is only the *threat* of litigation. *See* AGOs 04-35 and 98-21 (s. 286.011[8] exemption "does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable").

Similarly, s. 286.011(8), F.S. "may not be used to conduct a closed meeting during a mandatory arbitration proceeding, when there is no pending legal proceeding in a court or before an administrative agency." AGO 13-17. *And see* AGOs 06-03 (exemption not applicable to pre-litigation mediation proceedings), 09-14 (exemption not applicable to discussion of terms of mediation in conflict resolution proceedings under the "Florida Governmental Conflict Resolution Act," ss. 164.101-164.1061, F.S.), and 09-25 (town council which received pre-suit notice letter under the Bert J. Harris Act, s. 70.001, F.S., is not a party to pending litigation for purposes of s. 286.011[8], F.S.). and Inf. Op. to Barrett, February 17, 2016 (board not authorized to use exemption to discuss pending investigation and subpoena where there is no ongoing judicial or administrative proceeding).

**(4) Persons authorized to attend closed session**

Only those persons listed in the statutory exemption, *i.e.*, the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Thus, other staff members, consultants, or officials are not allowed to be present. *School Board of Duval County v. Florida Publishing Company,* 670 So. 2d at 101. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), *review denied,* 735 So. 2d 1284 (Fla. 1999) (city charter provision requiring that city clerk attend all council meetings does not authorize clerk to attend closed attorney-client session; municipality may not authorize what the Legislature has expressly forbidden); AGO 01-10 (clerk of court not authorized to attend); and AGO 09-52 (attorneys representing superintendent not authorized to attend closed session to discuss settlement of administrative action in which school board is the named party). *Cf.* AGO 95-06 (s. 286.011(8), F.S., does not authorize the temporary adjournment and reconvening of meetings in order for members who are attending such a session to leave the room and consult with others outside the meeting).

Since the entity's attorney is permitted to attend the closed session, if the school board hires outside counsel to represent it in pending litigation, both the school board attorney and the litigation attorney may attend a closed session. AGO 98-06. *See Zorc v. City of Vero Beach,* 722 So. 2d at 898 (attendance of special counsel authorized). *And see* AGO 08-42 (qualified interpreters for the deaf are treated by the Americans with Disabilities Act as auxiliary aids in the nature of hearing aids and other assistive devices and may attend litigation strategy meetings of a board or commission to interpret for a deaf board member without violating section 286.011(8), F.S). *Cf.* AGO 15-13 (mayor who is a voting member of the city council is not precluded from attending closed session relating to pending litigation in which city council is a party, even though plaintiffs have also sued the mayor in his individual capacity).

**(5) Determination of "conclusion" of the litigation**

Section 286.011(8)(e), F.S., provides that transcripts of closed meetings "shall be made



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part of the public record upon conclusion of the litigation." *See* AGO 15-03 (transcript of a litigation strategy session which was closed to the public while the litigation was ongoing became a public record once the litigation was concluded). *Cf. Everglades Law Center, Inc. v. South Florida Water Management District,* 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the mediation communications disclosed by a governmental agency during a closed session must be redacted from the transcript of the meeting when it becomes public record; the exemptions from disclosure for mediation communications in ss. 44.102(1) and 44.405(1), F.S., are not inconsistent with the requirements of s. 286.011(8)(e), F.S.

The statute does not recognize a continuation of the exemption for "derivative claims" made in separate, subsequent litigation. AGO 13-13. For example, a transcript of a closed meeting to discuss settlement of a quiet title lawsuit became a public record upon the entry of a final judgment in that case, even though the same parties were now embroiled in an inverse condemnation lawsuit. *Chmielewski v. City of St. Pete Beach,* 161 So. 3d 521 (Fla. 2d DCA 2014). Similarly, a claim for payment of attorney's fees does not extend the application of the exemption after a final judgment has been entered and a mandate issued. Inf. Op. to Boutsis, December 13, 2012.

Accordingly, a dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement operates as a conclusion of the litigation. AGO 15-03. By contrast, litigation that is ongoing but temporarily suspended pursuant to a stipulation for settlement has not been concluded for purposes of s. 286.011(8), F.S., and a transcript of meetings held between the city and its attorney to discuss such litigation may be kept confidential until conclusion of the litigation. AGO 94-64. *And see* AGO 94-33 (public agency may maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice or the applicable statute of limitations has run); and Inf. Op. to Boutsis, *supra* (legislative history of s. 286.011[8], F.S., indicates "that the Legislature intended the exemption to continue through the appeals segment of the litigation"). *Cf. Wagner v. Orange County,* 960 So. 2d 785 (Fla. 5th DCA 2007), concluding that the phrase "conclusion of the litigation or adversarial administrative proceedings" for purposes of the attorney work product exemption from the public records law found in s. 119.071(1)(d), F.S., encompasses postjudgment collection efforts such as a legislative claims bill.

In AGO 13-21, the Attorney General's Office observed that s. 286.011(8)(e), F.S., "should be seen as a tool which governmental boards or commissions may employ in their discretion but the statute should not be read as a prohibition against the release of such records prior to the conclusion of . . . litigation." Therefore, a city council, as the collegial body to which the exemption applies, may waive the exemption and release transcripts of meetings held pursuant to s. 286.011(8), F.S., prior to the conclusion of litigation. *Id.*

**b. Risk management exemption**

Section 768.28(16)(c), F.S., states that portions of meetings and proceedings relating solely to the evaluation of claims or to offers of compromise of claims filed with a risk management program of the state, its agencies and subdivisions, are exempt from s. 286.011, F.S. The minutes of such meetings and proceedings are also exempt from public disclosure until the termination of the litigation and settlement of all claims arising out of the same incident. Section 768.28(16)(d), F.S.

This exemption is limited and applies only to tort claims for which the agency may be liable under s. 768.28, F.S. AGO 04-35. The exemption is not applicable to meetings held prior to the filing of a tort claim with the risk management program. AGO 92-82. Moreover, a meeting of a city's risk management committee is exempt from the Sunshine Law only when the meeting relates solely to the evaluation of a tort claim filed with the risk management program or relates solely to an offer of compromise of a tort claim filed with the risk management program.



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AGO 04-35.

Unlike s. 286.011(8), F.S., s. 768.28(16), F.S., does not specify the personnel who are authorized to attend the meeting. *See* AG0 00-20, advising that personnel of the school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

**10. Personnel matters**

In the absence of a specific statutory exemption, meetings of a public board or commission to discuss personnel matters are subject to the Sunshine Law. *Times Publishing Company v. Williams,* 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company,* 462 So. 2d 821 (Fla. 1985).

**a. Collective bargaining discussions**

**(1) Strategy sessions**

A limited exemption from s. 286.011, F.S., exists for discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body of the public employer relative to collective bargaining. Section 447.605(1), F.S. A similar exemption is contained in s. 110.201(4), F.S., for discussions between the Department of Management Services and the Governor, between the department and the Administration Commission or agency heads, or between any of their respective representatives, relative to collective bargaining.

A duly-appointed labor negotiating committee of a city that does not have a city manager or city administrator qualifies as the "chief executive officer" for purposes of s. 447.605(1), F.S., and may use the exemption when meeting with the city council to discuss collective bargaining. AGO 85-99. *And see* AGO 99-27, concluding that a committee formed by the city manager to represent the city in labor negotiations may participate in closed executive sessions conducted pursuant to s. 447.605(1), F.S. The exemption also extends to meetings of the negotiating committee itself which are held to discuss labor negotiation strategies, including when the committee adjourns during negotiations to hold a caucus among its members to determine the strategy to be employed in ongoing negotiations. *Id.*

If a school superintendent's responsibility to conduct collective bargaining on behalf of the school board has been completely delegated to a separate labor negotiating committee and the superintendent does not participate in the collective bargaining negotiations, the exemption afforded by s. 447.605(1), F.S., applies to discussions between the committee and the school board only and does not encompass discussions among the committee, school board and superintendent. AGO 98-06.

The exemption afforded by s. 447.605(1), F.S., applies only in the context of actual and impending collective bargaining negotiations. AGO 85-99. It does not allow private discussions of a proposed "mini-PERC ordinance" or the stance a public body intends to adopt in regard to unionization and/or collective bargaining. AGO 75-48. Moreover, a public body may not conduct an entire meeting outside the Sunshine Law merely by discussing one topic during the course of that meeting which may be statutorily exempt from s. 286.011, F.S. AGO 85-99.

Section 447.605(1), F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure. AGO 03-09.

**(2) Negotiations**

The collective bargaining negotiations between the chief executive officer and a bargaining agent are not exempt and pursuant to s. 447.605(2), F.S., must be conducted in the sunshine. Once the collective bargaining process begins, when one side or its representative, whether



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before or after the declaration of an impasse, meets with the other side or its representative to discuss anything relevant to the terms and conditions of the employer-employee relationship, the meeting is subject to the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.,* 514 So. 2d 408, 412 (Fla. 2d DCA 1987). *Accord Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014), *review denied,* No. SC 16-2490 (Fla. February 24, 2016). *See also* AGO 99-27. As with other meetings subject to s. 286.011, F.S., minutes of the negotiation meeting must be kept. Inf. Op. to Fulwider, June 14, 1993.

The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.,* 514 So. 2d at 412. *And see Brown v. Denton,* 152 So. 3d at 12 (By holding closed-door negotiations that resulted in changes to public employee pension benefits, "the [city and pension board] ignored an important party who also had the right to be in the room -- the public."). *Cf. Palm Beach County Classroom Teachers' Association v. School Board of Palm Beach County,* 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

**b. Disciplinary, grievance, and complaint review proceedings**

Meetings of a board or commission to conduct disciplinary proceedings are subject to the Sunshine Law. *See, e.g.,* AGO 92-65 (employee termination hearing conducted by housing authority commission). *And see News-Press Publishing Company v. Wisher,* 345 So. 2d 646, 647-648 (Fla. 1977), in which the Court disapproved of a county's use of "pseudonyms or cloaked references" during a county commission meeting held to reprimand an unnamed department head.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012). *And see Barfield v. City of West Palm Beach,* No. CL94-2141-AC (Fla. 15th Cir. Ct. May 6, 1994) (complaint review board of a city police department is subject to the Sunshine Law; AGO 80-27 (sheriff civil service board created by special act is subject to the Sunshine Law). *Cf.* AGO 93-79 (discussions between two members of a three-member complaint review board regarding their selection of the third member of the board must be conducted in accordance with s. 286.011, F.S.).

Similarly, in *Dascott v. Palm Beach County,* 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to county ordinance and composed of a department head, personnel director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel. *See also* AGO 10-14 (team created by charter school board of directors to review employment decisions is subject to the Sunshine Law). *Cf.* AGO 77-132 (personnel council composed of citizens appointed by members of county commission to hear appeals from county employees who have been disciplined not authorized to deliberate in secret).

A grievance committee established as "the final hearing body for all matters determined to be grievances and [authorized] to uphold, modify, or deny any grievance" is subject to the Sunshine Law "because the [committee] clearly exercises decision-making authority." *Dascott v. Palm Beach County, supra* at 13. *And see* AGO 84-70 (Sunshine Law applies to staff grievance committee created to make a determination of "all facts and circumstances" and nonbinding recommendations to a county administrator regarding disposition of employee grievances). *Cf. Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County,* 411 So. 2d 1375 (Fla. 4th DCA 1982), in which the court affirmed the lower tribunal's refusal to issue



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a temporary injunction to exclude a newspaper reporter from a grievance arbitration hearing. A collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S. *Id.* at 1376.

By contrast, in *Jordan v. Jenne,* 938 So. 2d 526, 530 (Fla. 4th DCA 2006), the court determined that the Sunshine Law did not apply to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general, because the inspector general made the "ultimate decision" on discipline and did not deliberate with the committee. *See also McDougall v. Culver,* 3 So. 3d 391 (Fla. 2d DCA 2009) (Internal Affairs memorandum containing findings and recommendations circulated to senior officials for review and comment before submission to the sheriff for a decision on disciplinary action did not constitute a meeting under the Sunshine Law since officials only provided a recommendation but did not deliberate with the sheriff or have decision-making authority).

Similarly, if the mayor as chief executive officer, rather than the city council, is responsible under the city charter for disciplining city employees, meetings between the mayor and a city employee concerning discipline of the employee are not subject to the Sunshine Law. *City of Sunrise v. News and Sun-Sentinel Company,* 542 So. 2d 1354 (Fla. 4th DCA 1989). *And see* AGO 07-54 (while post-termination hearings before city manager are not subject to the Sunshine Law, hearings before a three-member panel appointed by the city manager should be open).

**c. Evaluations**

The Sunshine Law applies to meetings of a board of county commissioners when interviewing applicants for county positions appointed by the board, when conducting job evaluations of county employees answering to and serving at the pleasure of the board, and when conducting employment termination interviews of county employees who serve at the pleasure of the board. AGO 89-37.

A board that is responsible for assessing the performance of its chief executive officer (CEO) should conduct the review and appraisal process in a proceeding open to the public as prescribed by s. 286.011, F.S., instead of using a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO. AGO 93-90. However, meetings of individual school board members with the superintendent to discuss the individual board members' evaluations do not violate the Sunshine Law when such evaluations do not become the board's evaluation until they are compiled and discussed at a public meeting by the school board for adoption by the board. AGO 97-23.

**d. Selection and screening committees**

The Sunshine Law applies to advisory committees created by an agency to assist in the selection process. In *Wood v. Marston,* 442 So. 2d 934 (Fla. 1983), a committee created to screen applications and make recommendations for the position of a law school dean was held to be subject to s. 286.011, F.S. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university. *See also Krause v. Reno,* 366 So. 2d 1244 (Fla. 3d DCA 1979) (Sunshine Law governs advisory group created by city manager to assist in screening applications and to recommend several applicants for the position of chief of police), and AGO 77-43 (Sunshine Law applies to committee selected by a county bar association on behalf of the school board to screen applicants and make recommendations for the position of school board attorney). *Cf. Dore v. Sliger,* No. 90-1850 (Fla. 2d Cir. Ct. July 11, 1990) (faculty of university law school prohibited from conducting secret ballots on personnel hiring matters).

However, if the sole function of the screening committee is simply to gather information for the decision-maker, rather than to accept or reject applicants, the committee's activities are outside the Sunshine Law. *See Cape Publications, Inc. v. City of Palm Bay,* 473 So. 2d 222 (Fla.



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5th DCA 1985), holding that the Sunshine Law was not violated when the city manager, who was responsible for selecting the new police chief, asked several people to sit in on the interviews, as the only function of this group was to assist the city manager in acquiring information on the applicants he had chosen by asking questions during the interviews and then discussing the qualifications of each candidate with the city manager after the interview. *And see Knox v. District School Board of Brevard,* 821 So. 2d 311, 314 (Fla. 5th DCA 2002), holding that an interview team composed of staff was not subject to s. 286.011, F.S., even though the team made recommendations since "all the applications went to the superintendent and he decided which applicants to interview and nominate to the school board."

**11. Purchasing meetings**

**a. Application of Sunshine Law**

A committee appointed by a public college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to "weed through the various proposals, to determine which were acceptable and to rank them accordingly." *Silver Express Company v. District Board of Lower Tribunal Trustees,* 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). *Accord* Inf. Op. to Lewis, March 15, 1999 (panels established by state agency to create requests for proposals and evaluate vendor responses are subject to the Sunshine Law), and AGO 80-51 (Sunshine Law applicable to city selection committee screening proposals from consultants and audit firms). *And see Leach-Wells v. City of Bradenton,* 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); and *Schweickert v. Citrus County Port Authority,* No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013) (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting). *Compare Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "Evaluation Team" members who individually evaluated the competitors' proposals, individually assigned scores, and individually submitted their scores for consideration by the "Negotiation Team" were not required to conduct a public meeting to perform these functions because "the Evaluation Team [or more accurately, its individual members] neither ranked the competitors nor excluded any from consideration of the ultimate decider, the Negotiation Team").

In *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1,* 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the public committee meeting during presentations by competitors. *Cf. Pinellas County School Board v. Suncam, Inc.,* 829 So. 2d 989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals). *See now* s. 286.0113(2)(b), F.S., discussed below, providing an exemption from the Sunshine Law for protions of certain competitive solicitation meetings and requiring a complete recording of the exempt portions.

**b. Recording requirement for exempt meetings**

Section 286.0113(2)(b)1. and 2., F.S., provide that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law. In addition, any portion of a team meeting at which negotiation strategies are discussed is also exempt. *See Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), in which the court rejected the agency's argument that the exemption applies to the *entirety* of any meeting



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at which negotiation strategies are discussed, even those portions that have nothing to do with procurement. However, the court also said that "the exempted 'portion' includes not only the negotiation-strategies discussions themselves, but also meeting activities inextricably intertwined with those discussions." *Id.* at 1269. *Cf.* s. 255.0518, F.S. (sealed bids received pursuant to a competitive solicitation for construction or repairs of a public building or public work must be opened at a public meeting conducted in compliance with the Sunshine Law).

The term "[c]ompetitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 286.0113(2)(a)1., F.S.

The term "team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation. Section 286.0113(2)(a)2., F.S.

A complete recording must be made of the exempt meeting; no portion of the exempt meeting may be held off the record. Section 286.0113(2)(c), F.S. *Cf.* AGO 10-42 (where statute required that closed proceedings of state committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

The recording and any records presented at the exempt meeting are exempt from public disclosure until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier. Section 286.0113(2)(c)1. and 2., F.S. *And see* s. 286.0113(2)(c)3., F.S. (exempt status of recording if the agency rejects all bids, proposals, or replies, and concurrently provides notice of its intent to reissue a competitive solicitation). *Cf.* s. 255.065(15), F.S. (recording requirement for the portion of a meeting to discuss an exempt unsolicited proposal received as part of the public-private partnership process authorized under s. 255.065, F.S.).

**12. Quasi-judicial matters, proceedings or hearings**

The Sunshine Law does not authorize boards to conduct closed-door hearings or deliberations simply because the board is acting in a "quasi-judicial" capacity. *Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973). *And see Occidental Chemical Company v. Mayo,* 351 So. 2d 336, 340n.7 (Fla. 1977), *disapproved in part on other grounds, Citizens v. Beard,* 613 So. 2d 403 (Fla. 1992) (characterization of the Public Service Commission's decision-making process as "quasi-judicial" did not exempt it from s. 286.011, F.S.); and *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County,* 411 So. 2d 1375 (Fla. 4th DCA 1982), affirming the lower court's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing.

Thus, in the absence of statutory exemption, "[t]he fact that a board or commission is acting in a quasi-judicial capacity does not remove it from the reach of section 286.011, Florida Statutes." AGO 10-04. *And see* AGOs 92-65, 83-43 and 77-132. *Cf.* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

**13. Real property negotiations**

In the absence of a statutory exemption, the negotiations by a public board or commission for the sale or purchase of property must be conducted in the sunshine. *See City of Miami Beach v. Berns,* 245 So. 2d 38, 40 (Fla. 1971) (city commission not authorized to hold closed sessions to discuss condemnation issues). In addition, if the authority of the public board or commission to acquire or lease property has been delegated to a single member, that member is subject to s. 286.011, F.S., and is prohibited from negotiating the acquisition or lease of the property in secret. AGO 74-294. *Cf.* AGO 95-06 (statutory exemption from Ch. 119, F.S., for certain records relating to the proposed purchase of real property does not authorize a city or its designee to



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conduct negotiations for purchase of property outside the Sunshine Law).

Advisory committees charged with land acquisition responsibilities are also subject to the Sunshine Law. *See* AGOs 87-42 (ad hoc committee appointed by mayor to meet with the Chamber of Commerce to discuss a proposed transfer of city property), and 86-51 (land selection committee appointed by water management district to evaluate and recommend projects for acquisition). *Cf. Monroe County v. Pigeon Key Historical Park, Inc.,* 647 So. 2d 857 (Fla. 3d DCA 1994) (committee established by county commission to negotiate lease agreement subject to s. 286.011).

**14. Security meetings**

While there is no general exemption from open meetings requirements that applies to all discussions relating to "security," s. 281.301(1), F.S., provides an exemption for portions of meetings relating directly to or that would reveal the security or firesafety systems for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property which is in the possession of an agency.

Similarly, s. 286.0113(1), F.S., states that the portion of a meeting that would reveal a security or firesafety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a), F.S. (providing an exemption from the Public Records Act for a "security or firesafety system plan") is exempt from open meetings requirements. *See* Inf. Op. to Sherman, July 2, 2018, noting that the phrasing of s. 286.0113(1), F.S., and the statement of legislative intent included in the session law show that the exemption applies to any portion of a meeting in which a record as defined in s. 119.071(3)(a) would be revealed. *See also* s. 282.31(7), F.S. (portions of meetings held to discuss specified information technology security records held by state agencies are exempt); s. 286.0113(3)(a), F.S. (exemption for portions of meetings held by local government owned utilities that would reveal information technology security records made exempt under s. 119.0713(5), F.S., although such portions must be transcribed and recorded); s. 1004.0962(5), F.S. (exemption for portions of meetings held to discuss a postsecondary educational institution's "campus emergency response"); and s. 1004.055(2), F.S. (exemption for portions of meetings held to discuss specified information technology security records maintained by postsecondary educational institutions). *Cf.* s. 286.0113(4)(b), F.S. (exemption for portions of meetings that would reveal building plans or geographical maps indicating the actual or proposed location of 911, E911, or public safety radio communication system infrastructure).

**15. Social events**

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings. AGO 92-79. *Accord* Inf. Op. to Batchelor, May 27, 1982.

Therefore, a luncheon meeting held by a private organization for members of a public board or commission at which there is no discussion among such officials on matters relating to public business would not be subject to the Sunshine Law merely because of the presence of two or more members of a covered board or commission. AGO 72-158. *Cf.* AGO 71-295, cautioning that "[p]ublic bodies should avoid secret meetings, from which the public and the press are effectively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only and with the understanding that the members of the public body will, in good faith, attempt to avoid any discussion of official business."

**16. Telephone conversations and virtual meetings**

**a. Private telephone conversations**

Private telephone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law. *See State v. Childers,* No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam affirmed,*



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886 So. 2d 229 (Fla. 1st DCA 2004) (private telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law). *See also* the discussion on pages 23-24 regarding the application of the Sunshine Law to emails, text messages, and other written communications between board members.

**b. Authorization to conduct and participate in public meetings via telephone, video conferencing, or other electronic media**

**(1) Sunshine Law**

Although both the Florida Constitution and the Sunshine Law require that, unless exempt by law, meetings of a government board must be "public meetings" that are "open to the public," neither provision requires that members of the public board be physically present during the meeting. AGO 20-03. Instead, the Attorney General's Office has observed that a board's use of electronic media technology to increase public participation in meetings and the use of such media to allow members of a board or commission to participate in a duly noticed public meeting does not necessarily raise Sunshine Law issues, "but rather implicates the ability of a board or commission to conduct public business with a quorum." *See* Inf. Op. to Stebbins, December 1, 2015.

**(2) In person quorum requirements**

The Attorney General's Office has advised that if a quorum is required to conduct official business, boards may only conduct meetings by teleconferencing or other technological means if they are authorized to do so by law or the in person requirement for constituting a quorum is lawfully suspended during a state of emergency. AGO 20-03. *And see* Executive Order 20-69, issued by Governor DeSantis on March 20, 2020 (recognizing that public boards should be able to use technology to conduct meetings in light of the declared public health emergency resulting from the COVID-19 pandemic, and suspending Florida Statutes requiring that a quorum be physically present during the state of emergency). Executive Order 20-69 (which expired on November 1, 2020), stipulated that boards holding virtual meetings must still comply with the Sunshine Law. *See also* AGO 20-03, noting that if "meetings are conducted by teleconferencing or other technological means, public access must still be afforded which permits the public to attend the meeting. That public access may be provided by teleconferencing or technological means."

**(a) State boards**

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes *state* boards to conduct public meetings via entirely electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. *See* Rule 28-109, F.A.C. *And see* AGO 20-03, noting that state boards have been conducting meetings using "communications media technology" since 1997.

**(b) Local boards**

**(1) Meetings**

As to *local* boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct meetings entirely through the use of electronic media technology applies only to *state* agencies. AGOs 20-03 and 98-28. Thus, unless the in-person requirement to constitute a quorum has been waived by law or lawfully suspended during a state of emergency, a quorum of the board must be physically present. AGO 20-03.

For example, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id. And see* AGOs 09-56 (where a quorum is required and absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum). and 10-34 (city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). *Cf.* s. 120.525(4),



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F.S., allowing a voting member of a regional planning council that covers three or more counties who participates via telephone or videoconferencing to be counted towards a quorum, provided that at least one third of the voting members are present at the meeting location and that notice of intent to participate remotely is given at least 24 hours prior to the meeting. *Cf.* s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications media technology; and Ch. 17-214, Laws of Florida, authorizing the Monroe County School Board, Monroe County Commission, or any political subdivision thereof, to adopt rules and procedures for using communications media technology for meetings at which no final action is taken.

However, if a quorum of a local board is physically present, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." AGO 03-41.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting. AGO 94-55. *And see* AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

**(2) Workshops**

The physical presence of a quorum has not been required where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. *See* Inf. Op. to Stebbins, December 1, 2015 (approval of board meeting minutes constitutes official action; vote to approve minutes not exempted from quorum requirements). Moreover, as discussed above, boards conducting workshop meetings electronically must still comply with the Sunshine Law.

For example, the Attorney General's Office advised that airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. Such interactive access must include not only public access via the Internet but also at designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. *Id.* For meetings, however, where a quorum is necessary for action to be taken, the physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *Id.* Internet access to such meetings, however may still be offered to provide greater public access. *Id. Cf.* AGO 08-65, noting that a city's plan to provide additional public access to on-line workshop meetings by making computers available at a public library "should ensure that operating-type assistance is available at the library where the computers are located."

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. *And see* Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission's proposed use of an electronic bulletin board to discuss matters that foreseeably may come before the commission over an extended period of time would not comply with the spirit or letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion). *Compare* AGO 08-65 (city advisory



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boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015.

## D. NOTICE AND PROCEDURES

### 1. Agenda

The Sunshine Law does not *mandate* that an agency provide notice of each item to be discussed via a published agenda although the Attorney General's Office has recommended the publication of an agenda, if available. The courts have rejected such a requirement because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body. *See Hough v. Stembridge,* 278 So. 2d 288 (Fla. 3d DCA 1973); and *Yarbrough v. Young,* 462 So. 2d 515 (Fla. 1st DCA 1985) (posted agenda unnecessary and public body not required to postpone meeting due to inaccurate press report which was not part of the public body's official notice efforts).

Thus, the Sunshine Law does not require boards to consider only those matters on a published agenda. "[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature." *Law and Information Services, Inc. v. City of Riviera Beach,* 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996). *And see Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (Sunshine Law does not prohibit use of consent agenda procedure).

Even though the Sunshine Law does not prohibit a board from adding topics to the agenda of a regularly noticed meeting, the Attorney General's Office has advised boards to postpone formal action on any added items that are controversial. *See* AGO 03-53, stating that "[i]n the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the commission."

While the Sunshine Law requires notice of *meetings*, not of the individual *items* which may be considered at that meeting, other statutes, codes, or ordinances may impose such a requirement and agencies subject to those provisions must follow them. *See* Inf. Op. to Mattimore, February 6, 1996.

For example, s. 120.525(2), F.S., requires that agencies subject to the Administrative Procedure Act must prepare an agenda in time to ensure that a copy may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on the agency's website. *Id.* After the agenda has been made available, changes may be made only for good cause. *Id.*

Similarly, special districts are required to post certain information on the district's official website, including: "[a]t least 7 days before each meeting or workshop, the agenda of the event. Section 189.069(2)(a)15., F.S. The information must remain on the website for at least 1 year after the event. *Id*.

### 2. Location of meetings

#### a. Facilities that discriminate or unreasonably restrict access to the facility



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Section 286.011(6), F.S., prohibits boards or commissions subject to the Sunshine Law from holding their meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access to such a facility. *And see* s. 286.26, F.S., relating to accessibility of public meetings to the physically handicapped.

Public boards or commissions, therefore, are advised to avoid holding meetings at places where the public and the press are effectively excluded. AGO 71-295. Thus, a police pension board should not hold its meetings in a facility where the public has limited access and where there may be a "chilling" effect on the public's willingness to attend by requiring the public to provide identification, to leave such identification while attending the meeting, and to request permission before entering the room where the meeting is held. AGO 96-55. *And see* Inf. Op. to Galloway, August 21, 2008, in which the Attorney General's Office expressed concerns about holding a public meeting in a private home in light of the possible "chilling effect" on the public's willingness to attend.

While a city may not require persons wishing to attend public meetings to provide identification as a condition of attendance, it may impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors. AGO 05-13.

**b. Luncheon meetings**

Public access to meetings of public boards or commissions is the key element of the Sunshine Law, and public agencies are advised to avoid holding meetings in places not easily accessible to the public. The Attorney General's Office has suggested that public boards or commissions avoid the use of luncheon meetings to conduct board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Inf. Op. to Campbell, February 8, 1999; and Inf. Op. to Nelson, May 19, 1980. *Cf. City of Miami Beach v. Berns,* 245 So. 2d 38, 41 (Fla. 1971), in which the Florida Supreme Court observed: "A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public." *See also* the discussion on page 47 relating to inaudible discussions.

**c. Out-of-town meetings**

The fact that a meeting is held in a public room does not make it public within the meaning of the Sunshine Law; for a meeting to be "public," the public must be given advance notice and provided with a reasonable opportunity to attend. *Bigelow v. Howze,* 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974). *See also* the discussion on page 24 relating to inspection and fact-finding trips.

Accordingly, a school board workshop held outside county limits over 100 miles away from the board's headquarters violated the Sunshine Law where the only advantage to the board resulting from the out-of-town gathering (elimination of travel time and expense due to the fact that the board members were attending a conference at the site) did not outweigh the interests of the public in having a reasonable opportunity to attend. *Rhea v. School Board of Alachua County,* 636 So. 2d 1383 (Fla. 1st DCA 1994). The court refused to adopt a rule prohibiting any board workshops from being held at a site more than 100 miles from its headquarters, instead applying a balancing of interests test to determine which interest predominates in a given case. As stated by the court, "[t]he interests of the public in having a reasonable opportunity to attend a Board workshop must be balanced against the Board's need to conduct a workshop at a site beyond the county boundaries." *Id.* at 1385. *And see* Inf. Op. to Sugarman, August 5, 2015 (no apparent authority for use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry



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out its functions and claim compliance with the Sunshine Law by providing the public with electronic access to the remote meeting).

In addition, there may be other statutes which limit where board meetings may be held. *See, e.g.,* s. 125.001, F.S. (meetings of the board of county commissioners may be held at any appropriate public place in the county); s. 1001.372, F.S. (school board meetings may be held at any appropriate public place in the county). *And see* AGOs 08-01 and 03-03 (municipality may not hold commission meetings at facilities outside its boundaries). *See now* ss. 166.0213(1), F.S. (governing body of municipality with 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution); 166.0213(2), F.S. (governing body of a municipality may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality at such time and place as shall be prescribed by ordinance or resolution); and 125.001(2), F.S. (authorizing boards of county commissioners to hold joint public meetings with governing boards of adjacent counties or municipalities upon due public notice within the jurisdiction of all participating counties and municipalities; provided that an authorizing resolution is adopted, no official vote is taken at the joint meeting, and the joint meeting may not take the place of a public hearing required by law). *Cf.* AGO 20-03, noting that a quorum of the board must be physically present at the meeting of a board which is required to be held at a place within the body's jurisdiction. For more information on this issue, please see the discussion on pages 37-39.

Conduct which occurs outside the state which would constitute a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, F.S.

**d. Size of meeting facilities**

The Sunshine Law requires that meetings of a public board or commission be "open to the public." If a large turnout is expected for a particular meeting, the Attorney General's Office has recommended that public boards and commissions take reasonable steps (such as moving the meeting to a larger room) to accommodate those who wish to attend. Inf. Op. to Galloway, August 21, 2008. If the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology (*e.g.*, a television screen outside the meeting room) may be appropriate. *See Kennedy v. St. Johns River Water Management District,* No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), *per curiam affirmed,* 84 So. 3d 331 (Fla. 5th DCA 2011) (even though not all members of the public were able to enter the meeting room, board did not violate the Sunshine Law when it held a meeting at the board's usual meeting place and in the largest available room; the court noted, however, that the board set up a computer with external speakers so that those who were not able to enter the meeting room could view and hear the proceedings).

**3. Minutes**

**a. Scope of minutes requirement**

Section 286.011(2), F.S., requires that minutes of a meeting of a public board or commission be promptly recorded and open to public inspection. Workshop meetings are not exempted from this requirement. AGOs 08-65 and 74-62. *And see Lozman v. City of Riviera Beach,* No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed,* 46 So. 3d 573 (Fla. 4th DCA 2010) (minutes required for city council's agenda review meetings).

Because the term "promptly" is not defined in the statute, it "should be construed in its plain and ordinary sense." Inf. Op. to Board of Trustees, January 27, 2009. The informal advisory opinion notes that Webster's New Universal Unabridged Dictionary (2003) defines



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"prompt" as done, performed, delivered, etc., at once or without delay.

Draft minutes of a board meeting may be circulated to individual board members for corrections and studying prior to approval by the board, so long as any changes, corrections, or deletions are discussed and adopted during the public meeting when the board adopts the minutes. AGOs 02-51 and 74-294. *Cf.* Inf. Op. to Stebbins, December 1, 2015 (vote to approve minutes constitutes official action of a board; no authority to exempt a vote to approve minutes from quorum requirements).

The minutes are public records when the person responsible for preparing the minutes has performed his or her duty even though they have not yet been sent to the board members or officially approved by the board. AGO 91-26. *And see Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (city violated both the language and the purpose of s. 286.011[2] by denying public access to its minutes until after approval).

Section 286.011, F.S., does not specify who is responsible for taking the minutes of public meetings. This appears to be a procedural matter which the individual boards or commissions must resolve. Inf. Op. to Baldwin, December 5, 1990.

**b. Content of minutes**

The term "minutes" as used in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly a verbatim transcript is not required. AGO 82-47. *And see State v. Adams,* No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992) (no violation of Sunshine Law where minutes failed to reflect brief discussion concerning a proposed inspection trip). *Cf.* s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

**c. Tape recording or Internet archive as minutes**

The Sunshine Law does not require that public boards and commissions tape record their meetings. *See* AGO 86-21. However, other statutes may require that certain proceedings be recorded. *See Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla.1st DCA 2017) (statute mandating that a "complete recording" be made of portions of a closed negotiation team meeting requires more than an agenda and meeting notes). *Cf.* AGO 10-42 (where statute requires that all closed proceedings of child abuse death review committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

However, while a board is authorized to tape record the proceedings if it chooses to do so, the Sunshine Law also requires written minutes. AGO 75-45. Similarly, while a board may archive the full text of all workshop discussions conducted on the Internet, written minutes of the workshops must also be prepared and promptly recorded. AGO 08-65.

Moreover, the tape recordings are public records and their retention is governed by schedules established by the Division of Library and Information Services of the Department of State in accordance with s. 257.36(6), F.S. AGO 86-21. *Accord* AGO 86-93 (tape recordings of school board meetings are subject to Public Records Act even though written minutes are required to be prepared and made available to the public).

**d. Use of transcript as minutes**

Although a written transcript is not required, a board may use a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

**4. Notice requirements**



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**a. Reasonable notice required**

A vital element of the Sunshine Law is the requirement that boards subject to the law provide "reasonable notice" of all meetings. *See* s. 286.011(1), F.S. Even before the statutory amendment in 1995 expressly requiring notice, the courts had stated that in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. *See Hough v. Stembridge,* 278 So. 2d 288, 291 (Fla. 3d DCA 1973); *Yarbrough v. Young,* 462 So. 2d 515, 517 (Fla. 1st DCA 1985).

Reasonable public notice is required for all meetings subject to the Sunshine Law and is required even though a quorum is not present. AGO 90-56. *And see Baynard v. City of Chiefland,* Florida, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003) (reasonable notice required even if subject of meeting is "relatively unimportant"). Notice is required even though meetings of the board are "of general knowledge" and are not conducted in a closed door manner. *TSI Southeast, Inc. v. Royals,* 588 So. 2d 309, 310 (Fla. 1st DCA 1991). "Governmental bodies who hold unnoticed meetings do so at their peril." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

The Sunshine Law does not define the term "reasonable notice," and "[f]ew cases address the question of what is reasonable notice." *See Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018). In *Transparency*, the court referenced AGO 73-170, which concluded that the type of notice given depends on the purpose for the notice, the character of the event about which the notice is given, and the nature of the rights to be affected. "Where there is no specific legislative directive as to what constitutes reasonable notice as a matter of law, we agree with the Attorney General that it is a fact specific inquiry." *Transparency*, at 787.

Therefore, the type of notice is variable and depends upon the facts of the situation and the board involved. In each case, an agency must give notice at such time and in such a manner as to enable the media and the general public to attend the meeting. AGOs 04-44, 80-78 and 73-170. *And see Rhea v. City of Gainesville,* 574 So. 2d 221, 222 (Fla. 1st DCA 1991) (purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wish). *Cf. Lyon v. Lake County,* 765 So. 2d 785, 790 (Fla. 5th DCA 2000) (where county attorney provided citizen with "personal due notice" of a committee meeting and its function, it would be "unjust to reward" the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee). *See also Suncam, Inc. v. Worrall,* No. CI97-3385 (Fla. 9th Cir. Ct. May 9, 1997) (Sunshine Law requires notice to the general public; agency not required to provide "individual notice" to company that wished to be informed when certain meetings were going to occur).

While the Attorney General's Office cannot specify the type of notice which must be given in all cases, the following notice guidelines are suggested:

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
2. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose, *e.g.*, for cities, in city hall, and on the agency's website, if there is one.
3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. *See Yarbrough v. Young,* 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly



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effective in providing notice of upcoming meetings.

The notice procedures set forth above should be considered as suggestions which will vary depending upon the circumstances of each particular situation. *See* AGO 73-170 ("If the purpose for notice is kept in mind, together with the character of the event about which notice is to be given and the nature of the rights to be affected, the essential requirements for notice in that situation will suggest themselves"). *See also* AGOs 00-08, 94-62 and 90-56. An individual challenging the adequacy of a meeting notice is not required "to allege and prove that some member of the public was not afforded an opportunity to attend the meeting because notice was not adequate," because this "is not an element of a cause of action for a Sunshine Law violation." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 787 (Fla. 4th DCA 2018).

Thus, in *Rhea v. City of Gainesville*, 574 So. 2d 221 (Fla. 1st DCA 1991), the court held that a complaint alleging that members of the local news media were contacted about a special meeting of the city commission one and one-half hours before the meeting stated a sufficient cause of action that the Sunshine Law had been violated. *Compare News and Sun-Sentinel Company v. Cox,* 702 F. Supp. 891 (S.D. Fla. 1988) (no Sunshine Law violation occurred when on March 31, a "general notice" of a city commission meeting scheduled for April 5 was posted on the bulletin board outside city hall); and *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), *per curiam affirmed*, 79 So. 3d 36 (Fla. 4th DCA 2012) (no violation of Sunshine Law where notice of special meeting held on Monday, September 15 was posted at city hall and faxed to the media on Friday, September 12 and members of the public [including the media] attended the meeting).

The determination as to who will actually prepare the notice or agenda is essentially "an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by . . . charters and ordinances." *Hough*, 278 So. 2d at 291.

**b. Notice requirements when meeting adjourned to a later date**

If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. AGO 90-56.

**c. Notice relating to record needed for appellate review**

Section 286.0105, F.S., requires:

> Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

This statute applies to every "board, commission, or agency of this state." *See* AGO 19-14 (Education Practices Commission, established in s. 1012.79, F.S., is a "commission" for purposes of s. 286.0105, F.S.)

The notice requirement in s. 286.0105, F.S., "is imposed at each occasion where notice of a meeting or hearing is required and is to be included in the notice to be given to the public of such meeting." *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), quoting from AGO 89-82. *See also Everglades Law Center, Inc. v. South*



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*Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that with the adoption of s. 286.0105, F.S., "the legislature understood the importance of a verbatim record for appellate review of government board decisions ."

**d. Paid advertising requirements and additional notice provisions imposed by other statutes, codes, or ordinances**

While the Sunshine Law requires only that *reasonable* public notice be given, a public agency may be subject to additional notice requirements imposed by other statutes, charters or codes. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Mattimore, February 6, 1996.

For example, while the Sunshine Law does not mandate that an agency use a paid advertisement to provide public notice of a meeting, other statutes may specify publication requirements for certain actions. *See Yarbrough v. Young,* 462 So. 2d 515, 517n.1 (Fla. 1st DCA 1985) (Sunshine Law does not require city council to give notice "by paid advertisements" of its intent to take action regarding utilities system improvements, although the Legislature "has required such notice for certain subjects," *e.g.,* 166.041[3][c], F.S.). *See also* s. 189.015(1), F.S. (notice requirements for meetings of the governing bodies of special districts); and s. 1001.372(2)(c), F.S. (school board meetings).

Similarly, a board or commission subject to Ch. 120, F.S., the Administrative Procedure Act, must comply with the notice and publication requirements of that act. *See, e.g.,* s. 120.525, F.S. Those requirements, however, are imposed by Ch. 120, F.S., not s. 286.011, F.S., although the notice of a board or commission meeting published pursuant to Ch. 120, F.S., also satisfies the notice requirements of s. 286.011, F.S. *Florida Parole and Probation Commission v. Baranko,* 407 So. 2d 1086 (Fla. 1st DCA 1982).

**5. Public comment**

Prior to the adoption of s. 286.0114, F.S. (2013), Florida courts had determined that s. 286.011, F.S., provides a right to attend public meetings, but does not provide a right to be heard. *See Herrin v. City of Deltona,* 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase "open to the public" as used in s. 286.011, F.S., means that "meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings"). *See also Keesler v. Community Maritime Park Associates, Inc.,* 32 So. 3d 659 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010).

However, as the court observed in *Herrin*, s. 286.0114(2), F.S., now mandates that "[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission." The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity "occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action." Section 286.0114(2), F.S.

The terms "proposition" or "official action" are not defined in the statute, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. Inf. Op. to Jacquot, April 25, 2014. "In light of the purpose of the statute to allow public participation during the decisionmaking process on a proposition, it should be liberally construed to facilitate that purpose." *Id.*

Section 286.0114(3), F.S., states that the public's "opportunity to be heard" does not apply to:

1. An official act that must be taken to deal with an emergency situation affecting the public



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health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from s. 286.011; or
4. A meeting during which the board or commission is acting in a quasi-judicial capacity. *See* AGO 17-01 (s. 286.0114, F.S., does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board).

The statute does not prohibit a board or commission from "maintaining orderly conduct or proper decorum in a public meeting." Section 286.0114(2), F.S. In addition, the opportunity to be heard is "subject to rules or policies adopted by the board or commission" as provided in s. 286.0114(4), F.S. These rules or policies are limited to those that:

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;
2. Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
3. Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
4. Designate a specified period of time for public comment.

If a board or commission adopts such rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the statute. Section 286.0114(5), F.S. *And see Jones v. Heyman,* 888 F.2d 1328, 1333 (11th Cir. 1989) (mayor's actions in attempting to confine the speaker to the agenda item in the city commission meeting and having the speaker removed when the speaker appeared to become disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's First Amendment rights); and *City of Miami v. Airbnb, Inc.*, 260 So. 3d 478, 483-484 (Fla. 3d DCA 2018)( temporary injunction prohibiting city from requiring speakers at public hearings to give their names and addresses was overbroad). *Cf. Lozman v. City of Riviera Beach, Fla.*, 138 S.Ct. 1945 (2018), in which the U.S. Supreme Court held that the existence of probable cause for a speaker's arrest for failure to follow the city council's rules of procedure did not bar the speaker's First Amendment retaliation claim.

A circuit court is authorized to issue injunctions for the purpose of enforcing s. 286.0114, F.S. Section 286.0114(6), F.S. However, an action taken by a board or commission which is found to be in violation of that statute is not void as a result of the violation. Section 286.0114(8), F.S.

**6. Restrictions on public attendance**

**a. Cameras and tape recorders**

A board or commission may adopt reasonable rules and policies which ensure the orderly conduct of a public meeting and require orderly behavior on the part of those persons attending a public meeting. A board, however, may not ban the use of nondisruptive recording devices. *Pinellas County School Board v. Suncam, Inc.,* 829 So. 2d 989 (Fla. 2d DCA 2002) (school board's ban on unobtrusive videotaping invalid). *Accord* AGO 91-28. *And see* AGO 77-122 (silent nondisruptive tape recording of district meeting permissible).

The Legislature in Ch. 934, F.S., appears to implicitly recognize the public's right to silently record public meetings. AGO 91-28. Chapter 934, F.S., the Security of Communications Act, regulates the interception of oral communications. Section 934.02(2), F.S., however, defines



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"[o]ral communication" to specifically exclude "any public oral communication uttered at a public meeting . . . ." *See also* Inf. Op. to Gerstein, July 16, 1976, stating that public officials may not complain that they are secretly being recorded during public meetings in violation of s. 934.03, F.S.

**b. Exclusion of certain members of the public**

The term "open to the public" as used in the Sunshine Law means open to *all* persons who choose to attend. AGO 99-53. *Cf. Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa,* 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

Thus the court in *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1,* 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), ruled that a procurement committee violated the Sunshine Law by requesting that bidders voluntarily excuse themselves from each other's presentations. *See now* s. 286.0113(2), F.S., providing an exemption from the Sunshine Law for any portion of a meeting at which a vendor makes an oral presentation or answers questions as part of a competitive solicitation, and requiring a complete recording of the exempt portion of the meeting.

Staff of a public agency clearly are members of the public as well as employees of the agency; they cannot, therefore, be excluded from public meetings. AGO 79-01. Section 286.011, F.S., however, does not preclude the reasonable application of ordinary personnel policies, for example, the requirement that annual leave be used to attend meetings, provided that such policies do not frustrate or subvert the purpose of the Sunshine Law. *Id.*

Although not directly addressing the open meetings laws, courts of other states have ruled that in the absence of a compelling governmental interest, agencies may not single out and exclude a particular news organization or reporter from press conferences. *See, e.g., Times-Picayune Publishing Corporation v. Lee,* 15 Media L. Rep. 1713 (E.D. La. 1988); *Borreca v. Fasi,* 369 F. Supp. 906 (D. Hawaii 1974); *Quad-City Community News Service, Inc. v. Jebens,* 334 F. Supp. 8 (S.D. Iowa 1971); and *Southwestern Newspapers Corporation v. Curtis,* 584 S.W.2d 362 (Tex. Ct. App. 1979).

**c. Inaudible discussions**

A school district advisory committee violated the Sunshine Law when it conducted "breakout sessions" where the members discussed committee business at two separate tables which meant that members at one table could not hear what was being discussed at the other table and members of the public could not hear what was being discussed at the sessions. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018). *And see* AGO 71-159 (cautioning against discussions of public business which are audible only to "a select few" who are at the table with board members). *Cf. Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012) (two members of a civil service board violated the Sunshine Law when they held a private discussion concerning a pending employment appeal during a recess of a board meeting).

**7. Time and length of meeting**

In *Greenbarg v. Metropolitan Dade County Board of County Commissioners,* 618 So. 2d 760 (Fla. 3d DCA 1993), the court held that there was "no impropriety" when a county commission continued to meet until the "early morning hours."

**8. Use of codes or preassigned numbers in order to avoid identifying individuals**

Section 286.011, F.S., requires that meetings of public boards or commissions be "open to the public at all times . . . ." *See Neu v. Miami Herald Publishing Company,* 462 So. 2d 821,



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823 (Fla. 1985), disapproving a procedure permitting representatives of the media to attend a city council meeting provided that they agreed to "respect the confidentiality" of certain matters: "Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories."

The use of preassigned numbers or codes at public meetings to avoid identifying the names of applicants violates s. 286.011, F.S., because "to permit discussions of applicants for the position of a municipal department head by a preassigned number or other coded identification in order to keep the public from knowing the identities of such applicants and to exclude the public from the appointive or selection process would clearly frustrate or defeat the purpose of the Sunshine Law." AGO 77-48. *Accord* AGO 76-240 (Sunshine Law prohibits the use of coded symbols at a public meeting in order to avoid revealing the names of applicants for the position of city manager). *And see News-Press Publishing Company v. Wisher,* 345 So. 2d 646, 648 (Fla. 1977) ("public policy of this state as expressed in the public records law and the open meetings statute eliminate any notion that the commission was free to conduct the county's personnel business by pseudonyms or cloaked references").

**9. Voting**

**a. Abstention**

Section 286.012, F.S., provides:

> A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting . . . and a vote *shall* be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, or s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is or appears to be a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice. (e.s.)

A member of a state, county, or municipal board who is present at a meeting is thus prohibited from abstaining from voting except as authorized in s. 286.012, F.S. *See* AGO 02-40 (s. 286.012, F.S., applies to advisory board appointed by a county commission). *Cf.* Inf. Op. to Dickens, August 10, 2006 (nothing in the language of s. 286.012 indicates that a member who temporarily absents himself or herself from the dais [but is still present in the meeting room] during a vote should be recorded as an affirmative vote).

Failure of a member to vote, however, does not invalidate the entire proceedings. *City of Hallandale v. Rayel Corporation,* 313 So. 2d 113 (Fla. 4th DCA 1975), *cause dismissed sua sponte,* 322 So. 2d 915 (Fla. 1975) (to rule otherwise would permit any member to frustrate official action merely by refusing to participate). *And see* Inf. Op. to Dickens, *supra* (failure of a member to vote does not render a voted matter invalid if a quorum is present and the required number of affirmative votes have been cast by the voting members).

Section 286.012, F.S., applies *only* to state, county, and municipal boards. AGO 04-21.



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Special district boards are not subject to its provisions and may adopt their own rules regarding abstention, subject to s. 112.3143, F.S. AGOs 04-21, 85-78 and 78-11.

Questions as to what constitutes a conflict of interest and when board members are prohibited from voting under the above statutes should be referred to the Florida Commission on Ethics.

**b. Proxy votes**

In the absence of statutory authority, proxy voting by board members is not allowed. AGO 78-117.

**c. Roll call vote**

While s. 286.012, F.S., requires that each member present cast a vote either for or against the proposal under consideration by the public board or commission, it is not necessary that a roll call vote of the members present and voting be taken so that each member's specific vote on each subject is recorded. The intent of the statute is that all members present cast a vote and that the minutes so reflect that by either recording a vote *or* counting a vote for each member. *Ruff v. School Board of Collier County,* 426 So. 2d 1015 (Fla. 2d DCA 1983) (roll call vote so as to *record* the individual vote of each such member is not necessary). *Cf.* s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

**d. Written or secret ballot**

A secret ballot violates the Sunshine Law. *See* AGO 73-264 (members of a personnel board may not vote by secret ballot during a hearing concerning a public employee). *Accord* AGOs 72-326 and 71-32 (board may not use secret ballots to elect the chair and other officers of the board).

However, board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act. *See* AGO 73-344.

In addition, because the Sunshine Law expressly requires that public meetings be open to the public "at all times," after the ballots are marked, the person who tallies the votes should announce the names of the persons who voted and their votes. For example, a judge found that a board violated the Sunshine Law when the board members' individual votes for each applicant were not announced at the public meeting. According to the court, "[t]he fact that the ballots are preserved as public records available for public inspection does not satisfy the requirement of openness." *Schweickert v. Citrus County Port Authority,* No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013). *See also* AGO 71-32 (if at any time during a public meeting, the proceedings become "covert, secret or not wholly exposed to the view and hearing of the public," that portion of the meeting is not "open to the public at all times").

**E. STATUTORY EXEMPTIONS**

**1. Creation and review of exemptions**

Article I, s. 24(b), Fla. Const., requires that all meetings of a collegial public body of the executive branch of state government or of local government, at which official acts are to be taken or at which the public business of such body is to be transacted or discussed, be open and noticed to the public. All laws in effect on July 1, 1993, that limit access to meetings remain in force until they are repealed. Article I, s. 24(d), Fla. Const.

The Legislature is authorized to provide by general law passed by two-thirds vote of each house for the exemption of meetings, provided such law states with specificity the public necessity justifying the exemption and is no broader than necessary to accomplish the stated purpose of



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the law. Article I, s. 24(c), Fla. Const. *See* s. 119.011(8), F.S., defining the term "exemption" to include a provision of general law which provides that a "specified . . . meeting, or portion thereof, is not subject to the access requirements" in s. 286.011, F.S., or Art. I, s. 24, Fla. Const. *And see Halifax Hospital Medical Center v. News-Journal Corporation,* 724 So. 2d 567 (Fla. 1999) (open meetings exemption for certain hospital board meetings unconstitutional because it did not meet the constitutional standard of specificity as to stated public necessity and limited breadth to accomplish that purpose). *Compare Baker County Press, Inc. v. Baker County Medical Services,* Inc., 870 So. 2d 189, 195 (Fla. 1st DCA 2004), upholding a more recent public meetings exemption because "the constitutional concerns expressed by the Florida Supreme Court in *Halifax*" were met due to a more specific legislative justification accompanied by adequate findings to support the breadth of the exemption.

Section 119.15, F.S., the Open Government Sunset Review Act, provides for legislative review of exemptions from the open government laws. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S. The two-thirds vote requirement for enactment of exemptions set forth in Art. I, s. 24(c), Fla. Const., applies to re-adoption of exemptions as well as initial creation of exemptions. AGO 03-18.

**2. Exemptions are narrowly construed**

As a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose, while exemptions should be narrowly construed. *See, e.g., Board of Public Instruction of Broward County v. Doran,* 224 So. 2d 693 (Fla. 1969); *Wood v. Marston,* 442 So. 2d 934 (Fla. 1983). *And see Turner v. Wainwright,* 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980) (rejecting a board's argument that a legislative requirement that certain board meetings must be open to the public implies that the board could meet privately to discuss other matters); and *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), rejecting an agency's argument that a statute providing an exemption for "[a]ny portion of team meeting at which negotiation strategies are discussed" covered the entirety of any meeting at which negotiation strategies were discussed.

The courts have recognized that the Sunshine Law should be construed so as to frustrate all evasive devices. *City of Miami Beach v. Berns,* 245 So. 2d 38 (Fla. 1971); *Blackford v. School Board of Orange County,* 375 So. 2d 578 (Fla. 5th DCA 1979); *Wolfson v. State,* 344 So. 2d 611 (Fla. 2d DCA 1977). As the Florida Supreme Court stated in *Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260, 264 (Fla. 1973):

> Various boards and agencies have obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist. Even though their intentions may be sincere, such boards and agencies should not be allowed to circumvent the plain provisions of the statute. The benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to circumvent the plain provisions of the statute by devious ways in the hope that the judiciary will read some exception into the law.

If a board member is unable to determine whether a meeting is subject to the Sunshine Law, he or she should either leave the meeting or ensure that the meeting complies with the Sunshine Law. *See City of Miami Beach v. Berns, supra* at 41; *Town of Palm Beach v. Gradison,* 296 So. 2d 473, 477 (Fla. 1974) ("The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.").



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### 3. Effect of statutory exemptions

#### a. Notice requirements

If a statute exempts meetings from the requirements of s. 286.011, F.S., the meetings are also exempt from the notice provisions in that statute that would otherwise apply. AGO 93-86. *Accord* AGO 07-28.

#### b. Attendance at closed meetings

In some cases, a statutory exemption specifies the persons who are permitted to attend a closed session. For example, s. 286.011(8), F.S., establishing an open meetings exemption for certain discussions pertaining to pending litigation, provides that only the entity, the entity's attorney, the entity's chief administrative officer, and a court reporter may attend the closed meeting. *See* AGO 01-10 (clerk of court not authorized to attend).

However, where an exemption for certain public hospital board meetings relating to a "written strategic plan" did not specify who may attend (other than a court reporter), the Attorney General's Office recommended that the board "strictly limit attendance to only those individuals who are essential to the purpose of the meeting, *i.e.*, to discuss, receive a report on, modify, or approve a strategic plan, in order to avoid what the courts might consider to be a disclosure to the public." AGO 07-28. *And see* AGO 06-34 (members of a local advocacy council, who are attending a closed session of the statewide advocacy council during the discussion of one of the local council's cases, may not remain in the closed session when the statewide advocacy council is considering cases from other advocacy councils which are unrelated to the local advocacy council's cases).

#### c. Disclosure of matters discussed at closed meeting

In a 2014 informal opinion, the Attorney General's Office considered whether the unauthorized disclosure by a council member of information discussed during a closed "shade meeting" held pursuant to s. 286.011(8), F.S., would violate the Sunshine Law or have other legal consequences. The opinion concluded that the prohibitions and penalties for violation of the Sunshine Law that are set forth in s. 286.011(3), F.S., appear to be directed only at persons who attend closed meetings that should have been open to the public. *See* Inf. Op. to Pritt, November 26, 2014. Accordingly, the Attorney General's Office was unable to conclude that unauthorized disclosure of matters disclosed at a valid closed session would violate the Sunshine Law. *Id.* However, other statutory provisions, such as ss. 112.313(8), 112.51, or 839.26, F.S., relating to disclosure of privileged information could apply to this situation. *Id. And see* AGO 03-09 (exemption for collective bargaining strategy sessions in s. 447.605[1], F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure).

### 4. Special act exemptions

Prior to July 1, 1993, exemptions from the Sunshine Law could be created by special act. Article I, s. 24, Fla. Const., however, now limits the Legislature's ability to enact an exemption from the constitutional right of access to open meetings established thereunder. While exemptions in effect on July 1, 1993, remain in force until repealed, the Constitution requires that exemptions enacted after that date must be by general law. Such law must state with specificity the public necessity for the exemption and be no broader than necessary to accomplish that stated purpose.

## F. REMEDIES AND PENALTIES

### 1. Criminal penalties

A *knowing* violation of the Sunshine Law is a misdemeanor of the second degree. Section 286.011(3)(b), F.S. *See Carlson v. Florida Department of Revenue*, 227 So. 3d 1261, 1263 (Fla. 1st DCA 2017), declaring that the Sunshine Law is "serious business," because "there is criminal



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liability for officials who knowingly disregard it."

A person convicted of a second degree misdemeanor may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to $500. Sections 775.082(4)(b) and 775.083(1)(e), F.S. The criminal penalties apply to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. AGO 01-84 (school advisory council members).

Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3)(c), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business while violations occurring within the state may be prosecuted in that county. Section 910.16, F.S.

**2. Removal from office**

When a method for removal from office is not otherwise provided by the Florida Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his or her official duties. Section 112.52(1), F.S. If convicted, the officer may be removed from office by executive order of the Governor. Section 112.52(3), F.S. A person who pleads guilty or nolo contendere or who is found guilty is, for purposes of s. 112.52, F.S., deemed to have been convicted, notwithstanding the suspension of sentence or the withholding of adjudication. *Id. Cf.* s. 112.51, F.S. (municipal officers) and Art. IV, s. 7, Fla. Const. (state and county officers).

**3. Noncriminal infractions**

Section 286.011(3)(a), F.S., imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. The state attorney may pursue such actions on behalf of the state. *State v. Foster,* 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). *Accord* AGO 91-38. *Cf. State v. Foster,* 13 F.L.W. Supp. 385a (Fla. 17th Cir. Ct. January 25, 2006) (no right to jury trial is triggered when an individual faces a noncriminal violation of the Sunshine Law).

If a nonprofit corporation is subject to the Sunshine Law, its board of directors constitute "public officers" for purposes of s. 286.011(3)(a), F.S. AGO 98-21. *See Goosby v. State,* No. GF05-(001122-001130,001135)-BA (Fla. 10th Cir. Ct. December 22, 2006), *cert. denied,* No. 2D07-281 (Fla. 2d DCA May 25, 2007) (members of the Polk County Opportunity Council, which had assumed and exercised a delegated governmental function, were "public officers" for purposes of the Sunshine Law and subject to the imposition of the noncriminal infraction fine). *Compare, State v. Dorworth,* No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), *affirmed,* No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

**4. Attorney's fees**

Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S. *See Indian River County Hospital District v. Indian River Memorial Hospital, Inc.,* 766 So. 2d 233, 235 (Fla. 4th DCA 2000), concluding that the trial court erred by failing to assess attorney's fees against a nonprofit hospital corporation found to have violated the Sunshine Law. *And see* s. 286.011(5), F.S., authorizing the assessment of attorney fees if a board appeals an order finding the board in violation of the Sunshine Law and the order is affirmed.



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While s. 286.011(4), F.S., authorizes an award of appellate fees if a person successfully appeals a trial court order denying access, the statute "does not supersede the appellate rules, nor does it authorize the trial court to make an initial award of appellate attorney's fees." *School Board of Alachua County v. Rhea,* 661 So. 2d 331 (Fla. 1st DCA 1995), *review denied,* 670 So. 2d 939, 332 (Fla. 1996). Thus, a person prevailing on appeal must file an appropriate motion in the appellate court in order to receive appellate attorney's fees. *Id.* If a board appeals an order finding the board in violation of the Sunshine Law, and the order is affirmed, "the court shall assess a reasonable attorney's fee for the appeal" against the board. Section 286.011(5), F.S.

Attorney's fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney. Section 286.011(4) and (5), F.S.

If a member of a board or commission charged with a violation of s. 286.011, F.S., is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her reasonable attorney's fees. Section 286.011(7), F.S. *Cf.* AGO 86-35, stating that this subsection does not authorize the reimbursement of attorney's fees incurred during an investigation of alleged sunshine violations when no formal charges were filed, although common law principles may permit such reimbursement.

Reasonable attorney's fees may be assessed against the individual filing an action to enforce the provisions of s. 286.011, F.S., if the court finds that it was filed in bad faith or was frivolous. Section 286.011(4), F.S. The fact that a plaintiff may be unable to prove that a secret meeting took place, however, does not necessarily mean that attorney's fees will be assessed. *See Bland v. Jackson County,* 514 So. 2d 1115, 1116 (Fla. 1st DCA 1987), concluding that although the plaintiff was unable to prove that a meeting in violation of the Sunshine Law took place, the evidence showed that the county commission unanimously voted on the issue in an open public meeting without identifying what they were voting on and without any discussion and under these circumstances an inference might reasonably be drawn that the commissioners had no need to discuss the action being taken because they had already discussed and decided the issue before the public meeting.

**5. Civil actions for injunctive or declaratory relief**

Section 286.011(2), F.S., states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. *See Allen v. United Faculty of Miami-Dade College,* 197 So. 3d 604 (Fla. 3rd DCA 2016) (Public Employees Relations Commission [PERC] properly dismissed unfair labor practice charge alleging a violation of the Sunshine Law, as s. 286.011, F.S., is enforceable only by the courts, not by PERC).

While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the mere showing that the law has been violated constitutes "irreparable public injury." *Town of Palm Beach v. Gradison,* 296 So. 2d 473 (Fla. 1974); and *Times Publishing Company v. Williams,* 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company,* 462 So. 2d 821 (Fla. 1985). The plaintiff's burden is to "establish by the greater weight of the evidence" that a meeting which should have been held in the sunshine took place on the date alleged. *Lyon v. Lake County,* 765 So. 2d 785, 789 (Fla. 5th DCA 2000).

A complaint for injunctive relief must allege by name or sufficient description the identity of the public official with whom the defendant public official has violated the Sunshine Law. *Deerfield Beach Publishing, Inc. v. Robb,* 530 So. 2d 510 (Fla. 4th DCA 1988). *And see Forehand v. School Board of Gulf County, Florida,* 600 So. 2d 1187 (Fla. 1st DCA 1992) (plaintiff was not denied a fair and impartial hearing because the board only briefly deliberated in public before a vote was taken as there was no evidence that the board had privately deliberated on this issue); and *Law and Information Services v. City of Riviera Beach,* 670 So. 2d 1014 (Fla. 4th DCA



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1996) (patent speculation, absent any allegation that a nonpublic meeting in fact occurred, is insufficient to state a cause of action).

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law based upon a finding that the law was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *See Board of Public Instruction of Broward County v. Doran,* 224 So. 2d 693, 699-700 (Fla. 1969), *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995), and *Citizens for Sunshine, Inc. v. Martin County School Board,* 125 So. 3d 184 (Fla. 4th DCA 2013). *See also Wood v. Marston,* 442 So. 2d 934 (Fla. 1983) (trial court's permanent injunction affirmed). *Compare Leach-Wells v. City of Bradenton,* 734 So. 2d 1168, 1170n. 1 (Fla. 2d DCA 1999), in which the court noted that had a citizen appealed the trial court's denial of her motion for temporary injunction based on a selection committee's alleged violation of the Sunshine Law, the appellate court "would have had the opportunity to review this matter before the project was completed and to direct that the City be enjoined from entering into a final contract with the developer until after such time as the ranking of the proposals could be accomplished in compliance with the Sunshine Law."

The future conduct must be "specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, supra,* quoting from *Board of Public Instruction v. Doran,* 224 So. 2d 693, 699 (Fla. 1969). *And see Lozman v. City of Riviera Beach,* No. 502007CA007552XXXXMB (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed,* 46 So. 3d 573 (Fla. 4th DCA 2010) (injunctive relief against future violations of city to record minutes of certain meetings appropriate in light of city's past conduct and consistent refusal to record such minutes even after being advised to do so by the city attorney and because the city "has continuously taken the legal position that local governments are not required by the Sunshine Law to record minutes").

Declaratory relief is not appropriate where no present dispute exists but where governmental agencies merely seek judicial advice different from that advanced by the Attorney General and the state attorney or an injunctive restraint on the prosecutorial discretion of the state attorney. *Askew v. City of Ocala,* 348 So. 2d 308 (Fla. 1977).

**6. Validity of action taken in violation of the Sunshine Law and subsequent corrective action**

Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void ab initio. *Town of Palm Beach v. Gradison,* 296 So. 2d 473 (Fla. 1974). *Accord Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010), noting that "where officials have violated section 286.011, the official action is void ab initio." *See Silver Express Company v. District Board of Lower Tribunal Trustees,* 691 So. 2d 1099 (Fla. 3d DCA 1997) (selection committee rankings resulting from a meeting held in violation of the Sunshine Law are void ab initio and agency enjoined from entering into contract based on such rankings); *TSI Southeast, Inc. v. Royals,* 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under s. 286.011, F.S.); *Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (by failing to open its minutes to public inspection and copying in a timely and reasonable manner, prejudice is presumed and therefore city's approval of minutes is null and void ab initio); and *Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014), (upholding trial court ruling that voided an agreement reached after closed-door mediation sessions which resulted in changes to pension benefits of city employees in certain unions). *Compare* s. 286.0114(8), F.S. (an action taken by a board or commission which is found



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to be in violation of s. 286.0114, F.S. [providing a right to be heard on a proposition before a state or local board or commission] "is not void as a result of that violation").

Similarly, a circuit judge found that where two members of civil service board held a private discussion about a pending case during a recess, the board's subsequent findings in the case were "null and void" and the city must reconvene the board and hear the evidence de novo. *Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012). *And see Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa,* 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

A violation need not be "clandestine" in order for a contract to be invalidated because "the principle that a Sunshine Law violation renders void a resulting official action does not depend upon a finding of intent to violate the law or resulting prejudice." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995). *But see Killearn Properties, Inc. v. City of Tallahassee,* 366 So. 2d 172 (Fla. 1st DCA 1979), *cert. denied,* 378 So. 2d 343 (Fla. 1979) (city which had received benefits under contract was estopped from claiming contract invalid as having been entered into in violation of the Sunshine Law).

Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County,* 398 So. 2d 427, 429 (Fla. 1981). *Accord Bruckner v. City of Dania Beach,* 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine violations "can be cured by independent, final action completely in the Sunshine"). *And see Monroe County v. Pigeon Key Historical Park,* Inc., 647 So. 2d 857, 861 (Fla. 3d DCA 1994) (adoption of the open government constitutional amendment, Art. I, s. 24, Fla. Const., did not overrule the *Tolar* "standard of remediation"). *Cf. Board of County Commissioners of Sarasota County v. Webber,* 658 So. 2d 1069 (Fla. 2d DCA 1995) (no evidence suggesting that board members met in secret during a recess to reconsider and deny a variance and then perfunctorily ratified this decision at the public hearing held a few minutes later); *B.M.Z. Corporation v. City of Oakland Park,* 415 So. 2d 735 (Fla. 4th DCA 1982) (where no evidence that any decision was made in private, subsequent formal action in sunshine was not merely perfunctory ratification of secret decisions or ceremonial acceptance of secret actions).

Thus, in a case involving the validity of a lease approved by a board of county commissioners after an advisory committee held two unnoticed meetings regarding the lease, a court held that the Sunshine Law violations were cured when the board of county commissioners held open public hearings after the unnoticed meetings, an effort was made to make available to the public the minutes of the unnoticed meetings, the board approved a lease that was markedly different from that recommended by the advisory committee, and most of the lease negotiations were conducted after the advisory committee had concluded its work. *Monroe County v. Pigeon Key Historical Park, Inc.,* 647 So. 2d 857, 860-861 (Fla. 3d DCA 1994).

Similarly, a school board remedied an inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a redistricting plan. *Finch v. Seminole County School Board,* 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008). *And see Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755 (Fla. 2010) (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by subsequent public meetings). *Jackson v. City of Tallahassee*, 265 So. 3d 736 (Fla. 1st DCA 2019) (public city commission meeting to fill a vacancy on the commission, which included a full discussion of the appointment, candidate presentations, more than an hour of public comment, and numerous speakers, cured any purported violation that may have



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occurred during the application process). *Cf. Anderson v. City of St. Pete Beach,* 161 So. 3d 548, 553-554 (Fla. 2d DCA 2014), noting that "even when an illicit action is 'cured' it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine."

It must be emphasized, however, that only a full open hearing will cure the defect; a violation of the Sunshine Law will not be cured by a perfunctory ratification of the action taken outside of the sunshine. *Spillis Candela & Partners, Inc. v. Centrust Savings Bank,* 535 So. 2d 694 (Fla. 3d DCA 1988). *See also Anderson v. City of St. Pete Beach,* 161 So. 3d at 553 (city failed to cure Sunshine Law violation since it merely perfunctorily ratified in public session what had already been decided in closed meetings).

For example, in *Zorc v. City of Vero Beach,* 722 So. 2d 891, 903 (Fla. 4th DCA 1998), *review denied,* 735 So. 2d 1284 (Fla. 1999), the Fourth District explained why a subsequent city council meeting did not cure the council's prior violation of the Sunshine Law:

> It is evident from the record that the meeting was not a full reexamination of the issues, but rather, was merely the perfunctory acceptance of the City's prior decision. This was not a full, open public hearing convened for the purpose of enabling the public to express its views and participate in the decision-making process. Instead, this was merely a Council meeting which was then opened to the public for comment at the City's request. There was no significant discussion of the issues or a discourse as to the language sought to be included. The City Councilmen were provided with transcripts of the hearings, but none reviewed the language previously approved, and the Council subsequently voted to deny reconsideration of the wording.

More recently, the Fourth District reversed an order granting summary judgment in favor of a city which claimed that a special meeting cured an alleged Sunshine Law violation arising from approval of a separation agreement for the departing city manager. The court observed that the entire proceeding lasted less than 15 minutes and "no one mentioned the terms of the agreement, nor did they discuss at length the reasons for the termination." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 786 (Fla. 4th DCA 2018). According to the court, "[t]he meeting may be more perfunctory . . . than the meeting in *Zorc." Id. And see Gateway Southeast Properties, Inc. v. Town of Medley,* 14 F.L.W. Supp. 20a (Fla. 11th Cir. Ct. October 24, 2006) (subsequent public meeting did not cure the defects of earlier closed meeting where no evidence was presented and no questions asked or discussion pursued by council members at subsequent open meeting); *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018) (minutes of school board meeting did not go into enough depth to carry the school district's burden of proving a cure of an advisory committee's violation of the Sunshine Law; the violation can be remedied only when all matters previously considered by the advisory committee are brought by independent action into the sunshine). *Cf.* AGO 12-31 (audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity; the committee may not, therefore, ratify a defective request for proposals which was created and issued by the county's financial officer contrary to the requirements of the law).

Moreover, an appellate court warned that while subsequent public board meetings may have "cured" a Sunshine Law violation, "if a pattern of Sunshine Law violations existed before this violation, then perhaps we may have found that any subsequent school board actions were merely 'perfunctory ratification[s] of secret actions and decisions.'" *Citizens for Sunshine, Inc. v. Martin County School Board,* 125 So. 3d 184, 189 (Fla. 4th DCA 2013). *See Bert Fish Foundation v. Southeast Volusia Hospital District,* No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011) (series of public meetings did not "cure" Sunshine Law violations that resulted from 21 closed



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door meetings over 16 months; "[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late").

**7. Damages**

The only remedies provided for in the Sunshine Law are a declaration of the wrongful action as void and reasonable attorney fees. *Dascott v. Palm Beach County,* 988 So. 2d 47 (Fla. 4th DCA 2008), *review denied,* 6 So. 3d 51 (Fla. 2009) (equitable recovery of back pay not authorized for employment termination conducted in violation of Sunshine Law).

## PART II

## PUBLIC RECORDS

### A. SCOPE OF THE PUBLIC RECORDS ACT

Florida's Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge. Access to public records has been described as a "cornerstone of our political culture." *In re Report & Recommendations of Judicial Mgmt. Council of Fla. on Privacy & Elec. Access to Court Records,* 832 So. 2d 712, 713 (Fla. 2002).

Section 119.011(2), F.S., defines "agency" to include:

> any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

A right of access to records is also recognized in Art. I, s. 24, Fla. Const., which applies to virtually all state and local governmental entities, including the legislative, executive and judicial branches of government. The only exceptions are those established by law or by the Constitution.

Section 119.011(12), F.S., defines "public records" to include:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company,* 372 So. 2d 420 (Fla. 1979). Exemption summaries are found in Appendix D.

The term "public record" is not limited to traditional written documents. As the statutory definition states, "tapes, photographs, films, sound recordings, data processing software, or



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other material, regardless of the physical form, characteristics, or means of transmission" can all constitute public records. *And see National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010) ("public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form"). *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records because in order to constitute a "public record" for purposes of Ch. 119, "the record itself must be susceptible of some form of copying . . . .").

Clearly, as technology changes the means by which agencies communicate, manage, and store information, public records will take on increasingly different forms. Yet, the comprehensive scope of the term "public records" will continue to make the information open to public inspection unless exempted by law.

Article I, s. 24, Fla. Const., establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted pursuant to Art. I, s. 24, Fla. Const., or specifically made confidential by the Constitution. *See State ex rel. Clayton v. Board of Regents,* 635 So. 2d 937 (Fla. 1994) ("[O]ur Constitution requires that public officials must conduct public business in the open and that public records must be made available to all members of the public."); and *Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851, 855 (Fla. 1st DCA 2013) ("A citizen's access to public records is a fundamental constitutional right in Florida"). The complete text of Art. I, s. 24, Fla. Const., the Public Records and Meetings Amendment, may be found in Appendix A.

## B. WHAT ENTITIES ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:

### 1. Advisory boards

The definition of "agency" for purposes of Ch. 119, F.S., is not limited to governmental entities. A "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency" is also subject to the requirements of the Public Records Act. *See also* Art. I, s. 24(a), Fla. Const., providing that the constitutional right of access to public records extends to "any public body, officer, or employee of the state, *or persons acting on their behalf* . . . ." (e.s.)

Thus, the Attorney General's Office has concluded that the records of an employee advisory committee, established pursuant to special law to make recommendations to a public hospital authority, are subject to Ch. 119, F.S., and Art. I, s. 24(a), Fla. Const. AGO 96-32. *And see* Inf. Op. to Nicoletti, November 18, 1987, stating that the Loxahatchee Council of Governments, Inc., formed by eleven public agencies to study and make recommendations on local governmental issues was an "agency" for purposes of Ch. 119, F.S.

### 2. Private organizations

A more complex question is presented when a private corporation or entity provides services for, or receives funds from, a governmental body. The term "agency," as used in the Public Records Act, includes private entities "acting on behalf of any public agency." Section 119.011(2), F.S. The Florida Supreme Court has stated that this broad definition of "agency" ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.,* 596 So. 2d 1029 (Fla. 1992). *Cf. Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.,* 718 So. 2d 227, 229n.4 (Fla. 3d DCA 1998) (private company operating state university bookstores is an "agency" as defined in s. 119.011[2], F.S., "[n]otwithstanding the language in its contract with the universities that



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purports to deny any agency relationship"); and *Schwartzman v. Merritt Island Volunteer Fire Department,* 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied,* 358 So. 2d 132 (Fla. 1978) (private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an "agency" for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

While the mere act of contracting with, or receiving public funds from, a public agency is not sufficient to subject a private entity to Ch.119, F.S., the following discussion considers when the statute has been held applicable to private entities.

**a. Private entities created pursuant to law or by public agencies**

The fact that a private entity is incorporated as a nonprofit corporation is not dispositive as to its status under the Public Records Act, but rather the issue is whether the entity is "acting on behalf of" a public agency. The Attorney General's Office has issued numerous opinions advising that if a private entity is created by law or by a public agency, it is subject to Ch. 119 disclosure requirements. The following are some examples of such entities: Pace Property Finance Authority, Inc., created as a Florida nonprofit corporation by Santa Rosa County to provide assistance in the funding and administration of certain governmental programs, AGO 94-34; South Florida Fair and Palm Beach County Expositions, Inc., created pursuant to Ch. 616, F.S., AGO 95-17; rural health networks established as nonprofit legal entities to plan and deliver health care services on a cooperative basis pursuant to s. 381.0406, F.S., Inf. Op. to Ellis, March 4, 1994. *And see* s. 20.41(8), F.S., providing that area agencies on aging, described as "nongovernmental, independent, not-for-profit corporations" are "subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings."

**b. Private entities contracting with public agencies or receiving public funds**

There is no single factor which is controlling on the question of when a private corporation, not otherwise connected with government, becomes subject to the Public Records Act. However, the courts have held that the mere act of contracting with a public agency is not dispositive. *See, e.g., News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra* (private corporation does not act "on behalf of" a public agency merely by entering into a contract to provide architectural services to the agency); *Parsons & Whittemore, Inc. v. Metropolitan Dade County,* 429 So. 2d 343 (Fla. 3d DCA 1983); *Stanfield v. Salvation Army,* 695 So. 2d 501, 503 (Fla. 5th DCA 1997) (contract with county to provide services does not in and of itself subject the organization to Ch. 119 disclosure requirements). *And see Weekly Planet, Inc. v. Hillsborough County Aviation Authority,* 829 So. 2d 970 (Fla. 2d DCA 2002) (fact that private development is located on land the developer leased from a governmental agency does not transform the leases between the developer and other private entities into public records).

Similarly, the receipt of public funds, standing alone, is not dispositive of the organization's status for purposes of Ch. 119, F.S. *See Sarasota Herald-Tribune Company v. Community Health Corporation, Inc.,* 582 So. 2d 730 (Fla. 2d DCA 1991) (mere provision of public funds to the private organization is not an important factor in this analysis, although the provision of a substantial share of the capitalization of the organization is important); and *Times Publishing Company v. Acton,* No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (attorneys retained by individual commissioners in a criminal matter were not "acting on behalf of" a public agency for purposes of Ch. 119, F.S., even though county commission subsequently voted to pay the legal expenses in accordance with a county policy providing for reimbursement of legal expenses to officers successfully defending charges filed against them arising out of the performance of their official duties). *Cf.* Inf. Op. to Cowin, November 14, 1997 (fact that nonprofit medical center is built on property owned by the city would not in and of itself be determinative of whether the medical center's meetings and records are subject to open government requirements).



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The courts have relied on "two general sets of circumstances" in determining when a private entity is "acting on behalf of" a public agency and must therefore produce its records under Ch. 119, F.S. *See Weekly Planet, Inc. v. Hillsborough County Aviation Authority,* 829 So. 2d 970, 974 (Fla. 2d DCA 2002); *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.,* 988 So. 2d 17 (Fla. 1st DCA 2008), *review denied,* 4 So. 3d 1220 (Fla. 2009); and *County of Volusia v. Emergency Communications Network, Inc.,* 39 So. 3d 1280 (Fla. 5th DCA 2010). Each of these circumstances or tests is discussed below.

**(1) "Totality of factors" test**

Recognizing that "the statute provides no clear criteria for determining when a private entity is 'acting on behalf of' a public agency," the Supreme Court adopted a "totality of factors" test to serve as a guide for evaluating whether a private entity is subject to Ch. 119, F.S. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.,* 596 So. 2d 1029, 1031 (Fla. 1992). *See New York Times Company v. PHH Mental Health Services, Inc.,* 616 So. 2d 27 (Fla. 1993); *Wells v. Aramark Food Service Corporation,* 888 So. 2d 134 (Fla. 4th DCA 2004).

Accordingly, when a public agency contracts with a private entity to provide goods or services to facilitate the agency's performance of its duties, the courts have considered the "totality of factors" in determining whether there is a significant level of involvement by the public agency so as to subject the private entity to Ch. 119, F.S. *See Weekly Planet, Inc. v. Hillsborough County Aviation Authority, supra* at 974.

The factors listed by the Supreme Court in *Schwab* include the following:

1) the level of public funding;
2) commingling of funds;
3) whether the activity was conducted on publicly owned property;
4) whether the contracted services are an integral part of the public agency's chosen decision-making process;
5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
6) the extent of the public agency's involvement with, regulation of, or control over the private entity;
7) whether the private entity was created by the public agency;
8) whether the public agency has a substantial financial interest in the private entity;
9) for whose benefit the private entity is functioning.

Thus, the application of the totality of factors test will often require an analysis of the statutes, ordinances or charter provisions which establish the function to be performed by the private entity as well as the contract, lease or other document between the governmental entity and the private organization.

For example, in AGO 92-37 the Attorney General's Office, following a review of the Articles of Incorporation and other materials relating to the establishment and functions of the Tampa Bay Performing Arts Center, Inc., concluded that the center was an "agency" subject to the Public Records Act, noting that the center was governed by a board of trustees composed of a number of city and county officials or appointees of the mayor, utilized city property in carrying out its goals to benefit the public, and performed a governmental function. *See also* AGOs 97-27 (documents created or received by the Florida International Museum after the date of its purchase/lease/option agreement with city subject to disclosure under Ch. 119, F.S.), 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., subject to Public Records Act), and 11-01. *Cf.* Inf. Op. to Goodman, September 26, 2016 (in the absence of a request from the chief



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of the volunteer fire department or additional information making the relationship between the town and the fire department clearer, the Attorney General's Office may not respond formally to town attorney's inquiry about the application of the Public Records Act to the town's volunteer fire department).

By contrast, an architectural firm providing architectural services associated with construction of school facilities was found to be outside the scope of the Public Records Act. *See News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra. See also Sipkema v. Reedy Creek Improvement District,* No. CI96114 (Fla. 9th Cir. Ct. May 29, 1996), *per curiam affirmed,* 697 So. 2d 880 (Fla. 5th DCA 1997), *review dismissed,* 699 So. 2d 1375 (Fla. 1997) (private security force providing services on Walt Disney World property, including traffic control and accident reports is not subject to Ch. 119); *Trepal v. State,* 704 So. 2d 498 (Fla. 1997) (soft drink company cooperating with law enforcement in the testing of soda bottles during an investigation of a poisoning death is outside the scope of the Public Records Act); and Inf. Op. to Michelson, January 27, 1992 (telephone company supplying cellular phone services to city officials for city business is not an "agency" since the company was not created by the city, did not perform a city function, and did not receive city funding except in payment for services rendered). *Cf. National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 182 (Fla. 1st DCA 2017) (trial court conclusion that insurance rating organization violated Public Records Act was erroneous because the court "expressly declined to apply the *Schwab* factors" prior to making this determination).

**(2) Delegation of function test**

While the mere act of contracting with a public agency is not sufficient to bring a private entity within the scope of the Public Records Act, there is a difference between a party contracting with a public agency to provide services to the agency and a contracting party which provides services in place of the public body. *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.,* 695 So. 2d 418 (Fla. 5th DCA 1997), *approved,* 729 So. 2d 373 (Fla. 1999). *And see Weekly Planet, Inc. v. Hillsborough County Aviation Authority,* 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

For example, if a private entity contracts to relieve the public body from the operation of a public obligation such as operating a jail or providing fire protection, the open government laws apply. *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.,* 695 So. 2d 418 (Fla. 5th DCA 1997), *approved,* 729 So. 2d 373 (Fla. 1999). *And see Dade Aviation Consultants v. Knight Ridder, Inc.,* 800 So. 2d 302, 307 (Fla. 3d DCA 2001) (consortium of private businesses created to manage a massive renovation of an airport was an "agency" for purposes of the Public Records Act because it was created for and had no purpose other than to work on the airport contract; "when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Act, as the government would be"); and *Fox v. News-Press Publishing Company,* 545 So. 2d 941, 943 (Fla. 2d DCA 1989) (upholding a trial court decision finding that business records maintained by a towing company in connection with its contract with a city were public records, as the company "was clearly performing what is essentially a governmental function, i.e., the removal of wrecked and abandoned automobiles from public streets and property"). *See also* AGOs 08-66 (Public Records Act applies to not-for-profit corporation contracting with city to carry out affordable housing responsibilities and screening applicant files for such housing); 99-53 (while not generally applicable to homeowners associations, Ch. 119 applies to an architectural review committee of a homeowners association which is required by county ordinance to review and approve applications for county building permits as a prerequisite to consideration by the county building department); and 07-44 (property owners association, delegated performance of services otherwise performed by municipal services taxing unit, subject to Public Records Act when acting on behalf of the taxing unit). *Compare* AGO 87-44 (records of a private nonprofit corporation pertaining to a fund established for improvements to city parks were not public records since the corporation raised and disbursed only private funds and had not been delegated any governmental responsibilities or functions).



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Thus, in *Stanfield v. Salvation Army,* 695 So. 2d 501 (Fla. 5th DCA 1997), the Fifth District recognized that the delegation of function test was the appropriate standard to use to determine that records generated by the Salvation Army in performing a contract to provide misdemeanor services for a county were subject to Ch. 119, F.S. As stated by the court: "Because we find the statutory and contractual delegation of governmental responsibility so compelling in this case, it is unnecessary to engage in the factor-by-factor analysis outlined in *Schwab*." *Stanfield,* 695 So. 2d at 503. *B & S Utilities v. Baskerville-Donovan Inc.,* 988 So. 2d. 17, 21 (Fla. 1st DCA 2008), citing to *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.,* 729 So. 2d 373 (Fla. 1999). In *Baskerville,* the court recognized that while the "totality of factors" test favored a private engineering firm's position that it was not an agency, "the fact that the City delegated its municipal engineering functions" to [the firm] "is *dispositive*." *Baskerville,* 988 So. 2d at 22. (e.s.)

The following are other examples of private businesses and nonprofit entities which were delegated a governmental function and thus determined to be subject to the Public Records Act in carrying out that function:

> **Corrections company operating county jail:** *Times Publishing Company v. Corrections Corporation of America,* No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *affirmed per curiam,* 611 So. 2d 532 (Fla. 5th DCA 1993). *And see Prison Health Services, Inc. v. Lakeland Ledger Publishing Company,* 718 So. 2d 204 (Fla. 2d DCA 1998), *review denied,* 727 So. 2d 909 (Fla. 1999) (medical services).
>
> **Employment search firm:** *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.* 379 So. 2d 633 (Fla. 1980). *Accord* AGO 92-80 (materials made or received by recruitment company in the course of its contract with a public agency to seek applicants and make recommendations to the board regarding the selection of an executive director, subject to Ch. 119).
>
> **Humane society investigating animal abuse for county:** *Putnam County Humane Society, Inc. v. Woodward,* 740 So. 2d 1238 (Fla. 5th DCA 1999).

However, the "delegation of function" test should not be used unless there is a "clear, compelling, complete delegation of a governmental function" to the private entity. *Economic Development Commission v. Ellis,* 178 So. 3d 118, 123 (Fla. 5th DCA 2015). In *Ellis,* the Fifth District found that the trial judge should not have used the delegation test to determine whether a private economic development entity (EDC) under contract with the county to provide services was an "agency." The appellate court explained that the EDC was the county's "primary" but not its "sole" agency for economic development activity. *Id.* The county "continued to carry out economic development activities itself through its own paid county employees and in conjunction with other entities to the exclusion of EDC." *Id.* In other words, "EDC did not take over the county's role or completely assume the county's provision of economic development services." *Id.* Because "EDC provided services to, not in place of, the county," the trial judge should have applied the "totality of factors" test instead of the "delegation of function" test. *Id.*

**c. Private company delegated authority to keep certain records**

If a public agency has delegated its responsibility to maintain records necessary to perform its functions, such records have been deemed to be accessible to the public. *See, e.g., Harold v. Orange County,* 668 So. 2d 1010 (Fla. 5th DCA 1996) (where county hired a private company to be the construction manager on a county project and delegated to the company the responsibility of maintaining records necessary to show compliance with a "fairness in procurement ordinance," the company's records for this purpose were public records). *See also Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.,* 718 So. 2d 227 (Fla. 3d DCA 1998), *review denied,* 729 So. 2d 389 (Fla. 1999) (private company operating a campus bookstore pursuant to a



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contract with a state university is the custodian of public records made or received by the store in connection with university business).

**d. Subcontractors**

A circuit court has addressed whether a subcontractor may be subject to the Public Records Act if both the subcontractor and contractor have been delegated a public function. In *Multimedia Holdings Corporation v. CRSPE, Inc.,* No 03-3474-G (Fla. 20th Cir. Ct. December 3, 2003), the court required a consulting firm to disclose its timesheets and internal billing records generated pursuant to a subcontract with another firm (CRSPE) which had entered into a contract with a town to prepare a traffic study required by the Department of Transportation. Rejecting the subcontractor's argument that Ch. 119, F.S., did not apply to it because it was a subcontractor, not the contractor, the court found that the study was prepared and submitted jointly by both consultants; both firms had acted in place of the town in performing the tasks required by the department: "[T]he Public Records Act cannot be so easily circumvented simply by CRSPE delegating its responsibilities to yet another private entity."

**e. Other statutory provisions governing records of private entities**

**(1) Contract requirements**

Section 119.0701, F.S., mandates that all agency contracts for services must contain specific provisions requiring the contractor to comply with public records laws, including retention and public access requirements. The term "contractor" is defined to mean "an individual, partnership, corporation or business entity that enters into a contract for services with a public agency *and* is acting on behalf of the public agency as provided under s. 119.011(2), [F.S.]." Section 119.0701(1)(a), F.S. (e.s.). "Thus, based on the terms of section 119.0701(1)(a), Florida Statutes, the nature and scope of the services provided by a private contractor determine whether he or she is 'acting on behalf of' an agency and thus, would be subject to the requirements of the statute." AGO 14-06. For more information on when a private entity is determined to be "acting on behalf of" a public agency for purposes of s. 119.011(2), F.S., please refer to the preceding discussion on pages 58-62.

In addition, contracts entered into or amended after July 1, 2016, must contain a statement, in the form prescribed by the statute, providing the contact information for the public agency's custodian of public records in the event that the contractor has questions about its duty to provide public records relating to the contract. Section 119.0701(2)(a), F.S. A request for records for records relating to the contract must be made directly to the public agency. Section 119.0701(3)(a), F.S. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. *Id.* Sections 119.0701(3) and (4), F.S., establish consequences in the event of a contractor's noncompliance.

Section 287.058(1)(c), F.S., provides, with limited exceptions, that *every* procurement for contracted services by a *state* agency be evidenced by a written agreement containing a provision allowing unilateral cancellation by the agency for the contractor's refusal to allow public access to "all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt" from disclosure.

**(2) Legislative appropriation**

Section 11.45(3)(e), F.S., states that all records of a nongovernmental agency, corporation, or person with respect to the receipt and expenditure of an appropriation made by the Legislature to that entity "shall be public records and shall be treated in the same manner as other public records are under general law." *Cf.* AGO 96-43 (Astronauts Memorial Foundation, a nonprofit corporation, is subject to the Sunshine Law when performing those duties funded under the General Appropriations Act).



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**(3) Public funds used for dues**

Section 119.01(3), F.S., provides that if an agency spends public funds in payment of dues or membership contributions to a private entity, then the private entity's financial, business and membership records pertaining to the public agency are public records and subject to the provisions of s. 119.07, F.S.

**3. Judiciary**

**a. Public Records Act inapplicable to judicial records**

Relying on separation of powers principles, the courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S. *See, e.g., Times Publishing Company v. Ake,* 660 So. 2d 255 (Fla. 1995) (the judiciary, as a coequal branch of government, is not an "agency" subject to supervision or control by another coequal branch of government); *State v. Wooten*, 260 So. 3d 1060, 1069 (Fla. 4th DCA 2018) ("Access to judicial branch records is governed by the rules and decisions of the Florida Supreme Court, not Chapter 119, Florida Statutes."); and *Locke v. Hawkes,* 595 So. 2d 32 (Fla. 1992). *Cf.* s. 119.0714(1), F.S., stating that "[n]othing in this chapter shall be construed to exempt from [s. 119.07(1), F.S.] a public record that was made a part of a court file *and that is not specifically closed by order of court . . . .*" (e.s.) *And see Tampa Television, Inc. v. Dugger,* 559 So. 2d 397 (Fla. 1st DCA 1990) (Legislature has recognized the distinction between documents sealed under court order and those not so sealed, and has provided for disclosure of the latter only).

However, the Florida Supreme Court has expressly recognized that "both civil and criminal proceedings in Florida are public events" and that it will "adhere to the well established common law right of access to court proceedings and records." *Barron v. Florida Freedom Newspapers,* 531 So. 2d 113, 116 (Fla. 1988). *See also Russell v. Miami Herald Publishing Co.,* 570 So. 2d 979, 982 (Fla. 2d DCA 1990), in which the court stated: "[W]e recognize that the press has a general right to access of judicial records." *And see C.H.-C v. Miami Herald Publishing Co.*, 262 So. 3d 226 (Fla. 3d DCA 2018) (trial court did not abuse its discretion in finding that newspaper had proper interest in access to redacted transcript of judicial review dependency hearing involving minor children).

**b. Public access to and protection of judicial branch records, Fla. R. Jud. Admin. 2.420**

**(1) Scope of the rule**

Although the judiciary is not an "agency" for purposes of Ch. 119, F.S., there is a constitutional right of access to judicial records established by Art. I, s. 24, of the Florida Constitution. In accordance with this directive, access to records of the judicial branch is governed by Florida Rule of Judicial Administration 2.420 (formerly 2.051), entitled "Public Access to and Protection of Judicial Branch Records." *See* 2.420(a), Fla. R. Jud. Admin., providing that "[t]he public shall have access to all records of the judicial branch of government except as provided [in the rule]." *Cf. Morency v. State*, 223 So. 3d 439 (Fla. 5th DCA 2017), noting that "electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes or stenographic tapes of court proceedings" are included within the scope of the rule.

According to the Florida Supreme Court, rule 2.420 is "intended to reflect the judiciary's responsibility to perform both an administrative function and an adjudicatory function." *In re Amendments to the Florida Rules of Judicial Administration--Public Access to Judicial Records,* 608 So. 2d 472 (Fla. 1992). In its administrative role, the judiciary is a governmental entity expending public funds and employing government personnel. Thus, "records generated while courts are acting in an administrative capacity should be subject to the same standards that govern similar records of other branches of government." *Id.* at 472-473. *See also Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit,* 840 So. 2d 1008, 1016 (Fla. 2003) (when an individual complains to a chief circuit judge about judicial misconduct involving



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sexual harassment or sexually inappropriate behavior by a judge, the records made or received by the chief judge "constitute 'judicial records' subject to public disclosure absent an applicable exemption").

An online version of Fla. R. Jud. Admin. 2.420 is also available at: http://www.floridabar.org.

**(2) Confidential judicial records**

Rule 2.420(c)(1) through (6) contains a list of confidential and exempt judicial branch records. Examples include trial and appellate court memoranda, complaints alleging misconduct against judges and other court personnel until probable cause is established, periodic evaluations implemented solely to assist judges in improving their performance, information (other than names and qualifications) about persons seeking to serve as unpaid volunteers unless made public by the court based upon a showing of materiality or good cause, and copies of arrest and search warrants until executed or until law enforcement determines that execution cannot be made.

Rule 2.420(d)(1) provides that the clerk of court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of the rule. Subdivision (A) references "information described by any of the subdivisions (c)(1) through (c)(6)." Subdivision (B) contains a list of specific statutory exemptions. *And see* Fla. R. Jud. Admin. 2.420(d)(2)-(5) establishing procedures for filing material designated as confidential. *Cf.* s. 119.0714(2)(g), F.S., providing that the clerk of court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk.

Although Rule 2.420(c)(1)-(6) lists specific confidential and exempt records, subdivision (c)(8) of the rule provides a general exemption from disclosure for records deemed to be confidential by court rule, Florida Statutes, prior Florida case law, and by rules of the Judicial Qualifications Commission. *See State v. Buenoano,* 707 So. 2d 714, 718 (Fla. 1998). In addition, Fla. R. Jud. Admin. 2.420(c)(7) provides an exemption for "all records made confidential under the Florida and United States Constitutions and Florida and federal law."

Subdivision (c)(9) of rule 2.420 incorporates the holdings in *Barron v. Florida Freedom Newspapers,* 531 So. 2d 113 (Fla. 1988), and *Miami Herald Publishing Company v. Lewis,* 426 So. 2d 1 (Fla. 1982) by "establishing that confidentiality [of court records] may be required to protect the rights of defendants, litigants, or third parties; to further the administration of justice; or to otherwise promote a compelling governmental interest." *Commentary, In re Amendments to Rule of Judicial Administration 2.051.--Public Access to Judicial Records,* 651 So. 2d 1185, 1191 (Fla. 1995). The degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect these interests. Fla. R. Jud. Admin. 2.420(c)(9)(B). "The burden of proof . . . shall always be on the party seeking closure." *Barron, supra* at 118.

Procedures for judicial determinations of requests for confidentiality of court records and for obtaining access to confidential court records are referenced in rule 2.420(e)-(j). For example, rule 2.420(f)(3) states that "any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned 'Motion to Determine Confidentiality of Court Records.'" *See also* Fla. R. Jud. Admin. 2.425, governing the filing of sensitive personal information, and establishing categories of personal information that must not be filed or must be truncated or redacted before filing.

**(3) Procedures for accessing judicial branch records under rule 2.420**

"Requests and responses to requests for access to records under this rule shall be made in



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a reasonable manner." Fla. R. Jud. Admin. 2.420(m). Requests must be in writing and directed to the custodian. *Id. See Morris Publishing Group, LLC v. State,* 13 So. 3d 120 (Fla. 1st DCA 2009), in which the court denied a Florida newspaper's records request for an audio tape related to a shooting since the request was made orally instead of in writing as required by the rule. In a commentary to the decision incorporating the written request provision, the Court cautioned that the "writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing." *Commentary, In re Report of the Supreme Court Workgroup on Public Records,* 825 So. 2d 889, 898 (Fla. 2002).

A public records request "shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be disclosed." Fla. R. Jud. Admin. 2.420(m)(1).

The custodian "is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request." *Commentary, In re Report of the Supreme Court Workgroup on Public Records,* 825 So. 2d 889, 898 (Fla. 2002).

The custodian shall determine whether the requested records are subject to the rule, whether there are any exemptions, and the form in which the record is provided. Fla. R. Jud. Admin. 2.420(m)(2). If the request is denied, the custodian shall state in writing the basis for the denial. *Id.*

Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus, or other appropriate relief. Fla. R. Jud. Admin. 2.420(l). *See Jacobs Keeley, PLLC v. Chief Judge of the Seventeenth Judicial Circuit,* 169 So. 3d 192 (Fla. 4th DCA 2015). *And see C.H.-C v. Miami Herald Publishing Co.*, 262 So. 3d 226 (Fla. 3d DCA 2018) (trial court did not abuse its discretion in finding that newspaper had proper interest in access to redacted transcript of judicial review dependency hearing involving minor children).

**c. Discovery material**

The Florida Supreme Court has ruled that there is no First Amendment right of access to unfiled discovery materials. *Palm Beach Newspapers v. Burk,* 504 So. 2d 378 (Fla. 1987) (discovery in criminal proceedings); and *Miami Herald Publishing Company v. Gridley,* 510 So. 2d 884 (Fla. 1987), *cert. denied,* 108 S.Ct. 1224 (1988) (civil discovery). *Cf. Lewis v. State,* 958 So. 2d 1027 (Fla. 5th DCA 2007) (*Burk* applies to a request for unfiled depositions made during an ongoing, active criminal prosecution but does not extend to a defendant's request for deposition transcripts after the conviction becomes final; such transcripts must be produced in accordance with Ch. 119, F.S.). *And see SCI Funeral Services of Florida, Inc. v. Light,* 811 So. 2d 796, 798 (Fla. 4th DCA 2002), noting that even though there is no constitutional right of access to prefiled discovery materials, "it does not necessarily follow that there is a constitutional right to *prevent* access to discovery." (emphasis supplied by the court).

Even though unfiled discovery material is not accessible under the First Amendment, it may be open to inspection under Ch. 119, F.S., if the document is a public record which is otherwise subject to disclosure under that law. *See, e.g., Tribune Company v. Public Records,* 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company,* 503 So. 2d 327 (Fla. 1987), in which the court reversed a trial judge's ruling limiting inspection of police records produced in discovery to those materials which were made part of an open court file because "this conflicts with the express provisions of the Public Records Act." *And see Smithwick v. Television 12 of Jacksonville, Inc.*, 730 So. 2d 795 (Fla. 1st DCA 1999) (trial court properly required defense counsel to return discovery documents once it realized that its initial order permitting removal of the documents from the court file had been entered in error because the requirements of rule 2.420 had not been met).



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Thus, in *Florida Freedom Newspapers, Inc. v. McCrary,* 520 So. 2d 32 (Fla. 1988), the Court noted that where pretrial discovery material developed for the prosecution of a criminal case had reached the status of a public record under Ch. 119, F.S., the material was subject to public inspection as required by that statute in the absence of a court order finding that release of the material would jeopardize the defendant's right to a fair trial. *See also Rameses, Inc. v. Demings,* 29 So. 3d 418 (Fla. 5th DCA 2010) (government not precluded from asserting applicable statutory exemptions to public records that have been disclosed during discovery to a criminal defendant). *And see Post-Newsweek Stations, Florida, Inc. v. Doe,* 612 So. 2d 549 (Fla. 1992) (public's statutory right of access to pretrial discovery information in a criminal case must be balanced against a nonparty's constitutional right to privacy).

**d. Florida Bar**

"Given that The Florida Bar is 'an official arm of the court,' see R. Regulating Fla. Bar, Introduction, [the Florida Supreme] Court has previously rejected the Legislature's power to regulate which Florida Bar files were subject to public records law . . . ." *The Florida Bar v. Committee,* 916 So. 2d 741, 745 (Fla. 2005). *See also The Florida Bar, In re Advisory Opinion Concerning the Applicability of Ch. 119, Florida Statutes,* 398 So. 2d 446, 448 (Fla. 1981) (Ch. 119, F.S., does not apply to unauthorized practice of law investigative files maintained by the Bar). *Cf. Florida Board of Bar Examiners Re: Amendments to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar,* 676 So. 2d 372 (Fla. 1996) (no merit to argument that under Art. I, s. 24, Fla. Const., all records in possession of Board of Bar Examiners should be open for inspection by applicant and the public).

**e. Judicial Qualifications Commission and judicial nominating commissions**

Proceedings by or before the Judicial Qualifications Commission are confidential until formal charges against a justice or judge are filed by the Commission with the clerk of the Florida Supreme Court; upon a finding of probable cause and the filing of formal charges with the clerk, the charges and all further proceedings before the Commission are public. *See* Art. V, s. 12(a)(4), Fla. Const; *Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit,* 840 So. 2d 1008 (Fla. 2003).

With regard to judicial nominating commissions, Art. V, s. 11(d), Fla. Const., provides that "[e]xcept for deliberations of the . . . commissions, the proceedings of the commissions and their records shall be open to the public." *See* Inf. Op. to Frost, November 4, 1987, concluding that correspondence between a member of a judicial nominating commission and persons wishing to obtain an application for a vacant seat on a District Court of Appeal is a public record subject to disclosure.

However, records pertaining to voting, including vote sheets, ballots, and ballot tally sheets "are clearly part of the deliberation process" and, therefore, are not subject to public disclosure. *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission,* 823 So. 2d 185, 192 (Fla. 1st DCA 2002). In addition, personal notes of individual commission members made during the deliberation process are not subject to disclosure because they are mere "precursors" of governmental records, and thus fall outside the definition of "public record." *Id., citing Shevin v. Byron, Harless, Schaffer, Reid and Associates Inc.,* 379 So. 2d 633 (Fla. 1980).

**f. Jury records**

**(1) Grand jury**

Proceedings before a grand jury are secret; therefore, records prepared for use of the grand jury during the regular performance of its duties are not subject to s. 119.07(1), F.S. *See Buchanan v. Miami Herald Publishing Company,* 206 So. 2d 465 (Fla. 3d DCA 1968), *modified*, 230 So. 2d 9 (Fla. 1969) (grand jury proceedings are "absolutely privileged"); and *In re Grand Jury, Fall Term 1986*, 528 So. 2d 51 (Fla. 2d DCA 1988), affirming a trial court order barring public disclosure of motions filed in accordance with s. 905.28, F.S., to repress or expunge stemming from a grand



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jury presentment not accompanied by a true bill or indictment. *See also* AGO 90-48 (as an integral part of the grand jury proceeding to secure witnesses, grand jury subpoenas would fall under the "absolute privilege" of the grand jury and not be subject to disclosure under Ch. 119, F.S.).

Thus, a letter written by a city official to the grand jury is not subject to public inspection. AGO 73-177. Similarly, a circuit court held that the list of grand jurors is confidential. *Wood v. Childers,* No. 13-CA-000877 (Fla. 1st Cir. Ct. April 16, 2013), *per curiam affirmed,* 130 So. 3d 1282 (Fla. 1st DCA 2014). *Accord* Inf. Op. to Alexander, September 8, 1995. However, the clerk of court is not authorized to redact the name of a grand jury foreperson or the acting foreperson from an indictment after it has been made public. AGO 99-09.

It is important to emphasize, however, that the exemption from disclosure for grand jury records does not apply to those records which were prepared by a public agency independent of a grand jury investigation. Thus, public records which are made or received by an agency in the performance of its official duties do not become confidential simply because they are subsequently viewed by the grand jury as part of its investigation. As the court stated in *In re Grand Jury Investigation, Spring Term 1988,* 543 So. 2d 757, 759 (Fla. 2d DCA 1989):

> Nor can we allow the grand jury to become a sanctuary for records which are otherwise accessible to the public. The mere fact that documents have been presented to a grand jury does not, in and of itself, cloak them in a permanent state of secrecy.

Accordingly, a state attorney and sheriff must provide public access to investigative records regarding a judge that were compiled independently of and prior to a grand jury's investigation of the judge. *In re Grand Jury Investigation, Spring Term 1988, supra. See also In re Subpoena To Testify Before Grand Jury,* 864 F.2d 1559 (11th Cir. 1989) (trial court's authority to protect grand jury process enabled court to prevent disclosure of materials prepared for grand jury proceedings; however, court not empowered to prohibit disclosure of documents assembled independent of grand jury proceedings).

There are a number of statutes which relate to secrecy of grand jury proceedings. *See* ss. 905.24-905.28, F.S., and s. 905.395, F.S. (statewide grand jury). *But see Butterworth v. Smith,* 110 S.Ct. 1376 (1990) (provisions of s. 905.27, F.S., which prohibit "a grand juror . . . reporter . . . or any other person" appearing before a grand jury from ever disclosing testimony before the grand jury except pursuant to a court order were unconstitutional insofar as they prohibit a grand jury witness from disclosing his own testimony after the term of the grand jury has ended).

**(2) Trial jury**

In *Kever v. Gilliam,* 886 So. 2d 263 (Fla. 1st DCA 2004), the appellate court ruled that the clerk of court was required to comply with appellant's public records request for names and addresses of trial court jurors empanelled in his trial. *Accord* AGO 05-61 (statute requiring Department of Highway Safety and Motor Vehicles to provide driver license information to courts for purposes of establishing jury selection lists does not operate to exempt from public disclosure jurors' names and addresses appearing on a jury list compiled by the clerk of court). *Cf. Sarasota Herald-Tribune v. State,* 916 So. 2d 904, 909 (Fla. 2d DCA 2005) (while "[t]here are unquestionably times when it might be necessary for a trial judge to impose media restrictions on the publication of juror information, . . ." trial court order prohibiting news media from publishing names and addresses of prospective or seated jurors in the high profile murder trial constituted a prior restraint on speech); and *WPTV-TV v. State,* 61 So. 3d 1191 (Fla. 5th DCA 2011) (given exceptional media coverage and public interest in upcoming criminal trial, trial court's decision to withhold location of jury selection until a time proximate to the start of the trial was not a material departure from essential requirements of law).

**g. Sunshine in Litigation Act**



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The Sunshine in Litigation Act, s. 69.081, F.S., provides, with limited exceptions, that no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or which has the purpose or effect of concealing any information which may be useful to members of the public in protecting themselves from injury which may result from a public hazard. *See State v. American Tobacco Company,* No. CL 95-1466-AH (Fla. 15th Cir. Ct. July 28, 1997) (upholding constitutionality of Sunshine in Litigation Act).

Additionally, s. 69.081(8), F.S., provides, subject to certain exceptions, that any portion of an agreement which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced. Settlement records must be maintained in compliance with Ch. 119, F.S. *See* Inf. Op. to Barry, June 24, 1998 (agency not authorized to enter into a settlement agreement authorizing the concealment of information relating to an adverse personnel decision from the remainder of a personnel file.

A governmental entity, except a municipality or county, settling a claim in tort which requires the expenditure of more than $5,000 in public funds, is required to provide notice pursuant to Ch. 50, F.S., of the settlement in the county in which the claim arose within 60 days of entering into the settlement. No notice is required if the settlement has been approved by a court of competent jurisdiction. Section 69.081(9), F.S.

**4. Legislature**

The Public Records Act does not apply to the legislative branch. *Locke v. Hawkes,* 595 So. 2d 32 (Fla. 1992) (definition of "agency" in the Public Records Act does not include the Legislature or its members). There is, however, a constitutional right of access to legislative records provided in Art. I, s. 24, Fla. Const., which provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body . . . ." This right of access specifically includes the legislative branch. Article I, s. 24(a), Fla. Const. The Legislature, however, may provide by general law for the exemption of records provided that such law must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the law. Article I, s. 24(c), Fla. Const. Each house of the Legislature is authorized to adopt rules governing the enforcement of this section for records of the legislative branch. *Id.* Any statutes providing limitations on access which were in effect on July 1, 1993, continue in force and apply to records of the legislative branch until repealed. Article I, s. 24(d), Fla. Const.

In accordance with Art. I, s. 24(c), Fla. Const., the Senate and House of Representatives have adopted rules relating to records of the legislative branch. These rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

In addition, s. 11.0431(2), F.S., lists legislative records which are exempt from inspection and copying. The text of s. 11.0431, F.S., is set forth in Appendix E. *See League of Women Voters v. Florida House of Representatives,* 132 So. 3d 135, 153 (Fla. 2013) ("We agree that the first issue to be decided is whether the draft [apportionment] plans fall within the scope of the public records exemption in section 11.0431[2][e], Florida Statutes [2012], and that this exemption should be strictly construed in favor of disclosure"). *And see* s. 11.26(1), F.S. (legislative employees are forbidden from revealing to anyone outside the area of their direct responsibility the contents or nature of any request for services made by any member of the Legislature except with the consent of the legislator making the request); and s. 15.07, F.S. (the journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon order of the Senate itself or some court of competent jurisdiction).

**5. Governor and Cabinet**

The Governor and Cabinet have duties which derive from both the Constitution and the



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Legislature. Because of separation of powers principles, the legislatively created Public Records Act does not apply to records gathered in the course of carrying out a specific duty or function which has been assigned to the Governor and Cabinet by the Constitution rather than by statute. *See* AGO 86-50, stating that materials collected by the former Parole and Probation Commission [now known as the Florida Commission on Offender Review] pursuant to direction of the Governor and Cabinet for pardons or other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to Ch. 119, F.S.

The Public Records Act, however, does apply to the Governor and Cabinet when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the "dominion and control" of the Legislature.

In addition, Art. I, s. 24, Fla. Const., establishes a constitutional right of access by providing that "every person" shall have a right of access to public records of the executive branch and of "each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution" except as otherwise provided in this section or specifically made confidential in the Constitution.

**6. Commissions created by the Constitution**

A board or commission created by the Constitution is not subject to Ch. 119, F.S., inspection requirements when such board or commission is carrying out its constitutionally prescribed duties. *Cf. Kanner v. Frumkes,* 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.); and AGO 77-65 (Ch. 120, F.S., is inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const., because the commission is authorized in that section to adopt its own rules of procedure).

Accordingly, the Public Records Act does not apply to the clemency investigative files and reports produced by the Florida Commission on Offender Review [formerly the Parole Commission] on behalf of the Governor and Cabinet relating to the granting of clemency; release of such materials is governed by the Rules of Executive Clemency adopted by the Governor and Cabinet, sitting as the clemency board. *Parole Commission v. Lockett,* 620 So. 2d 153 (Fla. 1993). *Accord Jennings v. State,* 626 So. 2d 1324 (Fla. 1993). *And see* AGO 86-50.

There is, however, a difference between the status of a commission created by the Constitution which exercises constitutional duties and a commission whose creation is merely authorized by the Constitution and whose duties are established by law. While the former is not subject to the Public Records Act, it has been held that a commission performing duties assigned to it by the Legislature must comply with the open government laws. *See Turner v. Wainwright,* 379 So. 2d 148 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission [now known as the Florida Commission on Offender Review] which Art. IV, s. 8(c), Fla. Const., recognizes may be created by law, is subject to s. 286.011, F.S., in carrying out its statutory duties and responsibilities relating to parole.

Moreover, Art. I, s. 24, Fla. Const., provides a constitutional right of access for public records of each branch of government, and "each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution." The only exceptions to the right of access are those records exempted pursuant to s. 24 or specifically made confidential by the Constitution. Article I, s. 24(a), Fla. Const. *See King v. State,* 840 So. 2d 1047 (Fla. 2003) (clemency records exempt pursuant to s. 14.28, F.S., providing that records made or received by any state entity pursuant to a Board of Executive Clemency investigation are not subject to public disclosure).



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## C. WHAT RECORDS ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:

This section discusses the application of the Public Records Act to various records made or received by agencies in the course of official business. Many, but not all of the statutory exemptions to disclosure for particular records or information are also referenced. For a more complete listing of statutory exemptions, please refer to Appendices C and D and the Index.

### 1. Adoption and birth records

Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records are considered to be confidential documents and exempt from public inspection; such records may be disclosed only as provided by law. Section 382.025(1), F.S.; AGO 74-70. *Cf.* s. 383.51, F.S. (the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S., is confidential).

Adoption records are also confidential and may not be disclosed except as provided in s. 63.162, F.S. *And see* s. 63.165(1), F.S. (state adoption registry); and s. 63.0541, F.S. (putative father registry).

An unadopted individual, however, has the right to obtain his or her birth records which include the names of the individual's parents from the hospital in which he or she was born. *Atwell v. Sacred Heart Hospital of Pensacola,* 520 So. 2d 30 (Fla. 1988).

### 2. Autopsy and death records

#### a. Autopsy reports

Autopsy reports made by a district medical examiner pursuant to Ch. 406, F.S., are public records and are open to the public for inspection in the absence of an exemption. AGO 78-23. *And see Bludworth v. Palm Beach Newspapers, Inc.,* 476 So. 2d 775, 777 (Fla. 4th DCA 1985), *review denied,* 488 So. 2d 67 (Fla. 1986), noting that a former statutory exemption precluding release of autopsy reports had been repealed. *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records).

Although autopsy reports are subject to Ch. 119, F.S., "[d]ocuments or records made confidential by statute do not lose such status upon receipt by the medical examiner." AGO 78-23. *See Church of Scientology Flag Service Org., Inc. v. Wood, supra* (predeath medical records in the possession of the medical examiner are not subject to public inspection).

In addition, statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may apply to an autopsy report. AGO 78-23. *See Williams v. City of Minneola,* 575 So. 2d 683 (Fla. 5th DCA), *review denied,* 589 So. 2d 289 (Fla. 1991), noting the application of the active criminal investigative information exemption to information contained in autopsy records.

#### b. Autopsy photographs and recordings

Section 406.135(2), F.S., provides that a photograph or video or audio recording of an autopsy held by a medical examiner is confidential and may not be released except as provided by court order or as otherwise authorized in the exemption. *See* AGOs 03-25 and 01-47, discussing the circumstances under which autopsy photographs and recordings may be viewed or copied. *And see* Inf. Op. to Lynn, July 25, 2007 (exemption applies to photographs and recordings taken or made by the medical examiner as a part of the autopsy process, including those taken before, during, and after the medical examiner performs the actual autopsy procedure). *Cf. Campus Communications, Inc. v. Earnhardt,* 821 So. 2d 388 (Fla. 5th DCA 2002), *review denied,* 848 So. 2d 1153 (Fla. 2003) (upholding trial court finding that newspaper failed to establish good cause for release of autopsy photographs of race car driver). *Compare Sarasota Herald-Tribune v. State,*



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924 So. 2d 8, 14 (Fla. 2d DCA 2005), *review denied,* 918 So. 2d 293 (Fla. 2005), *cert. dismissed*, 126 S. Ct. 1139 (2006), in which the district court reversed a trial court order that had barred the media from viewing autopsy photographs that were admitted into evidence in open court during a murder trial; according to the appellate court, s. 406.135, F.S., "does not render these *court exhibits* confidential." (e.s.)

**c. Photographs, video and audio recordings that depict or record the killing of a law enforcement officer or the killing of a victim of mass violence**

A photograph or video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1), F.S., and may not be disclosed except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information please refer to the discussion on page 121.

**d. Death certificates**

Information relating to cause of death in all death and fetal death records, and the parentage, marital status, and medical information of fetal death records are confidential and exempt from s. 119.07(1), F.S., except for health research purposes as approved by the Department of Health. Section 382.008(6), F.S. *And see* s. 28.2221(5)(a), F.S. (clerk of court not authorized to place certain records, including death certificates, on a publicly available Internet website); s. 382.008(8), F.S. (confidential information in nonviable birth certificates). *Cf. Department of Health v. Rehabilitation Center at Hollywood Hills, LLC*, 259 So. 3d 979, 982 (Fla. 1st DCA 2018), overturning the lower court's order holding the agency in contempt for failing to produce death certificates of all Floridians who died within a specified time period because, among other things, the final judgment "failed to take into account the confidential or exempt status of information in the death certificates it ordered the Department to produce").

Section 382.025(2)(a), F.S., provides for the Department of Heath to authorize the issuance of a certified copy of all or part of a death or fetal death certificate, excluding the portion that is confidential pursuant to s. 382.008, F.S., upon payment of the fee prescribed by that section. The statute also specifies those persons and governmental agencies authorized to receive a copy of a death certificate that includes the confidential portions. All portions of a death certificate cease to be exempt 50 years after the death. Section 382.025(2)(b), F.S.

**3. Child and vulnerable adult abuse and protection records**

**a. Department of Children and Families abuse records**

**(1) Confidentiality of abuse records**

Generally, reports of abused children or vulnerable adults which are received by the Department of Children and Families (DCF) are confidential and exempt from disclosure, except as expressly provided by statute. *See* ss. 39.202(1) and 415.107(1), F.S.

Thus, a union representative may not attend that portion of an investigatory interview between the DCF inspector general and an employee requiring the discussion of information taken from a child abuse investigation that is confidential under s. 39.202, F.S. AGO 99-42. *And see* s. 383.412(2)(b), F.S., providing that any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, or which reveals the identity of the surviving siblings, family members, or others living in the home of such deceased child is confidential and exempt from disclosure requirements. In addition, the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential. Section 383.412(2)(a), F.S.

All records and reports of the Child Protection Team of the Department of Health are



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confidential and exempt, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, DCF, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, by court order, or to health plan payors, limited to that information used for insurance reimbursement purposes. Section 39.202(6), F.S.

**(2) Release of abuse records**

Section 39.2021(1), F.S., authorizes any person or organization, including DCF, to petition the court to make public DCF records relating to its investigation into alleged abuse, neglect, exploitation or abandonment of a child. The court shall determine if good cause exists for public access to the records and is required to balance the best interest of the child and the interests of the child's siblings, together with the privacy rights of other persons identified in the reports against the public interest. *Id.*

This "balancing process" thus "requires the trial court to weigh the harm to the child against the benefit to the public that would potentially result from the disclosure of the records at issue." *In re Records of the Department of Children and Family Services,* 873 So. 2d 506, 513 (Fla. 2d DCA 2004). To perform this function, the trial court must conduct an in camera review because "[i]t is impossible to judge the potential impact of the disclosure of information contained in records without knowing what that information is." *Id.* at 514. *But see Department of Health and Rehabilitative Services v. Gainesville Sun Publishing Company,* 582 So. 2d 725 (Fla. 1st DCA 1991), holding that the trial court was not required to hold a hearing before finding good cause to release the department's records relating to a child abuse investigation, where shortly after the department's investigation, the individual who had been investigated killed the victim, the victim's family, and himself.

In cases involving serious bodily injury to a child, DCF may petition the court for immediate public release of records pertaining to the protective investigation. Section 39.2021(2), F.S. The court has 24 hours to determine if good cause exists for public release of the records. If no action is taken by the court in that time, DCF may, subject to specified exceptions, release summary information including a confirmation that an investigation has been conducted concerning the victim, the dates and a brief description of procedural activities undertaken in the investigation, and information concerning judicial proceedings. *Id.*

Similar procedures are established in Ch. 415, F.S., for access to DCF records relating to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. *See* s. 415.1071, F.S.

The petitioner seeking public access to the records must formally serve DCF with the petition. *Florida Department of Children and Families v. Sun-Sentinel,* 865 So. 2d 1278 (Fla. 2004). A "very narrow" exception to the home venue privilege applies when a petition is filed seeking to make DCF records public. *See Sun-Sentinel, supra,* at 1289, adopting the exception in cases "where a party petitions the court for an order to gain access to public records, and where the records sought are by law confidential and cannot be made public without a determination by the court, pursuant to the petition, that good cause exists for public access."

Section 39.202(2)(o), F.S., provides that access to child abuse records shall be granted to any person in the event of the child's death due to abuse, abandonment, or neglect. However, any information identifying the person reporting abuse, abandonment, or neglect, or any information that is otherwise made confidential or exempt by law shall not be released. *Id.* Section 415.107(3)(l), F.S., provides for similar release of records in the event of the death of a vulnerable adult. *And see* s. 39.202(4), F.S., authorizing DCF and the investigating law enforcement agency to release certain identifying information to the public in order to help locate or protect a missing child under investigation or supervision of the department or its contracted service providers.

In addition, "it is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and



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which are reported to the [DCF] central abuse hotline." Section 39.2022(1), F.S. Disclosure shall be posted on the DCF public website. *Id.* Section 39.2022(2), F.S., lists the information about the child which must be posted.

**b. Foster home, licensure and quality assurance records**

Records relating to licensure of foster homes, or assessing how the Department of Children and Families is carrying out its duties, including references to incidents of abuse, abandonment, or neglect, contained in such records, do not fall within the parameters of s. 39.202, F.S. AGO 01-54. Such reports are in the nature of quality assurance reports that do not substitute for the protective investigation of child abuse, abandonment, or neglect; to the extent that such incident reports reference an occurrence of abuse, abandonment, or neglect, identifying information that reveals the identity of the victim contained in the reference should be redacted. *Id. Cf.* s. 409.175(16), F.S., providing an exemption for certain personal information about licensed foster parents, foster parent applicants, and their families. *And see Boyles v. Mid-Florida Television Corp.,* 431 So. 2d 627, 637 (Fla. 5th DCA 1983), *approved,* 467 So. 2d 282 (Fla. 1985) (summary report compiled during a licensing investigation of a residential facility for developmentally disabled persons, subject to disclosure pursuant to statute [now found at s. 393.067(9), F.S.] providing for public access to inspection reports of such facilities).

**c. Guardians ad litem and court monitors**

Section 39.0132(4)(a)2., F.S., establishes confidentiality for specified information held by a guardian ad litem. *And see* s. 744.2104(2), F.S. (confidentiality of records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness); s. 744.1076(1)(b), F.S. (except as provided in the exemption, reports of court monitors or emergency court monitors which relate to the medical condition, financial affairs, or mental health of the ward are confidential); s. 744.2103 (2), F.S. (no disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law); and s. 744.3701, F.S. (court records relating to settlement of a ward or minor's claim).

**d. Status of abuse records held by law enforcement agencies**

For information regarding the status of abuse records held by law enforcement agencies in the course of a criminal investigation, please refer to the discussion in s. C. 15 relating to law enforcement records.

**4. Direct-support organizations**

Direct-support organizations established by or pursuant to law to support the efforts of public agencies have been found to be subject to the open government laws. *See* AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions must comply with open government laws), 11-01 (nonprofit corporation created by municipality and described as its "fundraising arm" subject to open government laws); and 05-27 (Sunshine Law applies to Florida College System institution [formerly community college] direct-support organization as defined in s. 1004.70, F.S.). *Cf.* s. 20.058, F.S., requiring that citizen support organizations or direct-support organizations created or authorized by law or executive order and created, approved, or administered by an agency must submit specified information to the agency which shall then post the information on the agency's website.

However, the Legislature has enacted exemptions for information identifying *donors* to certain direct-support organizations. For example, the identity of donors to a direct-support organization of a district school board, and all information identifying such donors and prospective donors, are confidential and exempt from the provisions of s. 119.07(1), F.S.; that anonymity is required to be maintained in the auditor's report. *See* s. 1001.453(4), F.S.



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More commonly, however, the statutory exemption applies only to the identity of donors who wish to remain anonymous. *See, e.g.,* s. 570.691(6), F.S. (identity of a donor or prospective donor to the direct-support organizations authorized to support programs in the Department of Agriculture and Consumer Services "who desires to remain anonymous and all information identifying such donor or prospective donor" is confidential). *Cf.* s. 265.7015, F.S. (if the donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt).

The identity of donors to a university direct-support organization who wish to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report of the organization. Section 1004.28(5)(a), F.S. Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel, all records of a university direct-support organization and any supplemental data requested by the Board of Governors, the Auditor General, board of trustees, and the Office of Program Policy Analysis and Government Accountability [OPPAGA] are confidential and exempt from s. 119.07(1), F.S. Section 1004.28(5)(b), F.S.

By contrast, s. 1004.70(6), F.S., provides that records of the Florida College System institution direct-support organizations other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and OPPAGA, are confidential and exempt from s. 119.07(1), F.S. *See Palm Beach Community College Foundation, Inc. v. WFTV,* 611 So. 2d 588 (Fla. 4th DCA 1993) (direct-support organization's expense records are public records subject to deletion of donor-identifying information).

For more information on exemptions for particular direct-support or citizen-support organizations, please consult Appendix D or the Index.

**5. Domestic violence and stalking records**

Information about clients received by the Department of Children and Families or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise, is confidential and exempt from disclosure except as provided by statute. Section 39.908, F.S. Information about the location of domestic violence centers and facilities is also confidential. *Id.*

A petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons. Section 741.30(3)(b), F.S. *And see* ss.784.046 (4) (b) and s. 784.0485(3)(b). In addition, a petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to a failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from disclosure. Section 119.0714(1)(k)1., F.S. Prior to July 1, 2017, the petition is exempt only upon request by an individual named in the petition as a respondent. Section 119.0714(1)(k)2., F.S. *And see* s. 119.0714(1)(k)3., F.S., providing confidentiality for information that can be used to identify the petitioner or respondent until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

A victim of domestic violence or aggravated stalking may file a written request, accompanied by official verification that a crime has occurred, to have his or her home or employment address, home or employment telephone number, or personal assets exempted from disclosure. Section 119.071(2)(j)1., F.S. For more information on this exemption, please refer to the discussion on pages 117-118. *And see* s. 741.313(7), F.S. (personal identifying information contained in records



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documenting an act of domestic violence or sexual violence that is submitted to an agency by an employee seeking to take leave under the requirements of s. 741.313, F.S., is confidential and exempt; a written request for leave submitted by an employee and an agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken). *See also* s. 787.03(6)(c), F.S. (current address and telephone number of the person taking the minor or incompetent person when fleeing from domestic violence and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03[6][b], F.S., are confidential and exempt from disclosure).

The addresses, telephone numbers, and social security numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence Program [Program] are exempt from disclosure, except as provided in the exemption. Section 741.465(1), F.S. A similar exemption is provided for the names, addresses, and telephone numbers of program participants contained in voter registration and voting records. Section 741.465(2), F.S. *And see* s. 741.4651, F.S. (names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from public disclosure requirements in the same manner that the names, addresses and telephone numbers of participants in the Program which are held by the Attorney General under s. 741.465, F.S, are exempt, provided that the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the procedures in ss. 741.401-741.409. F.S.).

Any information in a record created by a domestic violence fatality review team that reveals the identity of a domestic violence victim or the identity of the victim's children is confidential and exempt from disclosure. Section 741.3165, F.S.

**6. Drafts and notes**

There is no "unfinished business" exception to the public inspection and copying requirements of Ch. 119, F.S. As the Florida Supreme Court stated in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.,* 379 So. 2d 633, 640 (Fla. 1980), the term "public record" means "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." Such material is a "public record" regardless of whether it is in final form or the ultimate product of an agency. *Id.*

Thus, "[i]nteroffice memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business." 379 So. 2d at 640. *See also Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.,* 718 So. 2d 227, 229 (Fla. 3d DCA 1998) (book selection forms completed by state university instructors and furnished to campus bookstore "are made in connection with official business, for memorialization and communication purposes" and are public records); and *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010) (transcript and response prepared as part of NCAA disciplinary proceeding involving state university were public records because the "the purpose of the transcript was to perpetuate the information presented to the infractions committee" and the response "was designed to communicate information to the body that would hear the appeal within the NCAA"). *Compare Rogers v. Hood,* 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), *review denied,* 919 So. 2d 436 (Fla. 2005) (unused or unvoted Florida punch card ballots from 2000 election do not constitute public records because they do not "perpetuate, communicate, or formalize knowledge," but a ballot becomes a public record once it is voted because at that point "the voted ballot, as received by the supervisor of elections in a given county, has memorialized the act of voting").

Accordingly, any agency record, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary"



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or "working draft" or similar label. Examples of such materials include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.

In each of these cases, the fact that the records are part of a preliminary process does not remove them from the definition of "public record." When material falls within the statutory definition of "public record" in s. 119.011(12), F.S., and has been prepared to "perpetuate, communicate or formalize knowledge," the record is subject to disclosure even if the agency believes that release of the nonfinal product could be detrimental. *See, e.g., Gannett Corporation, Inc. v. Goldtrap,* 302 So. 2d 174 (Fla. 2d DCA 1974) (county's concern that premature disclosure of a report could be harmful to the county does not make the document confidential). As with other public records, only the Legislature has the authority to exempt preliminary or draft public records from disclosure. *Wait v. Florida Power & Light Company,* 372 So. 2d 420 (Fla. 1979). *See, e.g.,* s. 119.071(1)(d), F.S., providing a limited work product exemption for agency attorneys.

While the broad definition of the term "public record" ensures that the public's right of access includes preliminary and nonfinal records, the *Shevin* decision recognizes that not every record made or received in the course of official business is prepared to "perpetuate, communicate or formalize knowledge." Accordingly, preliminary drafts or notes prepared for the personal use of the writer may constitute mere "precursors" of public records *if* they are not intended to be the final evidence of the knowledge recorded. *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla.1980). *And see* the discussion of "attorney notes" on pages 127-128.

Thus, public employees' notes to themselves "*which are designed for their own personal use* in remembering certain things do not fall within the definition of 'public record.'" (e.s.) *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission,* 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *Accord Coleman v. Austin,* 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys' own personal use are not public records. *See also* AGO 10-55 (handwritten personal notes taken by city manager to assist in remembering matters discussed during manager's interviews of city employees are not public records "if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge"); and Inf. Op. to Trovato, June 2, 2009 (to the extent city commissioner has taken notes for his own personal use and such notes are not intended to perpetuate, communicate, or formalize knowledge, personal notes taken at a workshop or during a commission meeting would not be considered public records). *Compare Barfield v. City of Sarasota,* 21 F. L.W. Supp 874 (Fla. 12th Cir. Ct. May 5, 2014) (those portions of police officer's notes containing his research on homeless shelters became a public record when he made multiple references to them while answering questions during a presentation at a city commission meeting; however the unread portions of the notes did not become a public record because they were not disseminated).

The relevant test is whether the records have been prepared to "perpetuate, communicate, or formalize knowledge of some type." *See* AGO 05-23, stating that "it is only uncirculated materials that are not in and of themselves intended to serve as the final evidence of the knowledge to be recorded that fall outside of the definition of a public record." *Accord* AGOs 10-55 ("nonfinal documents need not be communicated to anyone in order to constitute a public record") and 04-15 (tape recordings of staff meetings made at the request of the executive director by a secretary for use in preparing minutes of the meeting are public records because "they are made at the request of the executive director as an independent record of the proceedings, and, unlike tapes or notes taken by a secretary as dictation, are intended to perpetuate the discussion at a staff meeting"). *See also* Inf. Op. to Yoder, November 10, 2014 (video recording of a school board meeting which was made at the direction of a school board member "appears to be a record intended to perpetuate the discussion at the meeting").



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For example, in *Miami Herald Media Co. v. Sarnoff,* 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official, summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form a part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting. *See also Grapski v. City of Alachua,* 31 So. 3d 193, 197 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (canvassing board minutes constitute "final work product of the [b]oard, not a preliminary draft or note"); *City of Pinellas Park, Florida v. Times Publishing Company,* No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) (rejecting city's argument that employee responses to survey are "notes" which are not subject to disclosure because "as to each of the employees, their responses were prepared in connection with their official agency business and they were 'intended to perpetuate, communicate, or formalize knowledge' that they had about their department"); and AGO 05-23 (handwritten notes taken by an assistant city labor attorney during her interviews with city personnel that were reviewed by the city's labor attorney, used to prepare a disciplinary action form, and then filed, constituted a public record).

**7. Education records**

**a. Charter schools**

Section 1002.33(16)(b), F.S., provides that charter schools are subject to the Public Records Act and the Sunshine Law. The open government laws apply regardless of whether the charter school operates as a public or private entity. AGO 98-48. The records and meetings of a not-for-profit corporation granted charter school status are subject to the requirements of Ch. 119, F.S., and s. 286.011, F.S., even though the charter school has not yet opened its doors to students. AGO 01-23. *And see* AGO 2010-14 (records of team created by charter school to review personnel decisions subject to Ch. 119, F.S.).

**b. Student records**

Public access to student records is limited by statute. In 2009, the Legislature amended the state statutes relating to student records to incorporate the federal Family Education Rights and Privacy Act (FERPA). Section 1002.221(1), F.S., provides that "[e]ducation records as defined in [FERPA], and the federal regulations issued pursuant thereto, are confidential and exempt" from public disclosure and may be released only as authorized in the exemption. "Education records" are defined by FERPA to mean "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. s. 1232g(a)(4)(A). *Cf.* AGO 10-04 (school board meeting at which student records may be discussed may not be closed to the public in the absence of a statutory exemption from the Sunshine Law; however, "school board should be sensitive to confidential student records that may be reviewed during such a meeting and protect these records to the extent that is possible to protect the privacy of the student involved . . . ."). *Compare* s. 1003.57(1)(c), F.S., providing an exemption from the Sunshine Law for hearings on exceptional student identification, evaluation, and eligibility determination; and s. 1006.07(1)(a), F.S. (student expulsion hearings exempted).

Public postsecondary educational institutions are also required to comply with FERPA with respect to the education records of students. Section 1002.225(2), F.S. Section 1006.52(1), F.S., authorizes a public postsecondary educational institution to prescribe the content and custody of records the institution maintains on its students and applicants for admission. A student's education records and applicant records are confidential and exempt. *Id. See Knight News, Inc. v. University of Central Florida,* 200 So. 3d 125, 128 (Fla. 5th DCA 2016) (personally identifiable information contained within records regarding alleged hazing incidents qualifies as confidential student disciplinary records; however, the names of student government officers charged with malfeasance in the performance of student government duties or alleged to have



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engaged in misconduct with regard to their election or appointment to their position are not confidential under FERPA because "given the statutory scheme [relating to university student government officers] student government officers know or reasonably should know" that they could be disciplined for misconduct in connection with their student government duties).

In *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010), the court construed FERPA and the 2009 amendments to the Florida Statutes. Recognizing that under FERPA a record "qualifies as an educational record only if it 'directly' relates to a student," the court found that a transcript of an NCAA hearing and an NCAA committee response pertained to allegations of misconduct by the university athletic department, and only tangentially related to students. Therefore, since the transcript and the response had been redacted to remove student-identifying information and thus did not disclose education records, they were not exempt from disclosure. *And see Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851 (Fla. 1st DCA 2013) (student's *unredacted* email which criticized instructor's classroom performance constituted an exempt education record). *Compare WFTV v. School Board of Seminole County, Florida,* 874 So. 2d 48 (Fla. 5th DCA 2004), *review denied,* 892 So. 2d 1015 (Fla. 2004), concluding that under *prior* student confidentiality laws (which did not incorporate FERPA), a school bus surveillance videotape was a confidential student record and could not be released to the media even with student-identifying information redacted).

In AGO 01-64 the Attorney General, in interpreting the former statutes, stated that a felony complaint/arrest affidavit created and maintained by school police officers for a juvenile or adult who is a student in the public schools is a law enforcement record subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release. *See now* 20 U.S.C. s. 1232g(a)(4)(B)(ii) excluding "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement" from the definition of "education records."

**c. Children in government-sponsored recreation programs**

Section 119.071(5)(c), F.S., exempts information that would identify or locate a child or the parent or guardian of a child, participating in a government-sponsored recreation program. A government-sponsored recreation program means "a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs." *Id.*

**d. School system security—**Please see page 152.

**e. Testing materials**

Testing materials are generally exempt from the disclosure provisions of s. 119.07(1), F.S. *See, e.g.,* s. 1008.23, F.S. (examination and assessment instruments, including developmental materials and workpapers directly related to such instruments, which are prepared or administered pursuant to cited statutes), and s. 1012.56(9)(g), F.S. (state-developed educator certification examination, developmental materials and workpapers). *See* AGO 09-35, concluding that student assessment tests developed by teachers to measure student preparedness for college board advanced placement exams are confidential and exempt from the inspection and copying requirements of Ch. 119, F.S. *Cf.* s. 1008.24(4)(b), F.S. (identity of a school or postsecondary educational institution, personal identifying information of personnel of a school district or postsecondary educational institution, or specific allegations of misconduct obtained or reported in connection with an investigation of a testing impropriety conducted by the Department of Education are confidential and exempt from disclosure until the investigation is concluded or becomes inactive).

**8. Election records**



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**a. Ballots**

Election records are generally open to public inspection. An individual or group is entitled to inspect the ballots and may take notes regarding the number of votes cast. AGO 93-48. *See also Rogers v. Hood,* 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), *review denied,* 919 So. 2d 436 (Fla. 2005) (voted ballots are public records because they have "memorialized the act of voting"). *Cf. Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016), stating that the supervisor of elections was not required to charge the hourly rate of the lowest paid person capable of providing ballots for inspection because s. 119.07(4)(d), F.S., authorizes the agency to impose a reasonable charge based on labor costs "actually incurred by the agency or attributable to the agency" when extensive clerical or supervisory assistance is required).

Section 119.07(5), F.S., prohibits any person other than the supervisor of elections or the supervisor's employees from touching the ballots. *And see* s. 101.572, F.S. (no persons other than the supervisor, supervisor's employees, or the county canvassing board shall handle any official ballot or ballot card). However, this restriction does not prohibit the supervisor from producing copies of optically scanned ballots which were cast in an election in response to a public records request. AGO 04-11. *And see* AGO 01-37.

Information regarding requests for vote-by-mail ballots that is recorded by the supervisor of elections pursuant to s. 101.62(3), F.S., is confidential and exempt and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only. Section 101.62(3), F.S.

**b. Voter registration and voter records**

Section 97.0585(1), F.S., states that the following information is confidential and exempt from public disclosure requirements and may be used only for purposes of voter registration: declinations to register to vote; information relating to the place where a person registered to vote or updated a voter registration; the social security number, driver license number, and the Florida identification number of a voter registration applicant or voter; information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored; and all information concerning preregistered voter registration applicants who are 16 or 17 years old. The signature of a voter registration applicant or a voter is exempt from copying requirements. Section 97.0585(2), F.S.. *See also* ss. 741.465(2), F.S. (identifying information concerning participants in the Office of the Attorney General Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records is exempt); and 741.4651, F.S. (exemption for identifying information of stalking victims who have filed a sworn statement of stalking with the Office of the Attorney General and otherwise comply with the procedures set forth in ss. 741.401-741.409, F.S.). *And see* AGO 04-18 (specified officers and employees who are authorized to file a request for exempt status of certain personal information pursuant s. 119.071(4)(d)3., F.S., may request that the supervisor of elections maintain the exempt status of such information contained in petitions or campaign papers).

Section 98.075(2)(b), F.S., allows the Department of State to join a nongovernmental entity composed of state and District of Columbia election officials whose sole purpose is to share and exchange information in order to verify voter registration information. Information received by the department from another state or the District of Columbia which is confidential or exempt pursuant to the laws of that state or the District of Columbia is exempt from disclosure. Section 98.075(2)(c), F.S.

**9. Electronic and computer records**

**a. Electronic databases and files**

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet . . . ." *Seigle v. Barry,* 422 So. 2d 63,



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65 (Fla. 4th DCA 1982), *review denied,* 431 So. 2d 988 (Fla. 1983). *And see National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form); AGO 98-54 (application and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records); AGO 91-61 (agency must provide copy of computer disk in response to Ch. 119 request); and AGO 85-03 (computer tape subject to disclosure).

Thus, information such as electronic calendars, databases, and word processing files stored in agency computers, can all constitute public records because records made or received in the course of official business and intended to perpetuate, communicate or formalize knowledge of some type, fall within the scope of Ch. 119, F.S. AGO 89-39. *Compare* AGO 85-87 (to the extent that "machine-readable intermediate files" may be intended to "communicate" knowledge, any such communication takes place completely within the data processing equipment and in such form as to render any inspection pursuant to Ch. 119, F.S., unintelligible and, except perhaps to the computer itself, meaningless; therefore, these files are analogous to notes used to prepare some other documentary material, and are not public records). *And see Grapski v. Machen,* No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007) (spam or bulk mail received by a public agency does not necessarily constitute a public record).

Moreover, the definition of "public records" specifically includes "data processing software" and establishes that a record made or received in connection with official business is a public record, regardless of physical form, characteristics, "or means of transmission." *See* s. 119.011(12), F.S. "Automation of public records must not erode the right of access to [public records]." Section 119.01(2)(a), F.S.

Accordingly, electronic public records are governed by the same rule as written documents and other public records--the records are subject to public inspection unless a statutory exemption exists which removes the records from disclosure. *Cf.* AGO 90-04, stating that a county official is not authorized to assign the county's right to a public record (a computer program developed by a former employee while he was working for the county) as part of a settlement compromising a lawsuit against the county. *And see* the discussion on pages 128-130 noting that in evaluating whether a public official's records were made or received in the course of official business for purposes of Ch. 119, the determining factor is the nature of the record, and not whether the record is located in a private or a government computer or communications device.

**b. Consideration of public access in design of electronic recordkeeping system**

When an agency is designing or acquiring an electronic recordkeeping system, the agency must consider whether the proposed system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange. Section 119.01(2)(b), F.S. *Cf.* Inf. Op. to Moore, October 19, 1993, noting that an agency considering the acquisition of computer software should be responsive to the need for preserving public access to the information through use of the computer's software and that "[t]he design and development of the software, therefore, should ensure that the system has the capability of redacting confidential or exempt information when a public records request is made." *And see* s. 287.042(3)(h), F.S. (Department of Management Services responsible for development of procedures to be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records and records retention requirements).

Similarly, an agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an electronic



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recordkeeping system used by the agency. Section 119.01(2)(c), F.S.

The importance of ensuring public access to computer records is recognized by statute and in the electronic recordkeeping rules of the Division of Library and Information Services of the Department of State. Rule 1B-26.003(6)(g), F.A.C., provides that each agency shall "[e]nsure that agency electronic recordkeeping systems meet state requirements for public access to records in accordance with Chapter 119, F.S."

**c. E-Mail**

E-mail messages made or received by agency officers and employees in connection with official business are public records and subject to disclosure in the absence of an exemption. AGOs 96-34 and 01-20. *See Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851, 855 (Fla. 1st DCA 2013), noting that "electronic communications, such as e-mail, are covered [by the Public Records Act] just like communications on paper." *Cf.* s. 668.6076, F.S., requiring agencies that operate a website and use electronic mail to post the following statement in a conspicuous location on the agency website: "Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or "blind" recipients and their e-mail addresses. AGO 07-14. *Cf. Butler v. City of Hallandale Beach,* 68 So. 3d 278 (Fla. 4th DCA 2011) (affirming a trial court order finding that a list of recipients of a *personal* e-mail sent by mayor from her personal computer was not a public record).

Like other public records, e-mail messages are subject to the statutory restrictions on destruction of public records. *See* s. 257.36(6), F.S., stating that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services (division) of the Department of State. Thus, an e-mail communication of "factual background information" from one city council member to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. AGO 01-20.

**d. Facebook**

The Attorney General's Office has stated that the placement of material on a city's Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S., although in any given instance, the determination would have to be made based upon the definition of "public record" contained in s. 119.011(12), F.S. AGO 09-19. To the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established in accordance with s. 257.36(6), F.S. *Id. And see* AGO 08-07 (city council members who post comments and emails relating to the transaction of city business on a privately owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

**e. Text messages**

In 2010, the Attorney General's Office advised the Department of State (which is statutorily charged with development of public records retention schedules) that the "same rules that apply to e-mail should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by government agencies." Inf. Op. to Browning, March 17, 2010.

In response, the Department revised the records retention schedule to recognize that retention periods for text messages and other electronic messages or communications "are



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determined by the content, nature, and purpose of the records, and are set based on their legal, fiscal, administrative, and historical values, regardless of the format in which they reside or the method by which they are transmitted." Stated another way, it is the content, nature and purpose of the electronic communication that determines how long it is retained, not the technology that is used to send the message. *See* General Records Schedule GS1-SL for State and Local Government Agencies, Electronic Communications, available online at http://dos.myflorida.com/library-archives.

A public official or employee's use of a private cell phone to conduct public business via text messaging "can create an electronic written public record subject to disclosure" if the text message is "prepared, owned, used, or retained . . . within the scope of his or her employment or agency." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040-1041 (Fla. 4th DCA 2018). In order to comply with the requirements of the Public Records Act, "the governmental entity must proceed as it relates to text messaging no differently than it would when responding to a request for written documents and other public records in the entity's possession—such as emails—by reviewing each record, determining if some or all are exempted from production, and disclosing the unprotected records to the requester." *Id*. at 1041. *And see* the discussion on page 159-160 regarding the entity's responsibility to conduct a reasonable search to locate text messages that have been requested from the governmental entity, including those located on private accounts or devices.

**f. Twitter**

The determination as to whether a list or record of accounts which have been blocked from posting to or accessing an elected official's personal Twitter feed is a public record involves mixed questions of law and fact which cannot be resolved by the Attorney General's Office. Inf. Op. to Shalley, June 1, 2016. However, "if the tweets the public official is sending are public records [because they were sent in connection with the transaction of official business] then a list of blocked accounts, prepared in connection with those public records 'tweets,' could well be determined by a court to be a public record." *Id. Cf. Knight First Amendment Institute v. Trump,* No. 18-1691 (2d Cir. July 9, 2019) (public official engaged in unconstitutional viewpoint discrimination by blocking certain users from access to his Twitter account, which is otherwise open to the public at large and "used for all manner of official duties," because he disagreed with their speech).

**10. Emergency records**

**a. Emergency "911" records**

Section 365.171(12)(a), F.S., provides that any record, recording, or information, or portions thereof, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from s. 119.07(1), F.S. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption. Section 365.171(12)(b), F.S.

The exemption applies only to the name, address, telephone number or personal information about or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. Section 365.171(12)(a), F.S. *See* AGO 93-60. There is no clear indication that the Legislature intended to include the sound of a person's voice as information protected from disclosure. AGO 15-01. Moreover, identifying information obtained or created independently of the 911 call, for example from a criminal investigation or offense report created as a result of such investigation, is not exempt under s. 365.171(12)(a), F.S. AGO 11-27.



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A tape recording of a "911" call is a public record which is subject to disclosure after the deletion of the exempt information. AGO 93-60. This does not, however, preclude the application of another exemption to such records. Thus, if the "911" calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. AGO 95-48. *See also* Inf. Op. to Fernez, September 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).

Moreover, an audio recording that records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt and may not be listened to or copied except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information on this exemption, please refer to the discussion on page 120.

Building plans, blueprints and related records which depict the structural elements of 911, E911 or public safety radio communication system infrastructure owned or operated by an agency, are exempt from disclosure. Section 119.071(3)(e)1.a., F.S. Geographical maps indicating actual or proposed locations, including towers, antennae, equipment, and facilities are also exempt. Section 119.071(3)(e)1.b., F.S.

**b. Emergency evacuation plans and disaster recovery assistance**

Section 119.071(3)(a), F.S., provides an exemption from disclosure for a security or firesafety system plan of a private or public entity that is held by an agency. The term "security or firesafety system plan" includes emergency evacuation plans and sheltering arrangements. *And see* s. 119.071(2)(d), F.S., providing an exemption from disclosure for "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, chapter 23 [Florida Mutual Aid Act], and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies as defined in s. 252.34, F.S.; and s. 395.1056, F.S., providing an exemption for those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster are confidential and exempt. Section 119.071(5)(f)1.b., F.S. The exemption authorizes access under specified conditions. Section 119.071(5)(f)2. and 3., F.S.

**c. Emergency medical services records**

Please refer to the discussion of this topic found on pages 93.

**d. Emergency notification**

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency is exempt from disclosure requirements. Section 119.071(5)(j)1., F.S. The e-mail addresses and corresponding home, school, and other "watched addresses of concern" provided for participation in the Florida Department of Law Enforcement Offender Alert System come within the scope of this exemption. AGO 11-16. *And see* s. 119.0712(2)(d)1. and 2., F.S. (emergency contact information contained in a motor vehicle record issued by the Department of Highway Safety and Motor Vehicles is confidential and exempt, and, without the express consent of the person to whom such emergency contact information applies, may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency).



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**e. Emergency planning information furnished to Division of Emergency Management**

The Division of Emergency Management (Division) manages a statewide public awareness program which encourages individuals, families, and businesses to develop disaster plans in preparation for and in response to natural or manmade disasters. *See* s. 2, Ch. 14-188, Laws of Florida. Any information furnished by a person or a business to the Division for the purpose of being provided assistance with emergency planning is exempt. Section 252.905, F.S.

**f. Special needs registry**

Section 252.355(1), F.S., states that the Division of Emergency Management, in coordination with each local emergency management agency in the state, shall maintain a registry of persons with special needs (*i.e.*, persons who would need assistance during evacuations and sheltering because of physical, mental, cognitive impairment, or sensory disabilities), located within the jurisdiction of the local agency. The registration shall identify those persons in need of assistance and plan for resource allocation to meet those identified needs. Records relating to the registration of persons with special needs are confidential and exempt, except such information is available to other emergency response agencies, as determined by the local emergency management director. Section 252.355(4), F.S. Local law enforcement agencies shall be given complete shelter roster information upon request. *Id.*

**11. Financial records**

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. *See* AGO 96-96 (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

**a. Audit reports**

**(1) Auditor General audits**

The audit report prepared by the Auditor General is a public record once finalized. Section 11.45(4)(c), F.S. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. *Id. And see* AGO 79-75 ("the term 'audit work papers and notes' should be construed narrowly and limited to such 'raw data' as is commonly considered to constitute the work papers of an accountant"). *Cf.* s. 11.51(4), F.S. (work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product are exempt from disclosure).

At the conclusion of the audit, the Auditor General provides the head of the agency being audited with a list of the findings so that the agency head may explain or rebut them before the report is finalized. Section 11.45(4)(d), F.S. The list of audit findings is a public record. AGO 79-75.

**(2) Local government audits**

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Section 119.0713(2)(b), F.S. The audit becomes final when the audit report is presented to the unit of local government; until the audit becomes final, the audit workpapers and notes related to such audit report are confidential. *Id.*

Thus, a draft audit report of a county legal department prepared by the clerk of court, acting in her capacity as county auditor, did not become subject to disclosure when the clerk submitted copies of her draft report to the county administrator for review and response. *Nicolai*



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*v. Baldwin,* 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). According to the exemption, the report would become "final," and hence subject to disclosure, when presented to the county commission. *Id.*

Similarly, draft audit reports relating to city towing companies did not become subject to disclosure even though the towing companies, who had reviewed the reports pursuant to city policy, shared the reports with a news organization which subsequently published an article about them. The court said its decision was compelled by the plain language of the statute, concluding that because the draft audit reports were not final, they were not subject to disclosure. *City of Miami Beach v Miami New Times, LLC*, 45 F.L.W. D2805 (Fla. 3d DCA December 16, 2020). *And see Rushing v. Barfield,* No. 2011-CA-5864-NC (Fla. 12th Cir. Ct. August 4, 2011), *per curiam affirmed,* 83 So. 3d 718 (Fla. 2d DCA 2012) (even though an audit has been completed with regard to some matters, clerk authorized to redact those portions of workpapers and notes relating to additional matters under investigation until the audit relating to the additional matters is concluded).

The term "internal auditor" is not defined for purposes of this exemption. However, the term would appear to encompass an official within county government who is responsible under the county code for conducting an audit. AGO 99-07. *Compare* AGO 04-33 (exemption does not apply to audit of guardianship files prepared by clerk of court because that audit "is not an internal audit performed by or on behalf of any of the specified units of local government").

**(3) State agency inspector general audits**

Section 20.055(2), F.S., establishes the Office of Inspector General in each state agency. Pursuant to s. 20.055(6), F.S., the inspector general is required to conduct audits of the agency and prepare audit reports of the findings. Such audit reports and workpapers are public records to the extent that they do not include information which has been made confidential and exempt from disclosure. Section 20.055(6)(b), F.S.

**b. Bids, proposals and financial statements**

Section 119.071(1)(b)2., F.S., provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" until such time as the agency provides notice of an intended decision or until 30 days after opening "the bids, proposals, or final replies," whichever is earlier. *Cf.* s. 255.0518, F.S., providing that notwithstanding s. 119.071(1)(b), F.S., agencies receiving sealed bids pursuant to a competitive solicitation for construction or repairs of a public building or public work, must open the bids at a public meeting conducted in compliance with the Sunshine Law, and must also announce bidder and price information at that meeting; and s. 255.065(15), F.S., providing an exemption from public records requirements for a specified period for unsolicited proposals received by a public entity pursuant to the public-private partnership process established in s. 255.065, F.S.

The term "competitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 119.071(1)(b)1., F.S.

If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)3., F.S. *And see* s. 286.0113(2)(c), F.S., providing an exemption for the recording of, and records presented at, an exempt meeting held pursuant to s. 286.0113(2)(b), F.S. For more information on this exemption, please refer to the discussion on page 34-35.



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Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from disclosure requirements. Section 119.071(1)(c), F.S. *See also* s. 119.0713(3), F.S., limiting access to materials used by municipal utilities to prepare bids; s. 339.55(10)(a), F.S., providing an exemption for financial information of a private entity applicant which the Department of Transportation requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank; and s. 337.168, F.S., providing restrictions on disclosure of Department of Transportation cost estimates, persons requesting bid packages, and the bid analysis and monitoring system.

**c. Budgets**

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission,* 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett,* 340 So. 2d 977 (Fla. 2d DCA 1976); and *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157,* 298 So. 2d 478 (Fla. 1st DCA 1974). *Accord* Inf. Op. to Pietrodangelo, Nov. 29, 1972 (financial operating budget of athletic department of state university constitutes a public record). *Cf. News-Press Publishing Company, Inc. v. Carlson,* 410 So. 2d 546, 548 (Fla. 2d DCA 1982), holding that the preponderant interest in allowing public participation in the budget process justified the inclusion of an agency's internal budget committee within the provisions of the Government in the Sunshine Law.

The exemption afforded by s. 447.605(3), F.S., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. *Warden v. Bennett, supra. See also* AGO 92-56 (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

**d. Economic development records**

**(1) Business location or expansion plans**

If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency maintain the confidentiality of information concerning the entity's interest in or plans to locate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first. Section 288.075(2)(a)1., F.S. Confidentiality may be extended for up to an additional 12 months upon the written request of the private entity if the agency finds that the private entity is still actively considering locating or expanding its business activities in Florida. Section 288.075(2)(a)2., F.S. If a final project order for a signed economic development agreement is issued, then the information remains confidential for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality specified in s. 288.075(2)(a)1. or s. 288.075(2)(a)2., F.S. *And see* s. 288.075(2)(b), F.S., restricting public officials from entering into binding agreements with the private entity requesting confidentiality until 90 days after the information has been made public, unless certain conditions are met.

The term "economic development agency" means the state Department of Economic Opportunity, an industrial development authority, Space Florida, the public economic development agency of a county or municipality, or a research and development authority. Also included are the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the related responsibilities, if the county or municipality does not have a public economic development agency. The term also includes private persons or agencies authorized by the state, a county or a



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municipality to promote the general business interests of the state or that municipality or county. Section 288.075(1)(a), F.S.

The Legislature's designation of those entities which are considered economic development agencies for purposes of s. 288.075, F.S., precludes any other entities from falling under the definition. *See* AGO 12-36 (St. Augustine-St. Johns County Airport Authority is not an "economic development agency" as defined in s. 288.075, F.S.). *Cf.* Inf. to Rooney, June 8, 2011 (if by amendment of the county charter, the voters made the county commission a part of the county economic development agency by placing the executive director of the agency under the direct supervision of the county commission, then the provisions of s. 288.075, F.S., would apply to the county commission).

A written request for confidentiality under s. 288.075(2), F.S., may constitute or contain information required to be held confidential under that statute; however, such a determination must be made by the custodian on a case-by-case basis as to whether a particular record or portion of a record falls within the scope of the exemption. AGO 07-15. The section, however, may be cited by the records custodian as statutory authority for withholding information from public disclosure without violating the required confidentiality provisions of the statute. *Id. Cf.* AGO 80-78 (county industrial development authority permitted to withhold access only to those records "clearly falling" within the exemption provided in s. 288.075; "policy considerations" do not justify nondisclosure of public records).

Development plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer considering expansion or relocation within the city appear to come within the scope of the exemption. AGO 04-19. However, the burden is on the economic development agency "to carefully and in good faith distinguish between those documents clearly covered by the exemption and those not covered." *Id.*

Trade secrets, as defined in s. 688.002, F.S., contained in the records held by an economic development agency are confidential and exempt from disclosure. Section 288.075(3), F.S. Proprietary confidential business information held by an economic development agency is confidential and exempt until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. Section 288.075(4), F.S. Federal employer identification numbers, reemployment assistance account numbers, or Florida sales tax registration numbers held by an economic development agency are confidential and exempt. Section 288.075(5), F.S. In addition, certain information held pursuant to the administration of an economic incentive program is confidential and exempt for limited periods as specified in the exemption. Section 288.075(6), F.S.

**(2) Convention center booking business records**

Booking business records of a public convention center, sports facility, or auditorium are exempt from public disclosure. Section 255.047(2), F.S. The statute defines "booking business records" to include "client calendars, client lists, exhibitor lists, and marketing files." Section 255.047(1)(a), F.S. The term does not include "contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event." *Id. And see* s. 125.0104(9)(d)1., F.S. (providing an exemption for information given to a county tourism promotion agency, which, if released, would reveal the identity of those who provide information in response to a sales promotion, advertisement, or research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data).

**e. Ownership records for registered public obligations**

Records regarding ownership of, or security interests in, registered public obligations are not open to inspection. Section 279.11, F.S.



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**f. Personal financial records**

In the absence of a statutory exemption, financial information prepared or received by an agency is subject to Ch. 119, F.S. *See Wallace v. Guzman,* 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure). *See also* Inf. Op. to Lovelace, April 3, 1992 (records identifying mortgage recipients held by a bank acting as agent of a housing finance authority in granting mortgages funded by the authority are public records).

**(1) Bank account, debit and credit card numbers**

Bank account numbers, and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), F.S. *See also* s. 119.0714(1)(j), (2)(e) and 3(b), F.S., regarding confidentiality of bank account numbers and debit, charge, and credit card numbers contained in court and official records.

**(2) Consumer financial information**

There are statutes which exempt consumer financial information received by certain agencies. For example, s. 624.23, F.S., provides confidentiality for personal financial information held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code. *See State, Department of Financial Services v. Danahy & Murray*, 246 So. 3d 466 (Fla. 1st DCA 2018), upholding the constitutionality of the statute. *See also* s. 717.117(8), F.S. (property identifiers contained in unclaimed property reports held by the Department of Financial Services are confidential); s. 627.351(6)(x)1., F.S. (claims and underwriting files of the Citizens Property Insurance Corporation, except as provided in the exemption); s. 119.071(5)(f), F.S. (health or property insurance information provided by applicants or participants in government housing assistance programs); and s. 655.057(1)(c), F.S. (personal financial information contained in investigation records of the Office of Financial Regulation).

**(3) Financial information submitted by state licensure applicants**

In the absence of statutory exemption, financial information in a licensing file is subject to disclosure. *See* AGO 04-16. However, the Legislature has enacted exemptions for financial information held by certain licensing agencies. For example, credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers and mortgage lenders are confidential. Section 494.00125(3) F.S. Financial information submitted by license applicants to the Department of Business and Professional Regulation is also confidential. Section 455.229(1), F.S. *And see* s. 456.014(1), F.S. (Department of Health license applicants). *Cf. Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court finding that identities of investors and partners listed in applications to dispense medical cannabis were not confidential trade secrets). For more information on disclosure issues relating to trade secrets, please refer to the discussion of that topic in pages 154-155.

**(4) Temporary cash assistance program participant**

Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant is confidential. Section 414.295(1), F.S.

**(5) Toll payment personal identifying information**

Section 338.155(6), F.S. provides an exemption for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities.



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**(6) Utility payment records**

Agency records of payments for utility services are subject to disclosure. *See* AGOs 88-57 (county records of payments made by individuals for waste collection services are public records), and 92-09 (customer delinquency information held by a utilities commission is subject to disclosure). *Cf.* s. 119.0713(5)(a), F.S., providing an exemption for customer meter-derived data and billing information in increments less than one billing cycle.

**g. Taxpayer records**

There are a number of statutes providing for confidentiality of taxpayer records held by the Department of Revenue. *See, e.g.,* s. 213.053(2)(a), F.S. (all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and letters of technical advice, is confidential except for official purposes and exempt from s. 119.07[1], F.S.); s. 213.21(3), F.S. (records of compromises of taxpayer liability not subject to disclosure); and s. 213.27(6), F.S. (confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from public disclosure and such debt collection or auditing agencies are bound by the same confidentiality requirements as the department). *Cf. Wallace v. Guzman,* 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns submitted by housing finance authority members to state banking agency as part of the authority's application to organize a bank are subject to disclosure).

In addition, s. 193.074, F.S., provides for confidentiality of certain taxpayer information. In light of the position taken by the Department of Revenue that its form entitled "Original Application for Ad Valorem Tax Exemption" constitutes a "return," such form should be treated as a "return" that is confidential pursuant to s. 193.074, F.S. AGO 05-04. *Accord* AGO 95-07. *And see NYT Management Services, Inc. v. Florida Department of Revenue,* No. 2006-CA-0896 (Fla. 2d Cir. Ct. April 25, 2006) (declarations or written statements filed with the Department of Revenue pursuant to the state's revenue laws would be a return and thus confidential under s. 193.074, F.S.).

A taxpayer's e-mail address held by a tax collector for purpose of sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices, as provided in cited statutes, is exempt from public disclosure requirements. Section 197.3225, F.S.

However, taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F.S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute. AGO 01-74. *Cf.* Inf. Op. to Echeverri, April 30, 2010 (while property appraiser may use confidential records submitted to the value adjustment board by the taxpayer, it is not clear whether property appraiser may independently submit confidential material to the board in the absence of a taxpayer's submission although board may order production of confidential records). Similarly, absent a specific statutory exemption for assessment rolls and public information cards, such documents made or received by the property appraiser are public records subject to the Public Records Act, regardless of the confidentiality of a return that may contain information used in their creation. AGO 05-04.

**12. Firearms records**

Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Department of Agriculture and Consumer Services is confidential and exempt from public disclosure requirements. Section 790.0601(1), F.S. The same information is also confidential when held by a tax collector appointed by the Department. Sections 790.0601(2), and 790.0625(4), F.S.

Information made confidential by s. 790.0601, F.S., shall be disclosed with the express



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written consent of the applicant or licensee or his or her legally authorized representative, by court order upon a showing of good cause, or upon request by a law enforcement agency in connection with the performance of lawful duties. Section 790.0601(3), F.S. *Cf. Times Publishing Company v. City of Pensacola,* No. 2002-2053 (Fla. 1st Cir. Ct. November 13, 2002), *per curiam affirmed,* 869 So. 2d 546 (Fla. 1st DCA 2004), concluding that police department records of weapons assigned to law enforcement officers and described as "specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel" were exempt from disclosure under s. 119.071(3)(a), F.S., relating to security system plans and terrorist threat assessments, and the exemption for surveillance personnel, techniques, and procedures, now found at s. 119.071(2)(d), F.S.

**13. Hospital and medical records**

**a. Communicable or infectious disease reports**

A number of exemptions exist for communicable or infectious disease reports. *See, e.g.,* s. 381.0031(6), F.S. (information submitted in public health reports to Department of Health is confidential and is to be made public only when necessary to public health); s. 384.29, F.S. (sexually transmissible diseases). *See Ocala Star-Banner v. State,* 697 So. 2d 1317 (Fla. 5th DCA 1997) (upholding court order sealing portions of a battery prosecution case file pertaining to transmission of sexually transmissible diseases to victims due to s. 384.29, F.S., confidentiality requirements). However, notwithstanding any other provision of law to the contrary, the Department of Health, the Department of Children and Families, and the Agency for Persons with Disabilities may share confidential information on any individual who is or has been the subject of a program within the jurisdiction of each agency. Section 402.115, F.S. The shared information remains confidential or exempt as provided by law. *Id.* See AGO 98-52.

Results of screenings for sexually transmissible diseases conducted by the Department of Health in accordance with s. 384.287, F.S., may be released only to those persons specified in the exemption. Section 384.287(5), F.S.

Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease must be done in a manner to protect the confidentiality of patient information and shall not include the patient's name. Section 395.1025, F.S.

There are strict confidentiality requirements for test results for HIV infection; such information may be released only as expressly prescribed by statute. *See* ss. 381.004, and 384.287(6), F.S. Any person who violates the confidentiality provisions of s. 381.004, F.S., and s. 951.27, F.S., is guilty of a first degree misdemeanor. Section 381.004(5)(b), F.S. *And see* s. 381.004(5)(c), F.S., establishing felony penalties for disclosure in certain circumstances. Thus, information received by the clerk of court indicating that an individual has complied with an order to be tested for HIV and the attendant test results "would appear to be confidential and should be maintained in that status." AGO 00-54. *Cf. Florida Department of Corrections v. Abril,* 969 So. 2d 201 (Fla. 2007) (an entity that negligently violates a patient's right of confidentiality in disclosing the results of HIV testing may be held responsible in a negligence action).

Results of HIV and hepatitis tests performed on persons charged with certain offenses may not be disclosed except as authorized in the exemption. Section 960.003, F.S. *See also* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates as provided in statute).

**b. Hospital records**

**(1) Public hospitals**

Like other governmental agency records, public hospital records are subject to disclosure in the absence of a statutory exemption. For example, the court in *Tribune Company v. Hardee Memorial Hospital,* No. CA 91-370 (Fla. 10th Cir. Ct. August 19, 1991), held that a settlement



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agreement entered in a lawsuit against the public hospital alleging that the hospital had swapped babies was a public record. The court held that the agreement was subject to disclosure despite a confidentiality provision contained within the agreement and claims by the hospital that it constituted work product. *Cf. Bert Fish Foundation, Inc. v. Southeast Volusia Hospital District,* No. 10-20801-CINS (Fla. 7th Cir. Ct. December 22, 2010) (governing boards of hospital district and medical center violated the Sunshine Law when they held numerous closed meetings to discuss an affiliation or merger with a healthcare corporation). For information on exemptions applicable to public hospitals, please refer to Appendix D and the Index. *Cf.* AGO 14-10, noting that an exemption in s. 395.3035(5), F.S., for certain records and meetings relating to a "strategic plan" for operation of a hospital must be narrowly construed and would not apply to an evaluation conducted pursuant to s. 155.40(5), F.S., for purposes of the sale or lease of a public hospital.

**(2) Private hospitals/private organizations operating public hospitals**

A private organization leasing the facilities of a public hospital is acting on behalf of a public agency and thus constitutes an agency subject to open records requirements in the absence of statutory exemption. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation,* 729 So. 2d 373 (Fla. 1999).

Section 395.3036, F.S., however, provides that records of a private entity that leases a public hospital or other public health care facility are confidential and exempt from disclosure when the public lessor complies with the public finance accountability provisions of s. 155.40(18), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of five criteria set forth in the exemption. *See Indian River County Hospital District v. Indian River Memorial Hospital, Inc.,* 766 So. 2d 233 (Fla. 4th DCA 2000) (nonprofit corporation leasing hospital from hospital district). *And see Baker County Press, Inc. v. Baker County Medical Services,* Inc., 870 So. 2d 189 (Fla. 1st DCA 2004), upholding the constitutionality of the exemption. *Cf. Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation,* 927 So. 2d 961 (Fla. 5th DCA 2006) (private corporation that *purchased* hospital from public hospital authority not subject to Public Records Act); and s. 155.40(21), F.S., describing and construing the term "complete sale" as applied to a purchase of a public hospital by a private entity.

**c. Patient and clinical records**

**(1) Patient and clinical records generally**

Patient records are generally protected from disclosure. For example, patient records in hospitals and surgical facilities licensed under Ch. 395, F.S., are confidential and may not be disclosed without the consent of the patient, or the patient's legal representative, except as provided in the statute. Section 395.3025(4), (5), (7) and (8), F.S. *And see* s. 119.0712(1), F.S. (personal identifying information contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health); and s. 400.022(1)(m), F.S. (nursing home residents' medical and personal records).

Patient clinical records are also protected. *See, e.g.,* s. 393.13(4)(i)1., F.S. (central client records of persons with developmental disabilities); s. 394.4615(1), F.S. (clinical records of persons subject to "The Baker Act"); and s. 397.501(7), F.S. (individuals receiving services from substance abuse service providers). *And see* ss. 397.6760(1), F.S. (petitions for involuntary assessment and stabilization and related court records filed with a court under Part V of Ch. 397, F.S.[substance abuse]); and 394.464(1) (petitions for voluntary and involuntary admission for mental health treatment, courts orders and related records filed with or by a court under the Baker Act). *Cf.* s. 381.987, F.S. (patient caregiver identifying information in the medical marijuana use registry).

**(2) Disclosure of patient records**

Patient medical records made by health care practitioners may not be furnished to any person other than the patient, his or her legal representative or other health care practitioners and providers involved in the patient's care and treatment without written authorization, except as



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provided by ss. 440.13(4)(c) and 456.057, F.S. Section 456.057(7)(a), F.S. *See State v. Johnson,* 814 So. 2d 390 (Fla. 2002) (state attorney's subpoena power under s. 27.04, F.S., cannot override notice requirements of s. 395.3025[4][d], F.S., which provides for disclosure of confidential patient records upon issuance of subpoena and upon proper notice to the patient or the patient's legal representative). *Cf.* s. 408.051(3), F.S., permitting a health care provider to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of the patient for an emergency medical condition, as defined in s. 395.002(8), F.S., when the health care provider is unable to obtain the patient's consent or the consent of the patient representative due to the patient's condition or the nature of the situation requiring immediate medical attention.

The recipient of patient records, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. *See* ss. 395.3025(7) (hospital patient records) and 456.057(11), F.S. (health care practitioner patient records). Thus, predeath medical records in the possession of the medical examiner are not subject to public inspection. *Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997).

Similarly, clinical records maintain their confidentiality even when disclosed to another agency such as the clerk of the circuit court. AGO 91-10. *And see Sarasota Herald-Tribune v. Department of Children and Families,* No. 2001-CA-002445 (Fla. 2d Cir. Ct. April 8, 2002) (confidentiality of clinical record is maintained even though Department of Children and Families may have filed portions of the records in court proceedings throughout the state; department has no authority to waive confidentiality of clinical records). *Cf.* AGO 01-69 (documents submitted to the statewide provider and managed care organization claim dispute resolution program pursuant to s. 408.7057, F.S., found to be subject to disclosure after redaction of patient-identifying information).

**d. Emergency medical services**

With limited exceptions, s. 401.30(4), F.S., provides, in relevant part, that "[r]ecords of emergency calls which contain patient examination or treatment information are confidential and exempt from the provisions of s. 119.07(1) and may not be disclosed without the consent of the person to whom they pertain." Such records may be released only in certain circumstances and only to the persons and entities specified in the statute. AGO 86-97. Thus, a city commissioner is not authorized to review records of an emergency call by the city's fire-rescue department when those records contain patient examination and treatment information, except with the consent of the patient. AGO 04-09. *See Lee County v. State Farm Mutual Automobile Insurance Company,* 634 So. 2d 250 (Fla. 2d DCA 1994), upholding the county's right to require the patient's notarized signature on all release forms, to ensure that these confidential records are not improperly released. *And see* AGO 09-30 (entire record of emergency call containing patient examination and treatment information which is maintained as required by s. 401.30[1], F.S., is confidential and exempt; reports containing statistical data, required by the Department of Health, are public records and must be made available for inspection and copying following redaction of any patient-identifying information).

However, s. 401.30(4), is not violated by the city attorney, or an attorney under contract to the city, and other city officials having access to the city fire-rescue department's records of emergency calls that contain patient information when such access is granted to such individuals in carrying out their official duties to advise and defend, or assess the liability of, the city in a possible or anticipated claim against the city arising out of the provision of such care. AGO 95-75. *And see* AGO 08-20 (s. 401.30[4], F.S., permits emergency medical services transportation licensee to release records of emergency calls including patient's name, address, and pertinent medical information to local law enforcement agency that does not provide regulatory or supervisory responsibility over licensee).



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**e. Hospital employees**

Section 395.3025(10), F.S., establishes that the home addresses, telephone numbers, and photographs of hospital or surgical center employees who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt from disclosure requirements. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family. Section 395.3025(11), F.S.

**14. Investigative records of non-law enforcement agencies**

**a. Investigative records generally**

In the absence of a specific legislative exemption, investigative records made or received by public agencies are open to public inspection pursuant to Ch. 119, F.S. *See State ex rel. Veale v. City of Boca Raton,* 353 So.2d 1194 (Fla. 4th DCA 1977), *cert. denied,* 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department is a public record). *See also Caswell v. Manhattan Fire and Marine Insurance Company,* 399 F.2d 417 (5th Cir. 1968) (ordering that certain investigative records of the state insurance agency be produced for inspection under Ch. 119, F.S.). *Accord* AGO 91-75 (documents containing information compiled by school board employees during an investigation of school district departments are open to inspection in the absence of statutory exemption); AGO 85-79 (interoffice memoranda, correspondence, inspection reports of restaurants, grocery stores and other such public premises, nuisance complaint records, and notices of violation of public health laws maintained by county public health units are subject to disclosure in the absence of any statutory exemption); and AGO 71-243 (inspection reports made or received by a school board in connection with its official investigation of the collapse of a school roof constitute public records). *Cf. Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to boards acting in a "quasi-judicial" capacity).

Disclosure of records of investigative proceedings upon completion of a preliminary investigation is not violative of privacy rights arising under the state or federal Constitutions. *See Garner v. Florida Commission on Ethics,* 415 So. 2d 67 (Fla. 1st DCA 1982), *review denied,* 424 So. 2d 761 (Fla. 1983) (public's right to view commission files prepared in connection with investigation of alleged violations of the Code of Ethics outweighs an individual's disclosural privacy rights).

The investigative exemptions now found in paragraphs (2)(c) through (f), (h) and (i) of s. 119.071(2), F.S., limit disclosure of specified *law enforcement* records, and thus do not apply to investigations conducted by agencies outside the criminal justice system. *See Douglas v. Michel,* 410 So. 2d 936, 939 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985) (exemption for "information revealing surveillance techniques or procedures or personnel" [now found at s. 119.071(2)(d)] does not apply to a hospital's personnel files). *See also* AGO 91-75, stating that the active criminal investigation and intelligence exemption does not apply to information compiled in a school board investigation into the conduct of certain school departments; and AGO 87-51, concluding that complaints from state labor department employees relating to departmental integrity and efficiency do not constitute criminal intelligence information or criminal investigative information.

Thus, the contents of an investigative report compiled by the Inspector General for a state agency in carrying out his or her duty to determine program compliance are not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because such report or a copy thereof has been transferred to the department. Inf. Op. to Slye, August 5, 1993.



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**b. Statutory exemptions**

A number of exemptions exist for investigative records. For a more complete listing, please refer to Appendix D and the Index.

**(1) Discrimination investigations**

Complaints and other records in the custody of any agency which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance evaluation, or related activities are exempt from 119.07(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of a hearing or court proceeding. Section 119.071(2)(g)1., F.S. *See* AGO 96-93 (prior to completion of an investigation and a finding of probable cause, records of a county equal opportunity board are exempt from disclosure). *Cf.* s. 119.071(2)(k), F.S., providing for confidentiality of complaints and investigative records of employee misconduct until the investigation is no longer active or has been concluded as set forth in the exemption.

Section 119.071(2)(g)1., F.S., was found to be inapplicable to a complaint filed against a county commissioner which listed many examples of alleged abusive behavior that would be inappropriate for one in the commissioner's position, because the complaint did not assert any form of discrimination based upon race, color, religion, sex, national origin, handicap or marital status. *Schweickert v. Citrus County Florida Board,* 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016). The appellate court also rejected the county's argument that it could delay producing the complaint until after the investigation was completed because the investigator might have discovered or generated records during her investigation that could have related to discrimination based on race, color, religion, sex, national origin, handicap or marital status which would have qualified for the exemption.

Section 119.071(2)(g)2., F.S., provides that when the alleged victim chooses not to file a complaint and requests that the records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential. *But see* AGO 09-10, stating that when an agency has reached a settlement with an individual who has filed a discrimination complaint, the claimant is considered to have pursued the claim and may not request confidentiality pursuant to the exemption.

Complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing, are exempt from s. 119.07(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of any hearing or court proceeding. Section 119.0713(1), F.S.

Personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt. The information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. Section 119.071(2)(n), F.S.

**(2) Employee misconduct investigations**

For information about the exemption for complaints and active investigations of employee misconduct contained in s. 119.071(2)(k), F.S., please refer to the discussion on page 131.

**(3) Ethics investigations**

The complaint and records relating to the preliminary investigation conducted by the Commission on Ethics or other specified entities are confidential and exempt until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the records be made public, or until the Commission or other listed entity determines whether probable cause exists to



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believe that a violation has occurred. Section 112.324(2)(a) and (e), F.S. *See also* s. 112.3215(8)(b) and (d), F.S. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, a police report of an investigation of a public employee that has been concluded and is in the possession of the police department is not made confidential by the fact that the same issue and the same individual are the subject of an ethics complaint pursuant to Part III, Ch. 112, F.S., or because a copy of the police report may be included in information obtained by the Ethics Commission pursuant to its powers to investigate ethics complaints. AGO 96-05. *And see Gay v. City of Madeira Beach*, No. 16-004836 (Fla. 6th Cir. Ct. May 26, 2017) (city must permit inspection and copying of complaints filed with the Ethics Commission and received by the City Attorney). *Cf.* s. 112.324(2)(b), F.S. (written referrals to the Ethics Commission submitted pursuant to s. 112.324[1][b], F.S., records relating to such referrals held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt except as provided in s. 112.324[2][e], F.S.)

**(4) Local government inspector general investigations**

The investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the investigation becomes final. Section 119.0713(2)(b), F.S. An investigation becomes final when the investigative report is presented to the unit of local government, as defined in the exemption. *Id. Cf. Nicolai v. Baldwin,* 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998), noting that a draft audit report prepared by the clerk of court did not become "final" when it was reviewed by the county administrator; the report became "final" and subject to disclosure when presented to the county commission. Information received, produced, or derived from an investigation is confidential and exempt until the investigation is complete or when the investigation is no longer active, as defined in the exemption. *Id.*

**(5) State inspector general investigations**

Audit workpapers and reports of state agency inspectors general appointed in accordance with s. 20.055, F.S., are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1), F.S. Section 20.055(6)(b), F.S. However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), F.S. [whistle-blower], the name or identity of the individual shall not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation. *Id. And see* page 131, discussing the exemption for complaints alleging employee misconduct found in s. 119.071(2)(k), F.S.

Section 112.31901(2), F.S., authorizes the Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, F.S., to certify that an investigatory record of the Chief Inspector General or an agency inspector general requires an exemption in order to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. If so certified, the investigatory records are exempt from s. 119.07(1), F.S., until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Section 112.31901(1), F.S. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act. Section 112.31901(3), F.S.

**(6) State licensing investigations**

Pursuant to s. 455.225(10), F.S., complaints against a licensed professional filed with the state licensing board or the Department of Business and Professional Regulation are confidential



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and exempt from disclosure until 10 days after probable cause has been found to exist by the probable cause panel of the licensing board or by the Department of Business and Professional Regulation, or the professional waives his or her privilege of confidentiality, whichever occurs first. A similar exemption applies to complaints and investigations conducted by the Department of Health and licensing boards within that department as provided in s. 456.073(10), F.S.

Complaints filed by a municipality against a licensed professional are included within the confidentiality provisions. AGO 02-57. However, while the complaint filed by the municipality with the state licensing agency is exempt, the exemption afforded by the statute does not extend to other records held by the city related to the nature of the alleged offense by the licensed professional. *Id.*

**(7) Whistle-blower investigations**

**(a) Whistle-blower identity**

The Whistle-blower's Act, ss. 112.3187-112.31895, F.S., "is intended to prevent agencies, or independent contractors of agencies, from taking retaliatory action against an employee who reports violations of law on the part of a public employer or an independent contractor." AGO 12-20. It provides, with limited exceptions, for the confidentiality of the identity of a whistle-blower who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. Section 112.3188(1), F.S. *See also* s. 20.055(6)(b), F.S.

A complainant may waive the right to confidential treatment of his or her name or identity. AGO 95-20. However, an individual may not be required to sign a waiver of confidentiality as a condition of processing a complaint. AGO 96-40.

In order to qualify as a whistle-blower complaint, particular information must be disclosed to an "appropriate local official" or other statutorily designated officials; a general complaint of wrongdoing or a complaint to officials other than those specifically named in s. 112.3188(1), F.S., does not entitle the complainant to whistle-blower protection. AGO 98-37. *And see* AGO 99-07 (county inspector general qualifies as an "appropriate local official" for purposes of the whistle-blower law); and AGO 96-40 (town ethics commission may constitute "appropriate local official" for purposes of processing complaints under the whistle-blower law). *Cf.* AGO 12-20 (while county transportation board may be designated as an "appropriate local official" under s. 112.3188, F.S., such designation "may not be advisable" because board must comply with the Sunshine Law and, "[a]bsent a statutory exemption, the handling of confidential information or records during the course of public meetings does not otherwise allow meetings of the board to be closed").

**(b) Active investigations**

Section 112.3188(2)(a), F.S., states that except as specifically authorized in s. 112.3189, F.S., all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt if the information is being received or derived from allegations as set forth in s. 112.3188(1)(a) or (b), F.S., and an investigation is "active" as defined s. 112.3188(2)(c), F.S. "Thus, the act protects the identity of employees and persons who disclose information that can serve as the basis for a whistle-blower complaint, as well as information received in the course of a whistle-blower investigation." AGO 10-48.



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Information received by an appropriate local official or local chief executive officer or produced or derived from fact-finding or investigations by local government pursuant to s. 112.3187(8)(b), F.S. [authorizing administrative procedures for handling whistle-blower complaints filed by local public employees] is confidential and exempt, provided that the information is being received or derived from allegations set forth in s. 112.3188(1) and an investigation is "active" as defined in the section. Section 112.3188(2)(b), F.S. A complaint initiating an investigation into alleged mismanagement and overpayment of contractors constitutes "information received by" a proper local official and is not subject to disclosure until the investigation is no longer active. *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 2d 375 (Fla. 4th DCA 2019). *See also* s. 119.071(2)(k), F.S., providing that complaints alleging "employee misconduct" are confidential until the investigation is no longer active or has concluded as provided in the exemption.

The exemption applies whether the allegations of wrongdoing were received from an anonymous source or a named individual; in either case information received or generated during the course of the investigation is subject to the exemption. AGO 99-07. *And see* AGO 10-48 (confidential information received by the county's inspector general pursuant to the county's whistle-blower act may be shared with the county's ethics commission only for the purpose of carrying out the commission's whistle-blower functions).

**15. Law enforcement records**

**a. Arrest and crime reports and the exemption for active criminal investigative and active criminal intelligence information**

**(1) Arrest and crime reports**

Arrest and crime reports are generally considered to be open to public inspection. AGOs 91-74 and 80-96. *And see* AGO 08-23 (officer trip sheets revealing identity of officer, location and hours of work and locations to which officers have responded for emergency and non-emergency purposes are public records); and AGO 12-07, discussing requirements for recording telephone conversations set forth in Ch. 934, F.S., Florida's Security of Communications law, but noting that "any recordings of telephone conversations made by [a police department] in the usual course of business would be public records," subject to the access and confidentiality provisions of the Public Records Act. *Cf.* s. 901.43(1), F.S., prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other payment to remove the photographs.

However, statutory exemptions for active criminal investigative and intelligence information, confessions, juvenile offender records and certain victim information may apply to crime reports and other law enforcement records. A discussion of these and other exemptions pertaining to law enforcement records follows; for additional information regarding exemptions, please refer to Appendix D and the Index, *infra.*

**(2) Purpose and scope of exemption**

Section 119.071(2)(c)1., F.S., exempts active criminal intelligence information and active criminal investigative information from public inspection. To be exempt, the information must be both "active" and constitute either "criminal investigative" or "criminal intelligence" information. *See Woolling v. Lamar,* 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001).

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report. AGO 91-74. *See also Palm Beach Daily News v. Terlizzese,* No. CL-91-3954-AF (Fla. 15th Cir. Ct. April 5, 1991), holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and uncensored incident report (prepared following a reported sexual battery but prior to the arrest of a suspect), including the investigating officer's narrative report of the interview with the victim, since such information



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was exempt from inspection as active criminal investigative information and as information identifying sexual battery victims. *See* s. 119.071(2)(c) and (h), F.S.

The active criminal investigative and intelligence exemption is limited in scope; its purpose is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. *See Tribune Company v. Public Records,* 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company,* 503 So. 2d 327 (Fla. 1987). *And see Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 973 (Fla. 4th DCA 2017), noting that the exemption furthers "the critical importance" of preserving the confidentiality of police records compiled during an ongoing investigation being conducted in good faith by criminal justice agencies.

Moreover, the active criminal investigative and intelligence information exemption does not *prohibit* the disclosure of the information by the criminal justice agency; the information is exempt from and not subject to the mandatory inspection requirements in s. 119.07(1), F.S., which would otherwise apply. As the court stated in *Williams v. City of Minneola,* 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied,* 589 So. 2d 289 (Fla. 1991), "[t]here are many situations in which investigators have reasons for displaying information which they have the option not to display." *And see* AGO 90-50. *Cf.* s. 838.21, F.S., providing that it is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position.

The law enforcement agency asserting the exemption has the burden of proving that it is entitled to it. *Christy v. Palm Beach County Sheriff 's Office,* 698 So. 2d 1365 (Fla. 4th DCA 1997); and *Florida Freedom Newspapers, Inc. v. Dempsey,* 478 So. 2d 1128 (Fla. 1st DCA 1985).

**(3) Definition of active criminal investigative or intelligence information**

"Criminal intelligence information" means information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Section 119.011(3)(a), F.S.

Criminal intelligence information is considered "active" as long "as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal investigative information" is defined as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Section 119.011(3)(b), F.S. *See Rose v. D'Alessandro,* 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information). Similarly, an autopsy report may constitute criminal investigative information. *See* AGO 78-23.

Such information is considered "active" as long "as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal justice agency" is defined to mean any law enforcement agency, court,



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prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections. Section 119.011(4), F.S.

**(4) Information that is *not* considered to be criminal investigative or intelligence information and must be released unless some other exemption applies**

Section 119.011(3)(c), F.S., states that the following information is not criminal investigative or criminal intelligence information:

1. The time, date, location and nature of a reported crime;
2. The name, sex, age, and address of a person arrested (but see pages 110-113 regarding confidentiality of certain juvenile crime records) or the name, sex, age and address of the victim of a crime, except as provided in s. 119.071(2)(h) or (o). F.S. Section 119.071(2)(h), F.S., provides confidentiality for information revealing the identity of a victim of a sexual offense, child abuse, or a child victim of human trafficking. Section 119.071(2)(o), F.S., provides that the address of a victim of an incident of mass violence is exempt. For more information, please refer to the discussion of exemptions pertaining to certain crime victims found on pages 118-120 (child abuse and sexual offense victims) and page 121 (homicide victims). For information on the constitutional amendment known as Marsy's Law, please see the discussion on page 117;
3. The time, date and location of the incident and of the arrest;
4. The crime charged;
5. Documents given or required to be given to the person arrested, except as provided in s. 119.071(2)(h) or (m), F.S., unless the court finds that release of the information prior to trial would be defamatory to the good name of a victim or witness or jeopardize the safety of such victim or witness; and would impair the ability of the state attorney to locate or prosecute a codefendant;
6. Informations and indictments except as provided in s. 905.26, F.S. [prohibiting disclosure of finding of indictment against a person not in custody, under recognizance or under arrest].

Accordingly, since the above information does not fall within the definition of criminal intelligence or criminal investigative information, it is always subject to disclosure unless some other specific exemption applies. For example, the "time, date, and location of the incident and of the arrest" cannot be withheld from disclosure since such information is expressly exempted from the definitions of criminal intelligence and criminal investigative information. *See* s. 119.011(3)(c)3., F.S. *See also Barfield v. City of Tallahassee,* 171 So. 3d 239 (Fla. 1st DCA 2015) (while "active criminal investigative information" is exempt from public disclosure requirements, the statute expressly excludes the time, date, location, and nature of a reported crime from the exemption).

**(5) Records released to the defendant**

Except in limited circumstances, records which have been given or are required to be given to the person arrested cannot be withheld from public inspection as criminal investigative or intelligence information. See s. 119.011(3)(c)5., F.S. In other words, once the material has been made available to the defendant as part of the discovery process in a criminal proceeding, the material is ordinarily no longer considered to be exempt criminal investigative or criminal intelligence information. *See, e.g., Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal



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investigation exemption does not apply to information for which disclosure was previously required under the rules of discovery). *Accord Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) and *Times Publishing Company v. State*, 903 So. 2d 322, 325 (Fla. 2d DCA 2005). *Cf. State v. Buenoano*, 707 So. 2d 714 (Fla. 1998) (restricted access documents provided to state attorney by federal government pursuant to a loan agreement retained their confidential status under a Florida law providing an exemption for out-of-state criminal investigative information that is shared with Florida criminal justice agencies on a confidential basis, even though the documents erroneously had been given to the defendant and placed in the court record).

For example, in *Satz v. Blankenship,* 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied,* 413 So. 2d 877 (Fla. 1982), the court ruled that a newspaper reporter was entitled to access to tape recordings concerning a defendant in a criminal prosecution where the recordings had been disclosed to the defendant. The court concluded that a reading of the statute reflected the Legislature's belief that once the information was released to the defendant, there was no longer any need to exclude the information from the public. Thus, the tape recordings were no longer "criminal investigative information" that could be withheld from public inspection. *See also News-Press Publishing Co. Inc. v. D'Alessandro,* No. 96-2743-CA-RWP (Fla. 20th Cir. Ct. April 24, 1996) (once state allowed defense counsel to listen to portions of a surveillance audiotape involving a city councilman accused of soliciting undue compensation, those portions of the audiotape became excluded from the definition of "criminal investigative information," and were subject to public inspection). *Cf. City of Miami v. Post-Newsweek Stations Florida, Inc.,* 837 So. 2d 1002, 1003 (Fla. 3d DCA 2002), *review dismissed,* 863 So. 2d 1190 (Fla. 2003) (where defendant filed request for discovery, but withdrew request before state attorney provided such materials, requested materials were not "given or required by law . . . to be given to the person arrested" and thus did not lose their exempt status as active criminal investigative information).

Similarly, in *Bludworth v. Palm Beach Newspapers, Inc.,* 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied,* 488 So. 2d 67 (Fla. 1986), the court upheld a trial judge's order requiring the state attorney to release to the news media all information furnished to the defense counsel in a criminal investigation. While the state attorney argued that the documents could be withheld because the criminal investigation was still "active" and thus exempt from disclosure, the court rejected this contention by concluding that once the material was given to the defendant pursuant to the rules of criminal procedure, the material was excluded from the statutory definition of criminal investigative information. Therefore, it was no longer relevant whether the investigation was active or not and the documents could not be withheld as active criminal investigative information. *Id.* at 779n.1.

Chapter 119's requirement of public disclosure of records made available to the defendant does not violate the attorney disciplinary rule prohibiting extrajudicial comments about defendants as long as the state attorney does not put an interpretation on the record that prejudices the defendant or exposes witnesses. *Bludworth v. Palm Beach Newspapers, Inc.,* 476 So. 2d at 780.

The only circumstances where criminal intelligence or investigative information can retain that status even though it has been made available to the defendant are:

1) If the information would reveal identifying information of a victim of a sexual offense, child abuse, or certain human trafficking crimes pursuant to s. 119.071(2)(h), F.S.; or identifying information of a witness to a homicide for a specified period as provided in s. 119.071(2)(m), F.S.; or the address of a victim of an incident of mass violence as provided in s. 119.071(2)(o), F.S.; or

2) If a court order has been issued finding that release of the information prior to trial would:

   a) be defamatory to the good name of a victim or witness or jeopardize the safety of a victim or witness; and



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b) impair the ability of a state attorney to locate or prosecute a codefendant.

In all other cases, material which has been made available to the defendant cannot be deemed criminal investigative or intelligence information and must be open to inspection unless some other exemption applies (*e.g.,* s. 119.071[2][e], F.S., exempting all information "revealing the substance of a confession" by a person arrested until there is a final disposition in the case); or the court orders closure of the material in accordance with its constitutional authority to take such measures as are necessary to obtain orderly proceedings and a fair trial or to protect constitutional privacy rights of third parties. *See Miami Herald Publishing Company v. Lewis,* 426 So. 2d 1 (Fla. 1982); *Florida Freedom Newspapers, Inc. v. McCrary,* 520 So. 2d 32 (Fla. 1988); *Post-Newsweek Stations, Florida Inc. v. Doe,* 612 So. 2d 549 (Fla. 1992). *And see Morris Communications Company LLC v. State,* 844 So. 2d 671, 673n.3 (Fla. 1st DCA 2003) (although documents turned over to the defendant during discovery are generally public records subject to disclosure under Ch. 119, the courts have authority to manage pretrial publicity to protect the defendant's constitutional rights as described in *Miami Herald Publishing Company v. Lewis, supra*); *Times Publishing Co. v. State,* 903 So. 2d 322 (Fla. 2d DCA 2005) (while the criminal discovery rules authorize a nonparty to file a motion to restrict disclosure of discovery materials based on privacy considerations, where no such motion has been filed, the judge is not authorized to prevent public access on his or her own initiative). *Cf. Rameses, Inc. v. Demings,* 29 So. 3d 418, 423 (Fla. 5th DCA 2010) ("disclosure to criminal defendant during discovery of unredacted versions of undercover police surveillance recordings does not destroy, in a public records context, the exemptions contained in section 119.071 for information relating to the identity of undercover law enforcement personnel").

**(6) Active versus inactive criminal investigative or intelligence information**

**(a) Active criminal investigative information**

Criminal investigative information is considered active (and, therefore, exempt from disclosure pursuant to s. 119.071[2][c], F.S.) "as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Section 119.011(3)(d)2., F.S. Information in cases barred from prosecution by a statute of limitation is not active. *Id.*

The definition of "active" requires "a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future." *Barfield v. City of Fort Lauderdale Police Department* 639 So. 2d 1012, 1016 (Fla. 4th DCA), *review denied,* 649 So. 2d 869 (Fla. 1994). Thus, "once the investigations are concluded, if no charges are filed, the records would cease to be 'active' and thus subject to disclosure." *Id.* at 1018.

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations. *See Florida Freedom Newspapers, Inc. v. Dempsey,* 478 So. 2d 1128 (Fla. 1st DCA 1985). The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive. *Id.* at 1131. The Legislature did not intend that confidentiality be limited to investigations where the outcome and an arrest or prosecution was a certainty or even a probability. *Barfield v. City of Fort Lauderdale Police Department* at 1016-1017.

Thus, an investigation will be deemed to be "active," even though there is no immediate anticipation of an arrest, so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. *Barfield v. City of Fort Lauderdale Police Department, supra.* Accordingly, a police department's criminal investigation into a shooting incident involving its officers continued to be "active" even though pursuant to department policy, all police shooting cases were sent to the state attorney's office for review by the grand jury and the department did not know if there would be an arrest in this particular case. *Id.*



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Similarly, in *News-Press Publishing Co., Inc. v. Sapp,* 464 So. 2d 1335 (Fla. 2d DCA 1985), the court held that in view of an ongoing investigation by the state attorney and the convening of a grand jury in the very near future to consider a shooting incident by deputy sheriffs during an undercover drug transaction, documents consisting of the sheriff's completed internal investigation of the incident constituted "active criminal investigative information" and were, therefore, exempt from disclosure. *See also Wells v. Sarasota Herald Tribune Company, Inc.,* 546 So. 2d 1105 (Fla. 2d DCA 1989) (investigative files of the sheriff and state attorney were not inactive where an active prosecution began shortly after the trial judge determined that the investigation was inactive and ordered that the file be produced for public inspection).

Additionally, a circuit court held that a criminal investigative file involving an alleged 1988 sexual battery which had been inactive for three years, due in part to the death of the victim from unrelated causes, could be "reactivated" and removed from public view in 1992 when new developments prompted the police to reopen the case. The court found that it was irrelevant that the 1988 file could have been inspected prior to the current investigation; the important considerations were that the file apparently had not been viewed by the public during its "inactive" status and the file was now part of an active criminal investigation and therefore exempt from disclosure as active criminal investigative information. *News-Press Publishing Co., Inc. v. McDougall,* No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992).

In another case, however, the appellate court upheld a court order unsealing an arrest warrant affidavit upon a showing of good cause by the subject of the affidavit. The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did not constitute active criminal investigative information because there was no reasonable, good faith anticipation that the subject would be arrested or prosecuted in the near future. In addition, most of the information was already available to the subject through grand jury transcripts, the subject's perjury trial, or by discovery. *Metropolitan Dade County v. San Pedro,* 632 So. 2d 196 (Fla. 3d DCA 1994). *And see Mobile Press Register, Inc. v. Witt*, 24 Med. L. Rptr. 2336, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996) (ordering that files in a 1981 unsolved murder be opened to the public because, despite recent reactivation of the investigation, the case had been dormant for many years and no arrest or prosecution had been initiated or was imminent).

**(b) Active criminal intelligence information**

In order to constitute exempt "active" criminal intelligence information, the information must "be of the type that will lead to the 'detection of *ongoing or reasonably anticipated criminal activities*.'" *Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), quoting s. 119.011(3)(d)1., F.S. *See Barfield v. Orange County, Florida,* No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying a petition for writ of mandamus seeking access to gang intelligence files compiled by the sheriff's office). *See also* AGO 94-48 (information contained in the statewide integrated violent crime information system established by the Florida Department of Law Enforcement constitutes active criminal intelligence information; even though some of the information may have come from closed investigations, the information is collected to "anticipate, prevent, and monitor criminal activity and to assist in the conduct of ongoing criminal investigations").

By contrast, in *Christy v. Palm Beach County Sheriff's Office, supra,* the court ruled that records generated in connection with a criminal investigation conducted 13 years earlier did not constitute "active" criminal intelligence information. The court noted that the exemption "is not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files." *Id.*

**(c) Pending prosecutions or appeals**

Criminal intelligence and investigative information is also considered to be "active" while



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such information is directly related to pending prosecutions or direct appeals. Section 119.011(3)(d), F.S. *See News-Press Publishing Co., Inc. v. Sapp, supra*; and *Tal-Mason v. Satz,* 614 So. 2d 1134 (Fla. 4th DCA), *review denied,* 624 So. 2d 269 (Fla. 1993) (contents of prosecutorial case file must remain secret until the conclusion of defendant's direct appeal).

Once the conviction and sentence have become final, criminal investigative information can no longer be considered to be "active." *See State v. Kokal,* 562 So. 2d 324, 326 (Fla. 1990) and *Osario v. State,* 34 So. 3d 98 (Fla. 3rd DCA 2010). *Accord Tribune Company v. Public Records,* 493 So. 2d 480, 483-484 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company,* 503 So. 2d 327 (Fla. 1987) (actions for postconviction relief following affirmance of the conviction on direct appeal are not pending appeals for purposes of s. 119.011[3][d]2., F.S. *See also Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997) (the term "pending prosecutions or appeals" in s. 119.011[3][d], F.S., applies only to ongoing prosecutions or appeals which have not yet become final).

Moreover, the determination as to whether investigatory records related to pending prosecutions or appeals are "active" is relevant *only* to those records which constitute criminal intelligence or investigative information. In other words, if records are excluded from the definition of criminal intelligence or investigative information, as in the case of records given or required to be given to the defendant under s. 119.011(3)(c)5., F.S., it is immaterial whether the investigation is active or inactive. *See Bludworth v. Palm Beach Newspapers, Inc.,* 476 So. 2d 775, 779n.1 (Fla. 4th DCA 1985), *review denied,* 488 So. 2d 67 (Fla. 1986) ("Something that is not criminal intelligence information or criminal investigative information cannot be active criminal intelligence information or active criminal investigative information."). *Accord Staton v. McMillan,* 597 So. 2d 940, 941 (Fla. 1st DCA 1992), r*eview dismissed sub nom., Staton v. Austin,* 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under discovery rules even though there is a pending direct appeal).

**(7) Criminal defendant's public records request**

Section 119.07(8), F.S., states that the public access rights set forth in s. 119.07, F.S., "are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings." Thus, a criminal defendant's public records request for nonexempt law enforcement records relating to the defendant's pending prosecution constitutes an election to participate in discovery and triggers a reciprocal discovery obligation. *Henderson v. State,* 745 So. 2d 319 (Fla. 1999).

**(8) Disclosure of active criminal investigative information to the public**

It has been held that the criminal investigative exemption does not apply if the information has already been made public. *Staton v. McMillan,* 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom., Staton v. Austin,* 605 So. 2d 1266 (Fla. 1992). *See also Downs v. Austin,* 522 So. 2d 931, 935 (Fla. 1st DCA 1988) (once state has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information). *Cf. State v. Buenoano,* 707 So. 2d 714, 717 (Fla. 1998) (confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement).

However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of *other* documents. *Arbelaez v. State,* 775 So. 2d 909, 918 (Fla. 2000). *Accord Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (release of the autopsy report and the medical examiner's public comments about the



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report did not mean that other records in the possession of the medical examiner relating to an active criminal investigation into the death were public; "[i]t is not unusual for law enforcement and criminal investigatory agencies to selectively release information relating to an ongoing criminal investigation in an effort to enlist public participation in solving a crime").

**(9) Disclosure of active criminal investigative information to another criminal justice agency**

Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status; in "determining whether or not to compel disclosure of active criminal investigative or intelligence information, the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests." *City of Riviera Beach v. Barfield,* 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied,* 651 So. 2d 1192 (Fla. 1995). The *City of Riviera Beach* court held that exempt records of the West Palm Beach police department's active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. *Accord Ragsdale v. State,* 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

Additionally, a police department may enter into a contract with a private company that compiles raw police data and then provides informational reports to law enforcement. The release of the exempt information to the corporation for this purpose would not cause such records to lose their exempt status. AGO 96-36.

However, while the courts have recognized that active criminal investigative information may be forwarded from one criminal justice agency to another without jeopardizing its exempt status, "[t]here is no statutory exemption from disclosure of an 'ongoing federal prosecution.'" *Woolling v. Lamar,* 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001). In *Woolling*, the court held that a state attorney bore the burden of establishing that state attorney files in a *nolle prossed* case which were furnished to the federal government for prosecution of a defendant constituted active criminal investigative information; the fact that the federal government was actively prosecuting the case was not sufficient, standing alone, to justify imposition of the exemption.

Moreover, the exemption for active criminal intelligence and investigative information does not exempt other public records from disclosure simply because they are transferred to a law enforcement agency. *See, e.g., Tribune Company v. Cannella,* 438 So. 2d 516, 523 (Fla. 2d DCA 1983), *reversed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company,* 105 S.Ct. 2315 (1985) (assistant state attorney could not withdraw public records from public scrutiny by asserting that he "compiled" the records simply because he subpoenaed them; thus, law enforcement personnel records compiled and maintained by the employing agency prior to a criminal investigation did not constitute criminal intelligence or criminal investigative information); and *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018) (surveillance video footage created by a school district before a criminal investigation began did not constitute "criminal investigative information" within the meaning of s. 119.011[3]b] because it was not compiled by a criminal justice agency in the course of conducting a criminal investigation). *And see New Times, Inc. v. Ross,* No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992) (papers in a closed civil forfeiture file which subsequently became part of a criminal investigation were open to inspection as the materials could not be considered criminal investigative information because the file was closed prior to the commencement of the criminal investigation).

Thus, public records maintained and compiled by the Office of the Capital Collateral Representative cannot be transformed into active criminal investigative information by merely transferring the records to the Florida Department of Law Enforcement (FDLE). AGO 88-25.



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*Accord* Inf. Op. to Slye, August 5, 1993, concluding that the contents of an investigative report compiled by a state agency inspector general in carrying out his or her duty to determine program compliance are not converted into criminal intelligence information merely because FDLE also conducts an investigation or because such report or a copy thereof has been transferred to that department. *And see Sun-Sentinel, Inc. v. Florida Department of Children and Families,* 815 So. 2d 793 (Fla. 3d DCA 2002).

Similarly, in AGO 92-78, the Attorney General's Office concluded that otherwise disclosable public records of a housing authority are not removed from public scrutiny merely because the records have been subpoenaed by and transferred to the state attorney's office. Inf. Op. to Theobald, November 16, 2006, stating that while an individual would be prohibited from obtaining records from the internal investigation file pursuant to s. 112.533(2), F.S., while the investigation is active, public records such as overtime slips created prior to the investigation and maintained in the law enforcement officer's personnel file would not become confidential simply because copies of such records are being used in the investigation.

However, the exemption for active criminal investigative information may not be subverted by making a public records request for all public records gathered by a law enforcement agency in the course of an ongoing investigation; to permit such requests would negate the purpose of the exemption. AGO 01-75.

In addition, a request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from disclosure requirements, during the period in which the information constitutes active criminal investigative or intelligence information. Section 119.071(2)(c)2.a., F.S. The law enforcement agency that made the request must give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active, so that the custodian's response to the request and information that would identify the public record requested are available to the public. Section 119.071(2)(c)2.b., F.S.

Thus, while agency records are not exempt merely because they have been submitted to FDLE, s. 119.071(2)(c)2.a., F.S., exempts FDLE's request to inspect or copy records, as well as the agency's response, or any information that would identify the public record that was requested by FDLE or provided by the agency during the period in which the information constitutes criminal intelligence or criminal investigative information that is active. AGO 06-04. Although a request may be made for the agency's records, such a request may not be phrased, or responded to, in terms of a request for the specific documents asked for and received by FDLE during the course of any active criminal investigation. *Id. Cf.* Inf. Op. to Theobald, November 16, 2006, stating that while the records in a personnel department were subject to disclosure, the personnel department was precluded from identifying which of its records had been gathered by a law enforcement agency in the course of its active internal investigation.

**(10) Records containing both active criminal investigative information and non-exempt information**

The fact that a crime or incident report may contain some active criminal investigative or intelligence information does not mean that the entire report is exempt from disclosure. Section 119.07(1)(d), F.S., requires the custodian of the document to redact only that portion of the record for which an exemption is asserted and to provide the remainder of the record for inspection and copying. *See, e.g., City of Riviera Beach v. Barfield,* 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied,* 651 So. 2d 1192 (Fla. 1995), in which the court held that a city was authorized to withhold exempt active criminal investigative records but "must comply with the disclosure requirements of sections 119.07(2) [now s. 119.07(1)(d)] and 119.011(3)(c) by making partial disclosure of certain non-exempt information contained in the records including,



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*inter alia*, the date, time and location of the incident."

**(11) Criminal investigative or intelligence information received from other states or the federal government**

Pursuant to s. 119.071(2)(b), F.S., criminal intelligence or investigative information received by a Florida criminal justice agency from a non-Florida criminal justice agency on a confidential or similarly restricted basis is exempt from disclosure. *See State v. Wright,* 803 So. 2d 793 (Fla. 4th DCA 2001), *review denied,* 823 So. 2d 125 (Fla. 2002) (state not required to disclose criminal histories of civilian witnesses which it obtained from the Federal Bureau of Investigation). The purpose of this statute is to "encourage cooperation between non-state and state criminal justice agencies." *State v. Buenoano,* 707 So. 2d 714, 717 (Fla. 1998). Thus, confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement. *Id.*

**(12) Criminal investigative or intelligence information received prior to January 25, 1979**

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure. Section 119.071(2)(a), F.S. *See Satz v. Gore Newspapers Company,* 395 So. 2d 1274, 1275 (Fla. 4th DCA 1981) ("All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is specifically exempt from the requirements of public disclosure.").

**b. "Baker Act" reports prepared by law enforcement officers**

Part I, Ch. 394, F.S., is the "Baker Act," Florida's mental health act. The Baker Act provides for the voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to s. 394.463(2)(a)2., F.S., a law enforcement officer must take a person who appears to meet the statutory criteria for involuntary examination into custody and deliver that person, or have that person delivered, to the nearest receiving facility for examination.

Section 394.463(2)(a)2., F.S., requires the officer to "execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record." A patient's clinical record is confidential. Section 394.4615(1), F.S. Thus, the report prepared by the officer pursuant to this statute is part of the patient's clinical record and is confidential. *Cf. Lake v. State,* 193 So. 3d 932 (Fla. 4th DCA 2016) (Legislature has not made records of a sexually violent predator confidential in the same way as the clinical records of a Baker Act patient).

However, in AGO 93-51, the Attorney General's Office advised that a *separate* written incident or event report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, is filed with the law enforcement agency as a record of that event, and is not made a part of the patient's clinical record, is not confidential pursuant to Ch. 394, F.S. The opinion noted that the incident report in question was not the confidential law enforcement report required by s. 394.463(2)(a)2., but was a separate written incident or event report prepared by a deputy sheriff for filing with the sheriff's office as an independent record of the deputy's actions. *Cf.* s. 394.464(1), F.S., providing confidentiality for petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act and authorizing disclosure to specified persons and entities.

**c. Body camera recordings**

A body camera recording is confidential and exempt from public disclosure when taken inside a private residence, inside a health care, mental health care, or social services facility, or in a place that a reasonable person would expect to be private. Section 119.071(2)(l)2., F.S. The term "body camera" is defined to mean a "portable electronic recording device that is worn on a



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law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities." Section 119.071(2)(l)1.a., F.S.

A law enforcement agency may disclose the recording in furtherance of its official duties and responsibilities or to another governmental agency in furtherance of that agency's duties and responsibilities. Section 119.071(2)(l)3., F.S.

The recording must be disclosed to certain individuals as set forth in the statute, including the person recorded, or pursuant to court order. Section 119.071(2)(l)4., F.S. *And see* s. 943.1718(2)(d), F.S. However, the exemption does not supersede any other public records exemption that existed before or is created after the effective date of the exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt. Section 119.071(2)(l)7., F.S.

A law enforcement agency must retain a body camera recording for at least 90 days. Section 119.071(2)(l)5., F.S. The exemption applies retroactively. Section 119.071(2)(l)6., F.S.

**d. Confessions**

Section 119.071(2)(e), F.S., exempts from disclosure any information revealing the substance of a confession by a person arrested until such time as the case is finally determined by adjudication, dismissal, or other final disposition. *See Times Publishing Co. v. Patterson,* 451 So. 2d 888 (Fla. 2d DCA 1984) (trial court order permitting state attorney or defendant to designate affidavits, depositions or other papers which contained "statements or substance of statements" to be sealed was overbroad because the order was not limited to those statements revealing the substance of a "confession").

In AGO 84-33, the Attorney General's Office advised that only such portions of the complaint and arrest report in a criminal case file which reveal the "substance of a confession," *i.e.*, the material parts of a statement made by a person charged with the commission of a crime in which that person acknowledges guilt of the essential elements of the act or acts constituting the entire criminal offense, are exempt from public disclosure. *And see Times Publishing Company v. State,* 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), (portions of police interview transcript and tape which did not "directly relate to [the defendant's] participation in the crimes" did not contain the substance of a confession pursuant to s. 119.071(2)(e), F.S.).

**e. Confidential informants**

Section 119.071(2)(f), F.S., exempts information disclosing the identity of confidential informants or sources. This exemption applies regardless of whether the informants or sources are still active or may have, through other sources, been identified as such. *Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997); *Salcines v. Tampa Television,* 454 So. 2d 639 (Fla. 2d DCA 1984); and *Rameses, Inc. v. Demings,* 29 So. 3d 418 (Fla. 5th DCA 2010). *And see State v. Natson,* 661 So. 2d 926 (Fla. 4th DCA 1995) (private citizen who provided police with tip information which led to defendant's arrest may be afforded confidential informant status). *Cf. Doe v. State*, 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney's office which led to a criminal investigation and was justified in inferring or had a reasonable expectation that he would be treated as a confidential source, the citizen is entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney's office); *State v. Bartholomew,* No. 08-5656CF10A (Fla. 17th Cir. Ct., August 7, 2009) (even if Crimestoppers Council of Broward County were an agency for purposes of Ch. 119, F.S., information relating to the identity of informants and persons from whom they received information would be confidential under s. 119.071[2][f], F.S.).

However, in *Ocala Star Banner Corporation v. McGhee,* 643 So. 2d 1196 (Fla. 5th DCA 1994), the court held that a police department should not have refused to release an entire police



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report on the ground that the report contained some information identifying a confidential informant. According to the court, "[w]ithout much difficulty the name of the informant, [and] the sex of the informant (which might assist in determining the identity) . . . can be taken out of the report and the remainder turned over to [the newspaper]." *Id.* at 1197. *Accord Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d at 1368. *And see Holley v. Bradford County Sheriff's Department,* 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants). *Cf. Althouse v. Palm Beach County Sheriff's Office,* 92 So. 3d 899 (Fla. 4th DCA 2012), *disapproved on other grounds*, *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) (agency conceded that its initial response denying public records request for "rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants" was "incorrect"; records were subsequently produced after portions were redacted pursuant to s. 119.071[2][d], F.S.).

Moreover, in *City of St. Petersburg v. Romine ex rel. Dillinger,* 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court ruled that information regarding payments to a confidential informant (who had been previously identified as a confidential informant during a criminal trial) is subject to disclosure as long as the records are sufficiently redacted to conceal the specific cases on which the informant worked. The court acknowledged that the Public Records Act may not be used in such a way as to obtain information that the Legislature has declared must be exempt from disclosure, but said that "this is not a situation where someone has alleged that they know or suspect the identity of a confidential informant and the production of records involving that informant would confirm the person's information or suspicion." *Id.*

Section 943.082(1), F.S., authorizes the Florida Department of Law Enforcement, in collaboration with the Department of Legal Affairs, to competitively procure a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the department, law enforcement agencies, or school officials is confidential. Section 943.082(6), F.S.

**f. Criminal history information**

**(1) Criminal history information generally**

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990. *And see* AGO 97-09 (a law enforcement agency may, without a request, release nonexempt information contained in its public records relating to sexual offenders; the agency's authority to release such information is not limited to those offenders who are designated as "sexual predators").

Section 943.046, F.S., states:

> (1) Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of the information, unless the information is confidential and exempt [from disclosure]. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may obtain a copy of an offender's criminal history record.
>
> (2) A state or local law enforcement agency and its personnel are immune from civil liability for the release of criminal history information or other information regarding a criminal offender, as provided by this section.

Section 943.053(2), F.S., referenced in the above statute, provides restrictions on the dissemination of criminal justice information obtained from *federal* criminal justice information systems and other states by stating that such information shall not be disseminated in a manner



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inconsistent with the laws, regulations, or rules of the originating agency. Thus, criminal history record information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection. AGO 99-01.

Section 943.053(3)(a), F.S., states that criminal history information compiled by the Criminal Justice Information Program of the Florida Department of Law Enforcement from *intrastate* sources shall be provided to law enforcement agencies free of charge and to persons in the private sector upon payment of fees as provided in the subsection. *And see* pages 112-113 relating to dissemination of criminal history information relating to juveniles.

**(2) Sealed and expunged records**

Access to criminal history records sealed or expunged by court order in accordance with s. 943.059 or s. 943.0585, F.S., is strictly limited. *See, e.g., Alvarez v. Reno,* 587 So. 2d 664 (Fla. 3d DCA 1991) (Goderich, J., specially concurring) (state attorney report and any other information revealing the existence or contents of sealed records is not a public record and cannot, under any circumstances, be disclosed to the public). *And see* s. 943.0595, F.S., providing for automatic sealing of certain criminal history records.

A law enforcement agency that has been ordered to expunge criminal history information or records should physically destroy or obliterate information consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges and the disposition of those charges. AGO 02-68. However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S. *Id. And see* AGO 00-16 (only those records maintained to formalize the petitioner's arrest, detention, indictment, information, or other formal criminal charge and the disposition thereof would be subject to expungement under s. 943.0585).

There are exceptions allowing disclosure of information relating to the existence of an expunged criminal history record to specified entities for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. Section 943.0585(6), F.S. Similar provisions exist relative to disclosure of sealed criminal history records. Section 943.059(6), F.S. *And see* s. 943.0583(10)(a), F.S. (expunged criminal history record of human trafficking victim). A records custodian who has received information relating to the existence of an expunged or sealed criminal history record is prohibited from disclosing the existence of such record. AGO 94-49.

**g. Fingerprint records**

Biometric identification information is exempt from s. 119.07(1), F.S. Section 119.071(5)(g), F.S. The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints. *Id.*

**h. Forensic behavioral health evaluations**

A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, F.S. (mentally deficient and mentally ill defendants) is confidential and exempt. Section 916.1065(1), F.S.

**i. Juvenile offender records**

**(1) Confidentiality and authorized disclosure**

Juvenile offender records traditionally have been considered confidential and treated differently from other records in the criminal justice system. With limited exceptions, s. 985.04(1)(a), F.S., provides, in relevant part, that:

> Except as provided in subsections (2), (3), (6), and (7) and s.



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> 943.053, *all information obtained under this chapter* in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department [of Juvenile Justice], the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile *is confidential and exempt [from public disclosure].* This exemption applies to information obtained before, on, or after the effective date of this exemption. (e.s).

Section 985.04(1)(b), F.S., states that the confidential and exempt information may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon court order. *Cf.* AGO 96-65 (subject of juvenile offense records may authorize access to such records to others [such as a potential employer] by means of a release).

Similarly, s. 985.04(7)(a), F.S., limits access to records in the custody of the Department of Juvenile Justice. With the exception of specified persons and agencies, juvenile records in the custody of that agency "may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper." If a juvenile prosecuted as an adult is transferred to serve his or her sentence in the custody of the Department of Juvenile Justice, the department's records relating to that juvenile are not open to public inspection. *New York Times Company v. Florida Department of Juvenile Justice*, No. 03-46-CA, 2003 WL 22723464 (Fla. 2d Cir. Ct. March 20, 2003).

Thus, as a general rule, access to records of juvenile offenders is limited. *See, e.g.*, Inf. Op. to Galbraith, April 8, 1992 (city's risk manager and attorney representing city in unrelated civil lawsuit not among those authorized to have access); and Inf. Op. to Wierzbicki, April 7, 1992 (domestic violence center not among those authorized to receive juvenile information). *And see* AGO 07-19 (confidentiality provisions preclude public release of the names and addresses of the parents of juvenile arrested for a misdemeanor). *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. *Cf.* AGO 97-28 (juvenile confidentiality requirements do not apply to court records of a case in which a juvenile is prosecuted as an adult, regardless of the sanctions ultimately imposed in the case).

Confidential photographs of juveniles taken in accordance with s. 985.11, F.S, "may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime." Section 985.11(1)(b), F.S. This statute authorizes a law enforcement officer to use photographs of juvenile offenders in a photographic lineup for the purpose of identifying the perpetrator of a crime, regardless of whether those juvenile offenders are suspects in the crime under investigation. AGO 96-80. *Cf. Barfield v. Orange County,* Florida, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

**(2) Exceptions to confidentiality**

**(a) Child traffic violators**

All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. Section 985.11(3), F.S.



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**(b) Felony arrests and adult system transfers**

Until October 1, 1994, law enforcement agencies generally could release only the name and address of juveniles 16 and older who had been charged with or convicted of certain crimes. In 1994, the juvenile confidentiality laws were modified to eliminate the age restriction and provide enhanced disclosure. Section 985.04(2), F.S., was amended again in 2016 and now provides:

> Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:
>
> (a) Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
>
> (b) Charged with a violation of law which, if committed by an adult, would be a felony;
>
> (c) Found to have committed an offense which, if committed by an adult, would be a felony; or
>
> (d) Transferred to adult court pursuant to part X of Chapter 985, are not considered confidential and exempt from s. 119.07(1) solely because of the child's age.

The Attorney General's Office has stated that the expanded disclosure provisions originally enacted in 1994 apply only to juvenile records created after October 1, 1994, the effective date of the 1994 amendments to the juvenile confidentiality laws. AGO 95-19. Confidential information on juveniles arrested prior to October 1, 1994, is available by court order upon a showing of good cause. *Id.* *See G.G. v. Florida Department of Law Enforcement,* 97 So. 3d 268, 274 (Fla. 1st DCA 2012) ("it is clear that only the arrest records of those juveniles who the legislature has designated in section 985.04[2] have lost their confidential status and are available to the public . . . ."). *See also* the discussion below regarding the dissemination of criminal history information relating to juveniles.

A public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this subparagraph does not restrict public access to records as provided by s. 119.07, F.S. Section 985.04(2)(a)2., F.S.

**(c) Mandatory notification to schools**

Section 985.04(4)(b), F.S., provides that when the state attorney charges a juvenile with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile's school that the juvenile has been charged with such felony or delinquent act. A similar directive applies to a law enforcement agency that takes a juvenile into custody for an offense that would have been a felony if committed by an adult, or a crime of violence. Section 985.04(4)(a), F.S. *And see* s. 1006.08(2), F.S. (notification by court to school superintendent); and s. 985.04(4)(c), F.S. (notification by school superintendent to certain school personnel). *Cf.* s. 985.04(4)(d), F.S. (notification by Department of Juvenile Justice of the presence of a juvenile sex offender in the care and custody or under the jurisdiction or supervision of the department).

**(d) Criminal history information relating to juveniles**

Section 943.053(3)(c)1., F.S., provides that criminal history information relating to juveniles, including information that is confidential pursuant to s. 943.053(3)(b), F.S., shall be available to:

> (a) A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
>
> (b) The person to whom the record relates, or his or her attorney;



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(c) The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or

(d) An agency or entity specified in s. 943.0585(6) or s. 943.059(6), F.S., for the purpose specified therein, and any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

**(e) Victim access**

Section 985.036(1), F.S., allows the victim, the victim's parent or guardian, their lawful representatives, and, in a homicide case, the next of kin, to have access to information and proceedings in a juvenile case, provided that such rights do not interfere with the constitutional rights of the juvenile offender. Those entitled to access "may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies." *Id. And see* s. 960.001(8), F.S., authorizing similar disclosures to victims.

In addition, s. 985.04(3), F.S., states that a "law enforcement agency may release a copy of the juvenile offense report to the victim of the offense." *Cf. Harvard v. Village of Palm Springs,* 98 So. 3d 645 (Fla. 4th DCA 2012), noting that the authorization in s. 985.04(3), F.S., is permissive not mandatory; thus, a local government was not *required* to produce a juvenile offense report to the victim's mother.

**j. Motor vehicle records**

**(1) Automated license plate recognition system records**

Images and data containing or providing personal identifying information obtained through use of an automated license plate recognition system are confidential and exempt. Section 316.0777, F.S.

**(2) Crash reports**

Motor vehicle crash reports are confidential for a period of 60 days after the report is filed. Section 316.066(2)(a), F.S. However, such reports may be made immediately available to the parties involved in the crash, their legal representatives, their insurance companies and agents, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, and certain print and broadcast media as described in the exemption. Section 316.066(2)(b), F.S. Nevertheless, certain "free newspapers of general circulation," as specified in the exemption, may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved with the crash if the newspaper requests ten or more crash reports within a 24 hour period before the 60 day period has ended. Section 316.066(2)(f), F.S.

The owner of a vehicle involved in a crash is among those authorized to receive a copy of the crash report immediately. AGO 01-59. In addition, the statute provides that any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties. Section 316.066(2)(c), F.S. *Cf.* AGO 06-11 (fire department that is requesting crash reports in order to seek reimbursement from the at-fault driver does not fall within the scope of this provision authorizing immediate access to the reports).

"As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver's license or other photographic identification, proof of status or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will



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not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt." Section 316.066(2)(d), F.S.

The written statement must be completed and sworn to by the requesting party for each individual crash report that is being requested within 60 days after the report is filed. *Id.* Reports may be released without the sworn statement to third-party vendors under contract with one or more insurers, but only if the conditions set forth in the statute are stated in the contract. *Id.* Third-degree felony penalties are established for knowing unauthorized disclosure or use of confidential information in violation of this statute. *See* s. 316.066(3)(b), (c), and (d), F.S., for more information.

**(3) Department of Highway Safety and Motor Vehicles motor vehicle records**

Section 119.0712(2)(b), F.S., provides that personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq* (DPPA). Such information may be released only as authorized by that act. The term "motor vehicle record" is defined to mean any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV). Section 119.0712(2)(a), F.S. *And see* s. 119.0712(2)(d)1. and 2., F.S., providing that emergency contact information contained in a motor vehicle record is confidential.

E-mail addresses collected by DHSMV pursuant to cited statutes [motor vehicle record and driver license transactions] are exempt from public disclosure requirements. Section 119.0712(2)(c), F.S.

**(4) Law enforcement agency records**

The Attorney General's Office has stated that while DHSMV motor vehicle records are confidential in the hands of a law enforcement agency, to the extent information is taken from DHSMV records and used in preparing other records of the law enforcement agency or its agent, the confidentiality requirements of s. 119.0712(2)(b), F.S., do not reach those records created by subsequent users. Thus, a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying. AGO 10-10.

Similarly, DPPA does not prohibit a city from disclosing to a newspaper, in response to a public-records request, the violation notices the city sent to vehicle owners based on images captured by red-light cameras. *City of Tallahassee v. Federated Publications, Inc.,* No. 4:11cv395-RH/CAS (N.D. Fla. August 9, 2012). *Cf.* s. 316.0777, F.S. (2014).

**k. Pawnbroker records**

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant s. 539.001, F.S., the Florida Pawnbroking Act, are confidential and exempt from disclosure and may be used only for official law enforcement purposes. Section 539.003, F.S. However, law enforcement officials are not prohibited from disclosing the name and address of the pawnbroker, the name and address of the conveying customer, or a description of the pawned property to the alleged owner of pawned property. *Id. And see* AGO 01-51.

**l. Polygraph records**

The Attorney General's Office is not aware of any statutory provision barring access to otherwise public records, simply because the records are in the form of polygraph charts. *See, e.g., Wisner v. City of Tampa Police Department,* 601 So. 2d 296 (Fla. 2d DCA 1992) (polygraph materials resulting from polygraph examination that citizen took in connection with a closed internal affairs investigation were public records); and *Downs v. Austin,* 522 So. 2d 931 (Fla.



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1st DCA 1988) (because state had already publicly disclosed the results of polygraph tests administered to defendant's accomplice, the tests were not exempt criminal investigative or intelligence information and were subject to disclosure to the defendant).

However, the s. 119.071(1)(a), F.S., exemption for questions and answers used in employment examinations applies to questions and answers contained in pre-employment polygraph examinations. *Rush v. High Springs,* 82 So. 3d 1108 (Fla. 1st DCA 2012). This exemption applies to examination questions and answers but does not include the "impressions and grading of the responses" by the examiners. *See Dickerson v. Hayes,* 543 So. 2d 836, 837 (Fla. 1st DCA 1989). *See also Gillum v. Times Publishing Company,* No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991) (newspaper entitled to access to employment polygraph records "to the extent such records consist of polygraph machine graph strips and examiners' test results, including the bottom portion of the machine graph denoted 'Findings and Comments' or similar designation"; however, agency could redact "any examinee's actual answers to questions or summaries thereof").

**m. Prison and inmate records**

In the absence of statutory exemption, prison and inmate records are subject to disclosure under the Public Records Act. *Cf. Williams v. State*, 741 So. 2d 1248 (Fla. 2d DCA 1999) (order imposing offender's habitual offender sentence and documents showing his qualifying convictions, subject to disclosure under Ch. 119). *And see Cruz v. State,* 279 So. 3d 154 (Fla. 4th DCA 2019), finding that county jail visitation logs are public records, and rejecting the defendant's argument that the names of jail visitors should be protected from disclosure.

Subject to limited exceptions, s. 945.10, F.S., states that the following records and information held by the Department of Corrections are confidential and exempt from public inspection: mental health, medical (including HIV tests) or substance abuse records of inmates or offenders; preplea, pretrial intervention, presentence or postsentence investigative records; information regarding a person in the federal witness protection program; confidential or exempt Florida Commission on Offender Review records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies an executioner; and records that are otherwise confidential or exempt by law. *See Correll v. State*, 184 So. 3d 478 (Fla. 2015), in which the Court summarized prior precedent upholding the constitutionality of s. 945.10, F.S., and again rejected claims that an inmate has the right to know the identity of execution team members. *See also Roberts v. Singletary,* No. 96-603 (Fla. 2d Cir. Ct. July 28, 1997) (portions of the Department of Corrections Execution Procedures Manual containing "highly sensitive security information" not subject to disclosure). *Cf.* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities).

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail. *Times Publishing Company v. Corrections Corporation of America,* No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *per curiam affirmed,* 611 So. 2d 532 (Fla. 5th DCA 1993). *See also Prison Health Services, Inc. v. Lakeland Ledger Publishing Company,* 718 So. 2d 204 (Fla. 2d DCA 1998), *review denied,* 727 So. 2d 909 (Fla. 1999) (records of private company under contract with sheriff to provide health care to jail inmates are subject to Ch. 119 just as if they were maintained by a public agency).

**n. Resource inventories and emergency response plans**

Section 119.071(2)(d), F.S., exempts "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34 . . . ." *See Timoney v. City of Miami Civilian Investigative Panel,* 917 So. 2d 885 (Fla. 3d DCA 2005), in which the court held that a city police department's Operational Plan prepared in response to



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intelligence reports warning of possible violence surrounding an economic summit remained exempt from disclosure after the summit ended. The court found that the city planned to use portions of the Plan for future events and the "language of [the exemption] leads us to believe that the legislature intended to keep such security information exempt after an immediate emergency passes." *Id.* at 887. *And see* s. 119.071(3)(a)1., F.S., which includes "emergency evacuation plans" and "sheltering arrangements" within the definition of a "security or firesafety system plan" that is confidential and exempt from public disclosure.

**o. Surveillance techniques, procedures or personnel**

Information revealing surveillance techniques, procedures or personnel is exempt from public inspection pursuant to s. 119.071(2)(d), F.S. *See Rameses, Inc. v. Demings,* 29 So. 3d 418 (Fla. 5th DCA 2010) (disclosure to criminal defendant of unredacted undercover police surveillance recordings does not destroy exemption in s. 119.071[2][d], F.S.; therefore, sheriff is only required to provide redacted recording in response to a public records request); and *State v. Bee Line Entertainment Partners Ltd.,* No. CIO 00-5358, 28 Med.L.Rptr. 2592 (Fla. 9th Cir. Ct. October 25, 2000) (videotapes created with hidden camera by law enforcement investigation showing result of investigative activity but that do not reveal confidential surveillance methods must be released once investigation is no longer active). *And see Althouse v. Palm Beach County Sheriff's Office,* 92 So. 3d 899 (Fla. 4th DCA 2012), *disapproved on other grounds, Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) noting that the agency had conceded that its initial response denying Althouse's request for "rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants" was "incorrect" and that the agency had subsequently produced the records after redacting portions pursuant to s. 119.071(2)(d), F.S. *Cf. State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018), in which the court noted that surveillance techniques are "*exempt*, not confidential and exempt." [Emphasis supplied by the Court]

The detailed schedule and travel plans of the Governor, including drive times and the time and location of the Governor's arrival and departure, were encompassed within the s. 119.071(2)(d), F.S., exemption where the Florida Department of Law Enforcement special agent submitted an undisputed affidavit attesting that premature disclosure of this information would reveal "surveillance techniques, procedures, or personnel," and would jeopardize the security of the Governor and the officers assigned to protect him. *Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2018).

**p. Undercover personnel**

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. *But see Ocala Star Banner Corporation v. McGhee,* 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994)(police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released). *Accord Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365 (Fla. 4th DCA 1997).

Information regarding law enforcement officers who are assigned to undercover duty and whose names appear on personnel rosters or other lists of all law enforcement officers of the city without regard to whether the record reveals the nature of their duties may constitute "[a]ny information revealing undercover personnel of any criminal justice agency[.]" AGO 15-02. The Legislature's determination that such information is exempt from public inspection, rather than confidential, conditions the release of exempt information upon a determination by the custodian that there is a statutory or substantial policy need for disclosure. *Id.*

For information on the identity of safe-school officers appointed pursuant to s. 1006.12,



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F.S., please refer to the discussion on page 152.

**q. Victim information**

**(1) Marsy's Law**

On November 6, 2018, Florida voters approved a constitutional amendment known as Marsy's Law. Marsy's Law amends Art. I, s. 16 of the Constitution to add several provisions relating to victim rights. Subsection (b)(5) provides that "every victim is entitled to the following rights, beginning at the time of his or her victimization" to include: "The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family or which could disclose confidential or privileged information of the victim." The amendment took effect on January 8, 2019.

**(2) Statutory exemptions relating to victim information**

Although s. 119.071(2)(c), F.S., exempts active criminal investigative information from disclosure, the "name, sex, age, and address of . . . the victim of a crime, except as provided in s. 119.071(2)(h) or (o)," are specifically excluded from the definition of criminal investigative or intelligence information. *See* s. 119.011(3)(c)2., F.S. Accordingly, victim information is considered to be public record in the absence of a statutory exemption. *Cf. Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017) (s. 119.071[2][m], F.S., providing an exemption for the identity of homicide witnesses for 2 years after the date on which the murder is observed by the witness shields the identity of witnesses to a highway shooting who became victims when the perpetrator shot at their vehicle). A discussion of the statutory exemptions which apply to crime victims generally, and those which apply to the victims of certain crimes, follows.

**(a) Amount of stolen property**

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or investigative information that reveals the personal assets of a crime victim, which were not involved in the crime, is exempt from disclosure. However, this exemption does not apply to information relating to the amount of property stolen during the commission of a crime. AGO 82-30. Note, however, that s. 119.071(2)(j)1., F.S., provides that victims of certain crimes may file a written request to exempt information revealing their "personal assets."

**(b) Commercial solicitation of victims**

Section 119.105, F.S., provides that police reports are public records except as otherwise made exempt or confidential and that every person is allowed to examine nonexempt or nonconfidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. *Id.* The statute "does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information." *Id.* A willful and knowing violation of this statute is a third-degree felony. Section 119.10(2)(b), F.S.

**(c) Documents which are *received* by an agency regarding victims**

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number or address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, if that document is *received* by an agency that regularly receives information from or concerning the victims of crime. However, this provision is limited to documents received by agencies which regularly receive information from or concerning victims of crime; it does not apply to records generated or made by these



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agencies. AGO 90-80. Accordingly, this exemption does not apply to police reports. *Id.*

Section 119.071(2)(j)1., F.S., also provides that "[a]ny state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section." *See* Inf. Op. to McCabe, November 27, 1995 (state attorney authorized to release materials received during an investigation of a domestic violence incident to a police department for use in the department's internal affairs investigation).

**(d) Home or employment address, telephone number, assets**

Victims of specified crimes listed in s. 119.071(2)(j)1., F.S., are authorized to file a written request for exemption of their addresses, telephone numbers and personal assets as follows:

> Any information not otherwise held confidential or exempt [from disclosure] which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of *sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence* is exempt [from disclosure], upon written request by the victim which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. (e.s.)

This exemption is not limited to documents *received* by an agency, but exempts specified information in records--whether generated or received by--an agency. Thus, a victim of the enumerated crimes may file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification, such as a copy of the incident or offense report for one of the listed crimes, that an applicable crime has occurred. *See* AGO 96-82. The exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity. *City of Gainesville v. Gainesville Sun Publishing Company,* No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996).

The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for exemption AGO 96-82. It applies to any records held by an agency and is not limited to those records relating to the offense. *Id.* "[A]n examination of the legislative history surrounding the adoption of this exemption indicates that the Legislature intended that the exemption not be limited to those documents identifying the individual as a victim of crime but rather be applied to any document revealing the personal information held by any agency." *Id. And see* AGO 02-50, in which the Attorney General's Office advised that s. 119.071(2)(j)1., F.S., does not contain an exception for copies of the police report that are sent to domestic violence centers pursuant to s. 741.29, F.S., if the victim has made a written request for exempt status of the personal information specified in s. 119.071(2)(j)1., F.S.

In addition, the requirement that the victim make a written request for exemption applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions, such as s. 119.071(2)(h), F.S., that may be applicable to certain crime victims. AGO 96-82

For more information on exemptions pertaining to domestic violence or stalking victims, please see the discussion on page 76.

**(e) Information identifying or depicting victims of sex offenses and of child abuse**

**(1) Law enforcement and prosecution records**

Section 119.071(2)(h)1.a., F.S., provides confidentiality for criminal investigative and



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intelligence information that reveals the identity of a victim of the crime of child abuse, as defined by Ch. 827, F.S., or that reveals the identity of a person under the age of 18 who is a victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S. Information which may reveal the identity of a victim of a sexual offense, including a sexual offense prohibited in s. 787.06(3)(b), (d), (f), or (g), or Chs. 794, 796, 800, 827, or 847, F.S., is also confidential. Section 119.071(2)(h)1.b., F.S.

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under ss. 787.06(3)(b), (d), (f), or (g) or 810.145, or Chs. 794, 796, 800, 827, or 847, F.S., is confidential and exempt, regardless of whether the photograph, videotape, or image identifies the victim. Section 119.071(2)(h)1.c., F.S. *See Harvard v. Village of Palm Springs,* 98 So. 3d 645, 647 (Fla. 4th DCA 2012), rejecting a mother's assertion that there is "no law prohibiting her" from obtaining a copy of her son's videotaped interview, because s. 119.071(2)(h)1.a-c, F.S., "provides that a video of a victim is exempt from a public records request if it is taken during the course of one of several enumerated types of criminal investigations."

Thus, the Attorney General's Office advised that information revealing the identity of victims of child abuse or sexual battery must be deleted from the copy of the report of domestic violence which is sent by a law enforcement agency to the nearest domestic violence center pursuant to s. 741.29(2), F.S. AGO 92-14. *And see Palm Beach County Police Benevolent Association v. Neumann,* 796 So. 2d 1278 (Fla. 4th DCA 2001), applying exemption to information identifying a child abuse victim which was contained in files prepared as part of an internal investigation conducted in accordance with s. 112.533, F.S.

Section 119.071(2)(h)2.a-c, F.S., sets forth circumstances which permit a law enforcement agency to disclose the confidential information. Moreover, the Attorney General's Office has advised that the confidentiality provisions do not apply to the identity of a child abuse victim who *died* from suspected abuse. AGO 90-103.

Section 119.071(2)(j)2a., F.S., provides that identifying information in a videotaped statement of a minor who is alleged to be or who is a victim of a sexual offense prohibited in the cited laws which reveals the minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies the minor as a victim, held by a law enforcement agency, is confidential. Access shall be provided, however, to authorized governmental agencies when necessary to the furtherance of the agency's duties. *Id.* A public employee may not willfully and knowingly disclose videotaped information that reveals the minor's identity to anyone other than the designated individuals, including the defendant. Section 119.071(2)(j)2b., F.S. *Cf. State v. Ingram,* 170 So. 3d 727 (Fla. 2015) (J. Pariente concurring) (s. 119.071[2][j]2.b. does not authorize disclosure to a convicted incarcerated inmate of videotaped information that reveals the minor victim's identity).

A public employee or officer having access to the photograph, name, or address of a person alleged to be a victim of an offense described in Ch. 794 (sexual battery); Ch. 800 (lewdness, indecent exposure); s. 827.03 (abuse, aggravated abuse, and neglect of a child); s. 827.04 (contributing to delinquency or dependency of a child); or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim. Section 794.024(1), F.S. A violation of this section constitutes a second degree misdemeanor. Section 794.024(2), F.S. *Cf. State v. Globe Communications Corporation,* 648 So. 2d 110, 111 (Fla. 1994) (statute mandating criminal



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sanctions for printing, publishing or broadcasting "in any instrument of mass communication" information identifying a victim of a sexual offense, ruled unconstitutional).

An entity or individual who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information concerning the victim of any sexual offense under Ch. 794 or Ch. 800 shall be liable to the victim for all damages reasonably necessary to compensate the victim for any injuries suffered as a result of such communication. Section 794.026(1), F.S. The victim, however, may not maintain a cause of action unless he or she is able to show that such communication was intentional and was done with reckless disregard for the highly offensive nature of the publication. Section 794.026(2), F.S. *Cf. Cox Broadcasting Corp. v. Cohn,* 95 S.Ct. 1029 (1975); and *Cape Publications, Inc. v. Hitchner,* 549 So. 2d 1374 (Fla. 1989), *appeal dismissed,* 110 S.Ct. 296 (1989).

The Crime Victims' Services Office in the Attorney General's Office is authorized to receive confidential records from law enforcement and prosecutorial agencies. Section 960.05(2)(k), F.S. *And see* AGO 92-51 (city victim services division, as a governmental agency which is part of the city's criminal justice system, may receive identifying information about victims of sex offenses, for the purpose of advising the victim of available services pursuant to s. 960.001, F.S., requiring distribution of victim support information).

**(2) Court records**

Section 92.56, F.S., provides that criminal intelligence information or criminal investigative information made confidential pursuant to s. 119.071(2)(h), F.S., must be maintained in court records and in court proceedings, including witnesses' testimony. If a petition for access to these records is filed with the trial court with jurisdiction over an alleged offense, the status of the information must be maintained by the court if the state or the victim demonstrates certain factors as set forth in the statute. Section 92.56(1), F.S. A person who willfully and knowingly violates section 92.56, F.S., or any court order issued under this section is subject to contempt proceedings. Section 92.56(6), F.S. *See also* AGO 03-56 and s. 119.0714(1)(h), F.S.

**(3) Department of Children and Families abuse records**

As discussed on pages 72-73, there are statutory exemptions set forth in Ch. 415, F.S., which relate to records of abuse of vulnerable adults. Similar provisions relating to child abuse records are found in Ch. 39, F.S. The Attorney General's Office has concluded that the confidentiality provisions in these laws, *i.e., ss.* 415.107 and 39.202, F.S., apply to records of the Department of Children and Families [DCF] and do not encompass a law enforcement agency's arrest report of persons charged with criminal child abuse, after the agency has deleted all information which would reveal the identity of the victim. *See* AGO 93-54. *Accord* Inf. Op. to O'Brien, January 18, 1994. *Cf. Times Publishing Company v. A.J.,* 626 So. 2d 1314 (Fla. 1993), holding that a sheriff's incident report of alleged child abuse that was forwarded to the state child welfare department for investigation pursuant to Ch. 415, F.S. 1990 [see now Part II, Ch. 39, F.S., entitled "Reporting Child Abuse"], should not be released. The Court noted that the department had found no probable cause and that child protection statutes accommodate privacy rights of those involved in these cases "by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found." *Id.* at 1315.

Section 39.202(1) and (2)(b), F.S., authorizes criminal justice agencies to have access to confidential abuse, abandonment, or neglect records held by DCF and provides that the exemption from disclosure for DCF abuse records also applies to DCF records and information in the possession of the agencies granted access. *See* Inf. Op. to Russell, October 24, 2001.

**(f) Homicide victims and witnesses**



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**(1) Photographs and video or audio recordings of killing of law enforcement officer or killing of victim of mass violence**

Section 119.071(2)(p)1., F.S., provides confidentiality for a photograph, video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence. Disclosure may be made to certain persons and entities as authorized in the exemption. Section 119.071(2)(p)2., F.S. *And see* pages 71-72 discussing the confidentiality of autopsy photographs.

The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean "all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." Section 119.071(2)(p)1.a., F.S.

"Killing of a victim of mass violence" means events that depict either a victim being killed or the body of a victim killed in an incident in which 3 or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence. Section 119.071(2)(p)1.b., F.S.

Section 119.071(2)(p)7., F.S., provides that the exemption shall be given retroactive application and shall apply to all photographs and recordings of persons covered by the exemption regardless of whether the killing occurred before, on, or after the effective date of the act, May 23, 2019. *And see State v. Schenecker*, No. 11 CF 001376A (Fla. 13th Cir. Ct. August 3, 2011), *cert.denied sub nom., Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), in which the court concluded that a prior version of this statute applied to crime scene photographs of the victims.

**(2) Address of victim of an incident of mass violence**

The address of a victim of an incident of mass violence is exempt from disclosure requirements. Section 119.071(2)(o), F.S. The term "incident of mass violence" means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator. *Id.*

**(3) Homicide witness**

Criminal investigative or intelligence information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S., is confidential for 2 years after the date on which the murder is observed by the witness. Section 119.071(2)(m)1., F.S. A criminal justice agency may disclose this information in the furtherance of its official duties and responsibilities; to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered; to another governmental agency for use in the performance of its official duties and responsibilities; to the parties in a pending criminal prosecution as required by law. *Id. And see Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017) (applying exemption to shield the identity of witnesses who observed a homicide on the highway and whose vehicle was hit by bullets fired by the perpetrator as the witnesses attempted to follow the suspect's car).

**(g) Human trafficking victims**

Criminal intelligence information or criminal investigative information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged pursuant to s. 943.0583, F.S., is confidential. Section 943.0583(11)(a), F.S. Disclosure is authorized under certain circumstances. Section 943.0583(11)(b), F.S. *And see* s. 119.071(2)(h), F.S., relating to victims of the crime of human trafficking proscribed in s. 787.06, F.S., discussed on pages 118-119.



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Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation, as defined in s. 409.016, F.S., is confidential and exempt from public disclosure requirements. Section 409.1678(6)(a), F.S. Information may be provided to an agency as necessary to maintain health and safety standards and to address emergency situations in the house or facility. Section 409.1678(6)(b), F.S.

**(h) Relocated victim or witness information**

Information held by a law enforcement agency, prosecutorial agency or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness (or their immediate family) who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Section 914.27, F.S.

**16. Litigation records**

**a. Attorney-client communications**

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company,* 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). *See also City of North Miami v. Miami Herald Publishing Company,* 468 So. 2d 218 (Fla. 1985) (although s. 90.502, F.S., of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119, F.S.).

Moreover, public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company, supra. And see Seminole County, Florida v. Wood,* 512 So. 2d 1000, 1001 (Fla. 5th DCA 1987), *review denied,* 520 So. 2d 586 (Fla. 1988) (the rules of ethics provide that an attorney may divulge a communication when required by law; the Legislature has plenary authority over political subdivisions and can require disclosure of otherwise confidential materials); and AGO 98-59 (records in the files of the former city attorney, who served as a contract attorney for the city, which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor).

On the other hand, the Florida Supreme Court has ruled that files in the possession of the Capital Collateral Representative (CCR) in furtherance of its representation of an indigent client are not subject to public disclosure under Ch. 119, F.S. The Court noted that the files are not governmental records for purposes of the public records law but are the "private records" of the CCR client. *Kight v. Dugger,* 574 So. 2d 1066 (Fla. 1990). *And see Times Publishing Company v. Acton,* No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (private attorneys retained by individual county commissioners in a criminal case were not "acting on behalf" of a public agency so as to become subject to the Public Records Act, even though the board of county commissioners subsequently voted to pay the commissioners' legal expenses in accordance with a county policy providing for reimbursement of legal expenses to individual county officers who successfully defend criminal charges filed against them arising out of the performance of their official duties).

**b. Attorney work product**

The Supreme Court has ruled that the Legislature and not the judiciary has exclusive authority to exempt litigation records from the scope of Ch. 119, F.S. *Wait v. Florida Power & Light Company,* 372 So. 2d 420 (Fla. 1979). *See also Edelstein v. Donner,* 450 So. 2d 562 (Fla. 3d DCA 1984), *approved,* 471 So. 2d 26 (Fla. 1985), noting that in the absence of legislation, a work product exemption is "non-existent;" and *Hillsborough County Aviation Authority v.*



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*Azzarelli Construction Company,* 436 So. 2d 153, 154 (Fla. 2d DCA 1983), stating that the Supreme Court's decision in *Wait* "constituted a tacit recognition that work product can be a public record."

With the enactment of s. 119.071(1)(d), F.S., the Legislature created a narrow statutory exemption for certain litigation work product of agency attorneys. *See City of Orlando v. Desjardins,* 493 So. 2d 1027, 1029 (Fla. 1986), in which the Court noted that the exemption was enacted because of "developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege . . . ." *See also City of North Miami v. Miami Herald Publishing Company,* 468 So. 2d 218, 219 (Fla. 1985) (noting application of exemption to "government agency, attorney-prepared litigation files during the pendency of litigation"); and *City of Miami Beach v. DeLapp,* 472 So. 2d 543 (Fla. 3d DCA 1985) (opposing counsel not entitled to city's legal memoranda as such material is exempt work product). *Cf. Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 682 (Fla. 1st DCA 2018), noting that "it was important" that an agency attorney's memorandum which was prepared exclusively to assess the strength of the agency's evidence in a licensing case remain exempt from disclosure during the pendency of the adversarial administrative proceedings.

Section 119.071(1)(d)1., F.S., states, in relevant part:

> A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt [from disclosure] until the conclusion of the litigation or adversarial administrative proceedings.

Note that this statutory exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively on pages 127-128, certain preliminary trial preparation materials, such as handwritten notes for the personal use of the attorney, are not considered to be within the definitional scope of the term "public records" and, therefore, are outside the scope of Ch. 119, F.S. *See Johnson v. Butterworth,* 713 So. 2d 985 (Fla. 1998).

Under the terms of the statute, the work product exemption "is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney." Section 119.071(1)(d)2., F.S. *See also* AGO 94-77 (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation).

An agency asserting the work product exemption must identify the potential parties to the litigation or proceedings. Section 119.071(1)(d)2., F.S. However, the agency is not required to identify each *document* in a record that it asserts to be exempt under the work product exemption. *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018). Whether to impose such a requirement "is a matter properly addressed to the legislature rather than this court." *Id*.

In the event of litigation disputing the claimed work product exemption, the court must conduct an in camera inspection of the records. *Environmental Turf, Inc. v. University of Florida*



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*Board of Trustees,* 83 So. 3d 1012 (Fla. 1st DCA 2012).

If a court finds that the record was improperly withheld, the party seeking the record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court. Section 119.071(1)(d)2., F.S. As one court has noted, the inclusion of an attorney's fee sanction "was prompted by the legislature's concern that government entities might claim the work product privilege whenever public access to their records is demanded." *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority,* 640 So. 2d 216, 218 (Fla. 2d DCA 1994).

**(1) Scope of exemption**

**(a) Attorney bills and payments**

Only those records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" are included within the parameters of the work product exemption. Accordingly, in AGO 85-89, the Attorney General's Office concluded that a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption. *Accord* AGO 00-07 (records of outside attorney fee bills for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

If the bills and invoices contain some exempt work product--*i.e.*, "mental impression[s], conclusion[s], litigation strateg[ies], or legal theor[ies],"--the exempt material may be deleted and the remainder disclosed. AGO 85-89. However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the exemption. *Id. And see Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998) ("Obviously, an entry on a [billing] statement which identifies a specific legal strategy to be considered or puts a specific amount of settlement authority received from the client, would fall within the exemption. On the other hand, a notation that the file was opened, or that a letter was sent to opposing counsel, would not.").

Thus, an agency which "blocked out" most notations on invoices prepared in connection with services rendered by and fees paid to attorneys representing the agency, "improperly withheld" nonexempt material when it failed to limit its redactions to those items "genuinely reflecting its 'mental impression, conclusion, litigation strategy, or legal theory.'" *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority,* 640 So. 2d at 218. *And see Davis v. Sarasota County Public Hospital Board,* 480 So. 2d 203 (Fla. 2d DCA 1985), *review denied,* 488 So. 2d 829 (Fla. 1986), holding in part that a citizen seeking to examine records of a public hospital board concerning the payment of legal fees was entitled to examine actual records, not merely excerpts taken from information stored in the hospital's computer.

**(b) Records prepared prior to litigation or for other purposes**

Unlike the open meetings exemption in s. 286.011(8), F.S., for certain attorney-client discussions between a governmental board and its attorney, s. 119.071(1)(d), F.S., is not limited to records created for *pending* litigation before a court or administrative agency, but may also apply to records prepared "in *anticipation of imminent* civil or criminal litigation or imminent adversarial administrative proceedings . . . ." (e.s.) *See* AGO 98-21, discussing the differences between the public records work product exemption in s. 119.071(1)(d) and the Sunshine Law exemption in s. 286.011(8), F.S.

However, s. 119.071(1)(d), F.S., does not create a blanket exception to the Public Records Act for all attorney work product. AGO 91-75. The exemption is narrower than the work product privilege recognized by the courts for private litigants. AGO 85-89. In order to qualify for the work product exemption, the records must have been prepared exclusively for litigation or adversarial administrative proceedings, or prepared in anticipation of imminent litigation or adversarial administrative proceedings; records prepared for other purposes may not be converted



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into exempt material simply because they are also used in or related to the litigation. *See, e.g., Lightbourne v. McCollum,* 969 So. 2d 326, 333 (Fla. 2007), *cert. denied,* 553 U.S. 1059 (2008) (memoranda prepared by corrections department attorney regarding lethal injection procedures do not constitute exempt attorney work product because memoranda do not relate to any pending litigation nor appear to have been prepared exclusively for litigation); *MHM Correctional Services, Inc. v. State, Department of Corrections,* No. 2009 CA 2105 (Fla. 2d Cir. Ct. June 10, 2009) (department wrongfully withheld portions of an e-mail stream regarding the bid process as protected work product or privileged communications as none of the emails were prepared in contemplation of litigation as required by the statute).

Moreover, only those records which are prepared by or at the express direction of the agency attorney and reflect "a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency" are exempt from disclosure until the conclusion of the proceedings. *See City of Orlando v. Desjardins,* 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city's litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city); *Jordan v. School Board of Broward County,* 531 So. 2d 976, 977 (Fla. 4th DCA 1988) (record did not constitute exempt work product because it "was not prepared at an attorney's express direction nor did it reflect a conclusion and mental impression of appellee"); and *Lightbourne v. McCollum, supra* (exemption inapplicable to records that conveyed specific factual information rather than mental impressions or litigation strategies). *Cf. Tober v. Sanchez,* 417 So. 2d 1053, 1055 (Fla. 3d DCA 1982), *review denied sub nom.*, *Metropolitan Dade County Transit Agency v. Sanchez,* 426 So. 2d 27 (Fla. 1983) (documents which are given by a client to an attorney in the course of seeking legal advice are privileged in the attorney's hands only if the documents were privileged in the client's hands; thus, otherwise public records made or received by agency personnel do not become privileged merely by transferring them to the agency attorney).

Thus, a circuit judge refused to apply the exemption to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp. *See Sun-Sentinel Company v. City of Hallandale,* No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995). Similarly, in AGO 05-23, the Attorney General's Office advised that notes taken by the assistant city attorney during interviews with co-workers of certain city employees in order to ascertain if employee discipline was warranted are not exempt from disclosure. *See also* AGO 91-75 (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the school board to conduct an investigation of certain school district departments). *Cf. City of Avon Park v. State,* 117 So. 3d 470 (Fla. 2d DCA 2013) (recognizing that where no charges were filed against any of the parties mentioned in a state attorney investigator's report, the report was a public record and the s. 119.071[1][d], F.S., exemption was inapplicable).

**(c) Settlement records**

A circuit court held that draft settlement agreements furnished *to* a state agency by a federal agency were public records despite the department's agreement with the federal agency to keep such documents confidential. *Florida Sugar Cane League, Inc. v. Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct. September 20, 1991), *per curiam affirmed*, 606 So. 2d 1267 (Fla. 1st DCA 1992). *And see Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (technical documents or data which were not prepared for the purpose of carrying litigation forward but rather were jointly authored among adversaries to promote settlement are not exempted as attorney work product); and Inf. Op. to Gastesi, August, 27, 2015 (settlement demand furnished by plaintiff to agency). *Cf. Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204, 205 (Fla. 2d DCA 1998), *review denied*, 727 So. 2d 909 (Fla. 1999) (private company under contract with sheriff to provide medical services for inmates at county jail must release records relating to a settlement agreement with an inmate because all of its records that would normally be subject to the Public Records Act if in the possession of the public agency, are likewise covered



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by that law, even though in the possession of the private corporation).

In addition, if the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. *State v. Coca-Cola Bottling Company of Miami, Inc.,* 582 So. 2d 1 (Fla. 4th DCA 1990). *And see Tribune Company v. Hardee Memorial Hospital,* No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991) (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the settled case and their litigation strategy would have a detrimental effect upon the agency's position in the related case).

**(2) Duration of exemption**

The exemption from disclosure provided by s. 119.071(1)(d), F.S., is temporary and limited in duration. *City of North Miami v. Miami Herald Publishing Co., supra.* The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if disclosure of the information in the concluded case could negatively impact the agency's position in related cases or claims. *See State v. Coca-Cola Bottling Company of Miami, Inc.,* 582 So. 2d 1 (Fla. 4th DCA 1990); *Seminole County v. Wood,* 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied,* 520 So. 2d 586 (Fla. 1988); and *Lightbourne v. McCollum, supra* (rejecting a "continuing exemption" claim by the state). *And see* AGO 13-13 (Sunshine Law exemption for certain attorney-client meetings found in s. 286.011[8], F.S., "does not recognize a continuation of the exemption for 'derivative claims' made in separate, subsequent litigation"). *Cf. State v. Coca-Cola Bottling Company of Miami, Inc., supra* (although state cannot claim work product exemption for litigation records after conclusion of litigation, Ch. 119 does not cover oral testimony; thus, opposing counsel not entitled to take *depositions* of state representatives regarding the concluded litigation).

Thus, a school board failed to meet its burden of showing that items contained in a school board litigation report were exempt from disclosure where there was no evidence that the cases in question were pending and open when the board received the public records request. *Barfield v. School Board of Manatee County,* 135 So. 3d 560 (Fla. 2d DCA 2014).

However, the phrase "conclusion of the litigation or adversarial administrative proceedings" encompasses post-judgment collection efforts such as a legislative claims bill. *Wagner v. Orange County,* 960 So. 2d 785 (Fla. 5th DCA 2007). *And see* AGO 94-33, concluding that for purposes of the attorney-client exemption from the Sunshine Law in s. 286.011(8), F.S., a pending lawsuit is concluded when the suit is dismissed with prejudice or the applicable statute of limitations has run; "[t]o allow a plaintiff who has voluntarily dismissed a suit to gain access to transcripts of strategy or settlement meetings in order to obtain an advantage in the refiling of a lawsuit would subvert the purpose of the statute." *Cf. Chmielewski v. City of St. Pete Beach,* 161 So. 3d 521 (Fla. 2d DCA 2014) (rejecting city's argument that because an agreement settling a quiet title action provided for further mediation should a dispute arise regarding the meaning of the agreement, the case was still pending for purposes of the Sunshine Law exemption in s. 286.011[8], F.S).

In addition, the exemption extends "through prosecution of appeals." Inf. Op. to Boutsis, December 13, 2012. *Cf.* s. 119.071(1)(d)1., F.S. ("For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.").

**c. Other statutory exemptions relating to litigation records**

Section 768.28(16)(b), F.S., provides an exemption for claims files maintained by agencies pursuant to a risk management program for tort liability until the termination of all litigation and settlement of all claims arising out of the same incident.



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The "plain language of the statute" indicates that the "*entire* claims file is exempt from disclosure until resolution of the claim or claims." *City of Homestead v. McDonough*, 232 So. 3d 1069, 1071 (Fla. 3d DCA 2017). [emphasis supplied by the court]. Accordingly, the trial court erred by ordering production of certain records in the file on the theory that production would not harm the city. *Id. See also Wagner v. Orange County,* 960 So. 2d 785 (Fla. 5th DCA 2007), stating that the phrase "settlement of all claims arising out of the same incident" included a legislative claims bill.

The exemption afforded by s. 768.28(16), F.S., is limited to tort claims for which the agency may be liable under s. 768.28, F.S., and does not apply to federal civil rights actions under 42 U.S.C. s. 1983. AGOs 00-20 and 00-07. *And see Sun-Sentinel Company v. City of Hallandale,* No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995) (exemption now found at s. 768.28[16][b], F.S., for risk management files did not apply to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp). Moreover, the exemption does not include outside attorney invoices indicating hours worked and amount to be paid by the public agency, even though the records may be maintained by the agency's risk management office pursuant to a risk management program. AGO 00-07. *And see* AGO 92-82 (open meetings exemption provided by s. 768.28, F.S., applies only to meetings held *after* a tort claim is filed with the risk management program).

Section 624.311(2), F.S., provides that the "records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt [from disclosure] until termination of all litigation and settlement of all claims arising out of the same incident." A county's self-insured workers compensation program is the legal equivalent of "insurance" for purposes of this exemption. *Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998). *And see* AGO 85-102 (s. 624.311, F.S., exemption includes correspondence regarding insurance claims negotiations between a county's retained counsel and its insurance carriers until termination of litigation and settlement of claims arising out of the same incident). *Compare* s. 284.40(2), F.S. (claim files maintained by the risk management division of the Department of Financial Services are confidential, shall be only for the use of the department, and are exempt from disclosure); and s. 1004.24(4), F.S. (claims files of self-insurance program adopted by Board of Governors, or the board's designee, are confidential and exempt).

**d. Attorney notes**

Relying on its conclusion in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), the Florida Supreme Court has recognized that "not all trial preparation materials are public records." *State v. Kokal*, 562 So. 2d 324, 327 (Fla. 1990). In *Kokal*, the Court approved the decision of the Fifth District in *Orange County v. Florida Land Co.,* 450 So. 2d 341, 344 (Fla. 5th DCA 1984), *review denied,* 458 So. 2d 273 (Fla. 1984), which described certain documents as not within the term "public records" because they were not used to perpetuate, formalize, or communicate knowledge:

> Document No. 2 is a list in rough outline form of items of evidence which may be needed for trial. Document No. 9 is a list of questions the county attorney planned to ask a witness. Document No. 10 is a proposed trial outline. Document No. 11 contains handwritten notes regarding the county's sewage system and a meeting with Florida Land's attorneys. Document No. 15 contains notes (in rough form) regarding the deposition of an anticipated witness. These documents are merely notes from the attorneys to themselves designed for their own personal use in remembering certain things. They seem to be simply *preliminary* guides intended to aid the attorneys when they later formalized the knowledge. We cannot imagine that the Legislature, in enacting the Public Records Act, intended to include within the



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> term 'public records' this type of material. [Emphasis supplied by Court]

Similarly, in *Johnson v. Butterworth,* 713 So. 2d 985, 987 (Fla. 1998), the Court ruled that "outlines, time lines, page notations regarding information in the record, and other similar items" in the case file, do not fall within the definition of public record, and thus are not subject to disclosure. *See also Braddy v. State*, 219 So. 3d 803. 821 (Fla. 2017) ("handwritten attorney notes, draft documents, and annotated copies of decisional law . . . do not constitute public records"); *Patton v. State,* 784 So. 2d 380, 389 (Fla. 2000) (prosecutor's personal notes, *i.e.*, handwritten details of specific questions to ask jurors during voir-dire, notes on potential jurors, a time-line of events, or specific detailed questions for witnesses, are not public records); *Ragsdale v. State,* 720 So. 2d 203, 205 (Fla. 1998) ("attorney's notes and other such preliminary documents are not public records and are never subject to public records disclosure"); *Valle v. State,* 705 So. 2d 1331, 1335 (Fla. 1997) (prosecutors' notes to themselves for their own personal use, including outlines of opening and closing arguments and notes of witness depositions are not public records); *Lopez v. State,* 696 So. 2d 725, 727 (Fla. 1997) (handwritten notes dealing with trial strategy and cross-examination of witnesses are not public records); and *Atkins v. State*, 663 So. 2d 624, 626 (Fla. 1995) (notes of state attorney's investigations and annotated photocopies of decisional case law are not public records).

By contrast, documents prepared to communicate, perpetuate, or formalize knowledge constitute public records and are, therefore, subject to disclosure in the absence of statutory exemption. *See Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.,* 379 So. 2d 633, 640 (Fla. 1980), stating that "[i]nter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business."

Thus, in *Coleman v. Austin,* 521 So. 2d 247, 248 (Fla. 1st DCA 1988), the court observed that "although notes from attorneys to themselves might not be public records when intended for their own personal use, inter-office and intra-office memoranda may constitute public records even though encompassing trial preparation materials." *And see Orange County v. Florida Land Company, supra,* in which the court concluded that trial preparation materials consisting of interoffice and intraoffice memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency's formal work product, were public records although such circulated trial preparation materials might be exempt from disclosure pursuant to s. 119.071(1)(d), F.S., while the litigation is ongoing. *See also* AGO 05-23 (handwritten notes prepared by city's assistant labor attorney during her interviews with city employees are public records "when those notes are made to perpetuate and formalize knowledge and to communicate that information to the city's labor attorney").

**17. Personal records not made or received in the course of official business**

As noted in AGO 04-33, the broad definition of "public record" makes it clear that the "form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." *See* s. 119.011(12), F.S., defining the term "public records" to mean materials "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that in order to constitute "public records" for purposes of Ch. 119 disclosure requirements, the records must have been prepared "in connection with official agency business" and be intended to "perpetuate, communicate, or formalize knowledge of some type."

Accordingly, records which are *not* made or received in connection with the transaction of official business do not constitute public records for purposes of Ch. 119 disclosure requirements. *See e.g. Butler v. City of Hallandale Beach,* 68 So. 3d 278 (Fla. 4th DCA 2011) (e-mail sent by



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mayor from her personal account using her personal computer and blind copied to friends and supporters did not constitute a public record because the e-mail was not made pursuant to law or ordinance or in connection with the transaction of official business).

In evaluating whether a record is made or received in connection with the official business of an agency, "the determining factor is the nature of the record, not its physical location." *State v. City of Clearwater,* 863 So. 2d 149, 154 (Fla. 2003). In *Clearwater*, the Court held that personal e-mails between government employees on government-owned computers which were not made or received in the course of official business did not constitute public records. *See also Bent v. State,* 46 So. 3d 1047, 1050 (Fla. 4th DCA 2010) (recordings made by sheriff's office of personal telephone calls between minors in jail awaiting trial and third parties are not public records when contents of the phone calls do not involve criminal activity or a security breach); and *Media General Operations, Inc. v. Feeney,* 849 So. 2d 3 (Fla. 1st DCA 2003) (records of personal or private calls of legislative employees using cellular phone service provided by a political party do not constitute official business of the Legislature and are not subject to public disclosure).

However, in concluding that the location of e-mails on a government computer does not control the application of Public Records Act, the *Clearwater* court also cautioned that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *State v. City of Clearwater,* at 151n.2. *And see Miami-Dade County v. Professional Law Enforcement Association,* 997 So. 2d 1289 (Fla. 3d DCA 2009) (personal flight log of pilots paid by county which are required as part of pilots' administrative duties are distinguishable from personal e-mails in *City of Clearwater* case and are subject to disclosure). *See also* AGO 09-19 (because the creation of a city Facebook page must be for a municipal, not private purpose, the "placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes"),

Thus, in *Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), the court concluded that billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; "and, the 'official business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls." *See also* AGO 77-141 (copies of letters or other documents received by the mayor in his official capacity constitute records received "in connection with the transaction of official business" and therefore are public records). *Compare* Inf. Op. to Burke, April 14, 2010 (while the licensing board, and not Attorney General's Office, must determine whether a letter, allegedly sent to the board by mistake, had been received by the board in connection with the transaction of official business, the board "may wish to consider whether circumstances characterize how the document was received, such as does the letter relate to a past, existing, or potential investigation by the board").

Similarly, the mere fact that an e-mail is sent from a private e-mail account using a personal computer is not the determining factor as to whether it is a public record; it is whether the e-mail was prepared or received in connection with official agency business. *See Butler v. City of Hallandale Beach, supra.* For example, if a public employee sends a proposed agency budget to his or her supervisor for review, the report is a public record, regardless of whether the report was sent from the employee's agency e-mail account using a government computer, or from his or her home computer using a personal e-mail account. *And see* AGO 08-07 (individual council members who post comments and emails relating to transaction of city business on a privately-owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

"An elected official's use of a private cell phone to conduct public business via text



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messaging can create an electronic written public record subject to disclosure." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018). However, in order for the communication to constitute a public record, "an official or employee must have prepared, owned, used, or retained it within the scope of his or her employment or agency." *Id*. at 1040-1041. According to the *O'Boyle* court, an official or employee's communication "falls 'within the scope of employment or agency' only when their job requires it, the employer or principal directs it, or it furthers the employer's or principal's interests." *Id*. at 1041. *Cf*. AG0 16-16 (hospital district not authorized to reimburse a board member for attorney fees incurred in responding to a public records request for records relating to her board service which were stored in her private computer and telephone when no suit, claim, charge, or action was instituted against the commissioner when the fees were incurred).

**18. Personnel records**

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted certain personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under s. 119.07(1), F.S. *See Michel v. Douglas,* 464 So. 2d 545 (Fla. 1985).

**a. Annuity or custodial account activities**

Records identifying individual participants in any annuity contract or custodial account under s. 112.21, F.S. (relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies) and their personal account activities are confidential and exempt from s. 119.07(1), F.S. Section 112.21(1), F.S.

**b. Applications for employment, references, and resumes**

Applications and resumes are subject to disclosure, after redaction of statutorily exempt information such as social security numbers. *See Shevin v. Byron, Harless,* Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980); and AGOs 15-10 and 77-48. Similarly, communications from third parties are subject to disclosure. *See Douglas v. Michel,* 410 So. 2d 936 (Fla. 5th DCA 1982), *questions answered and approved,* 464 So. 2d 545 (Fla. 1985). A written employment contract is a public record. AGO 13-14.

**c. Collective bargaining**

**(1) Relationship of collective bargaining agreement to personnel records**

A collective bargaining agreement between a public employer and its employees may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act. AGO 77-48. Thus, employee grievance records are disclosable even though classified as confidential in a collective bargaining contract because "to allow the elimination of public records from the mandate of Chapter 119 by private contract would sound the death knell of the Act." *Mills v. Doyle,* 407 So. 2d 348, 350 (Fla. 4th DCA 1981). *Cf. Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County,* 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

Similarly, a city may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. AGO 94-75. *Accord* AGO 94-54.

**(2) Collective bargaining work product exemption**

Section 447.605(3), F.S., provides:



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> All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1), F.S.

The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, F.S. *See Bay County School Board v. Public Employees Relations Commission,* 382 So. 2d 747, 749 (Fla. 1st DCA 1980), noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the s. 447.605(3) exemption; and *Warden v. Bennett,* 340 So. 2d 977 (Fla. 2d DCA 1976), ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer.

Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions which reflect the impressions, strategies and opinions of the district representative are exempt pursuant to s. 447.605(3), F.S. Inf. Op. to Fulwider, June 14, 1993.

**d. Complaints against employees**

Section 119.071(2)(k), F.S., provides that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint is confidential and exempt until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or

b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

Prior to the enactment of this statute in 2013, there was no general exemption from public disclosure for complaints and investigative records based on alleged misconduct by agency employees. *See e.g.,* AGO 04-22 (anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). Instead, the Legislature enacted exemptions pertaining to specific types of complaints and investigations. *See e.g.* s. 943.03(2), F.S., providing for confidentiality of Florida Department of Law Enforcement records relating to an active investigation of misconduct, in connection with their official duties, of public officials and employees and of members of public corporations and authorities subject to suspension or removal by the Governor.

For information on the exemptions for whistleblower, discrimination and ethics complaints directed against public officials and employees, please refer to the discussion on pages 95-98. A discussion of exemptions addressing complaints against law enforcement officers and educators follows:

**(1) Law enforcement officers and correctional officers**

**(a) Scope of exemption and duration of confidentiality**

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. *See Tribune Company v. Cannella,* 438 So. 2d 516, 524 (Fla. 2d DCA 1983), *quashed on other grounds,* 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company,* 105 S.Ct. 2315 (1985) (law enforcement personnel records compiled and maintained by the employing agency "can never constitute criminal investigative or intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency").



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However, section 112.533(2)(a), F.S., provides that complaints filed against law enforcement officers and correctional officers, and all information obtained pursuant to the agency's investigation of the complaint, are confidential *until* the investigation is no longer active or until the agency head or his or her designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or the filing of charges.

The term "law enforcement officer" is defined as any person, other than a chief of police, who is employed full time or part time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff under s. 30.07, F.S. Section 112.531(2), F.S.

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. AGO 93-61. However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield,* 579 So. 2d 315 (Fla. 4th DCA 1991). *Cf. Fraternal Order of Police v. Rutherford,* 51 So. 3d 485, 488 (Fla. 1st DCA 2010) (written complaint not necessary to trigger confidentiality afforded by s. 112.532[4][b], F.S., as that statute provides a broader confidentiality for ongoing investigations whenever a law enforcement or correctional officer faces possible dismissal, demotion, or suspension without pay until the investigating agency "completes or abandons its investigation").

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the law enforcement agency's investigation of the complaint, it does not transform otherwise public records (such as crime or incident reports) into confidential records simply because the actions which are described in the crime report later form the basis of a complaint filed pursuant to s. 112.533, F.S. AGO 96-27. Thus, a circuit judge ordered a police department to provide the media with a copy of an unredacted incident report that identified a police officer involved in the shooting of an armed suspect. *Morris Publishing Group, LLC v. Thomason,* No. 16-2005-CA-7052-XXXX-MA (Fla. 4th Cir. Ct. October 14, 2004). *And see* AGO 08-33 (list of law enforcement officers who have been placed on administrative duty by their employer is not confidential under s. 112.533[2][a], F.S., but is subject to inspection and copying even if information on the list will identify officers who are the subject of internal investigation).

If the officer resigns prior to the agency's completion of its investigation, the exemption from disclosure provided by s. 112.533(2), F.S., no longer applies, even if the agency is still actively investigating the complaint. AGO 91-73. However, if the complaint has generated information which qualifies as active criminal investigative information, *i.e.*, information compiled by a criminal justice agency while conducting an ongoing criminal investigation of a specific act, such information would be exempt while the investigation is continuing with a good faith anticipation of securing an arrest or prosecution in the foreseeable future. *Id. See* s. 112.533(2)(b), F.S., providing that the disclosure provisions do not apply to any public record [such as active criminal investigative information exempted in s. 119.071(2)(c), F.S.] which is exempt from disclosure pursuant to Ch. 119, F.S.

The exemption is of limited duration. Section 112.533(2), F.S., establishes that the complaint and all information gathered in the investigation of that complaint generally become public records at the conclusion of the investigation or at such time as the investigation becomes inactive. AGO 95-59. Thus, a court ruled that the exemption ended once the sheriff's office provided the accused deputy with a letter stating that the investigation had been completed, the allegations had been sustained, and that the deputy would be notified of the disciplinary action to be taken. *Neumann v. Palm Beach County Police Benevolent Association,* 763 So. 2d 1181 (Fla. 4th DCA 2000).

However, the mere fact that written notice of intervening actions is provided to the officer



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under investigation does not signal the end of the investigation nor does such notice make this information public prior to the conclusion of the investigation. AGO 95-59. Similarly, the exemption remains in effect if an agency schedules a pre-disciplinary determination meeting with an officer to hear and evaluate the officer's side of the case because "[d]iscipline is not an accepted fact at this point." *Palm Beach County Police Benevolent Association v. Neumann,* 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

A complaint is presumed to be inactive, and hence subject to disclosure, if no finding is made within 45 days after the complaint is filed. Section 112.533(2)(b), F.S. *See City of Delray Beach v. Barfield,* 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness--especially, as here, where there is other record evidence which sustains it").

**(b) Limitations on disclosure**

Section 112.533(2)(b), F.S., states that the inspection provisions in that subsection do not apply to any public record which is exempt from public disclosure under Ch. 119, F.S. For example, active criminal investigative or intelligence information which is exempt pursuant to s. 119.071(2)(c), F.S., remains exempt notwithstanding the disclosure provisions set forth in s. 112.533(2)(a), F.S. *Palm Beach County Police Benevolent Association v. Neumann,* 796 So. 2d 1278 (Fla. 4th DCA 2001). *And see* AGO 91-73. Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in s. 112.533(2), F.S. *Cf. City of Riviera Beach v. Barfield,* 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied,* 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status).

Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since the information is exempt pursuant to s. 119.071(2)(h), F.S. *Palm Beach County Police Benevolent Association v. Neumann, supra*.

However, the state attorney's records of a *closed* criminal investigation are not made confidential by s. 112.533, F.S., even though an internal investigation conducted by the police department remains pending concerning the same complaint. AGO 00-66. *Cf.* AGO 96-05, noting that a police report of an agency's criminal investigation of a police officer is a public record in the hands of the police department after the investigation is over regardless of whether a copy of the report is forwarded to the Criminal Justice Standards and Training Commission or to the Commission on Ethics.

**(c) Unauthorized disclosure penalties**

Section 112.533(4), F.S., makes it a first degree misdemeanor for any person who is a participant in an internal investigation to willfully disclose any information obtained pursuant to the agency's investigation before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), F.S. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. *Id.*

The Attorney General's Office has issued several advisory opinions interpreting this statute. *See, e.g.,* AGO 03-60 (while public disclosure of information obtained pursuant to an internal investigation prior to its becoming a public record is prohibited, s. 112.533[4], F.S., "would not preclude intradepartmental communications among those participating in the investigation). *Cf.* AGO 97-62 (confidentiality requirements prevent the participation of a citizens' board in resolving a complaint made against a law enforcement officer until the officer's employing agency has made its initial findings). *But see Cooper v. Dillon,* 403 F. 3d 1208, 1218-1219



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(11th Cir. 2005), in which the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional "[b]ecause the curtailment of First Amendment freedoms by Fla. Stat. ch. 112.533(4) is not supported by a compelling state interest, the statute fails to satisfy strict scrutiny and unconstitutionally abridges the rights to speak, publish, and petition government."

**(2) Public school system employees**

The complaint and material relating to the investigation of a complaint against a public school system employee are confidential until the preliminary investigation is either concluded or ceases to be active. Section 1012.31(3)(a)1., F.S. *See* AGO 91-75 (while exemption applies when a complaint against a district employee has been filed and an investigation against that employee ensues, it does not provide a basis for withholding documents compiled in a general investigation of school departments). *Cf. Johnson v. Deluz,* 875 So. 2d 1,3 (Fla. 4th DCA 2004) (because "legislature had no intention of permitting confidential student information to be made public," student-identifying information must be redacted from public report of investigation of school principal); and *Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about a college instructor's classroom behavior qualifies as an exempt "education record").

While s. 1012.31(1)(b), F.S., prohibits placing anonymous letters and material in a school district employee's personnel file, the statute does not prevent a school board from investigating the allegations contained in an anonymous letter nor does it permit the school board to destroy the anonymous material absent compliance with statutory restrictions on destruction of public records. AGO 87-48. Moreover, the personnel file is open at all times to school board members, the superintendent, or the principal, or their respective designees in the exercise of their duties, and to law enforcement personnel in the conduct of a lawful criminal investigation. Section 1012.31(3)(b) and (c), F.S.

**(3) State university and Florida College System institution employees**

For information on statutory exemptions for complaints filed against state university or Florida College System institution (formerly community college) employees, please refer to the discussion of employee evaluations on page 138.

**e. Conditions for inspection of personnel records**

An agency is not authorized to unilaterally impose special conditions for the inspection of personnel records. An automatic delay in the production of such records is invalid. *Tribune Company v. Cannella,* 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company,* 105 S.Ct. 2315 (1985) (automatic 48 hour delay unauthorized by Ch. 119, F.S.). *And see Alterra Healthcare Corporation v. Estate of Shelley,* 827 So. 2d 936, 940n.4 (Fla. 2002) ("only the custodian of such records can assert any applicable exemption; not the employee").

Thus, while an agency is not precluded from notifying an employee that a request has been made to inspect his or her personnel records, in the absence of express legislative authority, the production of personnel records may not be delayed in order to allow the employee to be notified or present during the inspection of the public records relating to that employee. *Compare* s. 1012.31(3)(a)3., F.S., providing that no material derogatory to a *public school employee* may be inspected until 10 days after the employee has been notified by certified mail or personal delivery as provided in s. 1012.31(2)(c), F.S.

**(1) Privacy issues**

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. *See Michel v. Douglas,* 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist.



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"Absent an applicable statutory exception, pursuant to Florida's Public Records Act (embodied in chapter 119, Florida Statutes), public employees (as a general rule) do not have privacy rights in such records." *Alterra Healthcare Corporation v. Estate of Shelley,* 827 So. 2d 936, 940n.4 (Fla. 2002). *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and *Mills v. Doyle,* 407 So. 2d 348 (Fla. 4th DCA 1981). *But see Fadjo v. Coon,* 633 F.2d 1172, 1175n.3 (5th Cir. 1981), noting that "it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy."

Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. *See e.g., News-Press Publishing Company, Inc. v. Gadd,* 388 So. 2d 276, 278 (Fla. 2d DCA 1980) (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure).

Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *Buxton v. City of Plant City, Florida,* 871 F.2d 1037 (11th Cir. 1989). *See also Garcia v. Walder Electronics, Inc.,* 563 So. 2d 723 (Fla. 3d DCA 1990), *review denied,* 576 So. 2d 287 (Fla. 1990) (public employer has an affirmative duty to inform a discharged employee of his right to seek a post-termination name-clearing hearing). *Cf. Cannon v. City of West Palm Beach,* 250 F.3d 1299, 1303 (11th Cir. 2001) (failure to provide name-clearing hearing to employee who alleged that he was denied a promotion due to stigmatizing information in his personnel file does not violate the employee's due process rights, because "in this circuit a 'discharge or more' is required").

**(2) Sealed records**

An agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. AGO 94-75. Nor may an agency, absent a statutory exemption for such records, agree to remove counseling slips and written reprimands from an employee's personnel file and maintain such documents in a separate disciplinary file for the purpose of removing such records from public access. AGO 94-54. *Accord* AGO 11-19 (superintendent's failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). *And see* AGO 15-10 (agency may not "seal" job applications or request that they be submitted as "sealed" records to foreclose public access).

**f. Criminal history information**

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990.

In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from s. 119.07(1), F.S., or use of the information is restricted. *See, e.g.,* s. 110.1127(2)(d) and (e), F.S. (agency positions designated or specified as provided in s. 110.1127, F.S.); s. 1002.36(7)(d) and (e), F.S. (School for the Deaf and the Blind); and s. 39.821(1) F.S. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, criminal history information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection under Florida's Public Records Act. AGO 99-01. However, information developed by the school district from further inquiry into references in the federal criminal history record information is a



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public record which should be included in a school district employee's personnel file. *Id.*

Sections 943.0585 and 943.059, F.S., prohibit a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record. AGO 94-49.

**g. Deferred compensation**

All records identifying individual participants in any deferred compensation plan under the Government Employees' Deferred Compensation Plan Act and their personal account activities shall be confidential and exempt. Section 112.215(7), F.S.

**h. Direct deposit**

Direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1), F.S. With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), F.S.

**i. Drug test results**

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with s. 112.0455, F.S., the Drug-Free Workplace Act, are confidential and exempt, and may not be disclosed except as authorized in the statute. Section 112.0455(11), F.S. *See also* s. 112.0455(8)(l) and (t), F.S.

While the provisions of s. 112.0455, F.S., are applicable to state agencies and not to municipalities, ss. 440.101-440.102, F.S., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. *See* AGO 98-38. Section 440.102(8), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program implemented pursuant to Ch. 440, F.S. AGO 13-19. *Cf.* AGO 94-51 (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to s. 440.102, F.S.); and Inf. Op. to McCormack, May 13, 1997 (s. 440.102[8], F.S., applies to public employees and not to drug test results of public assistance applicants). *And see* s. 443.1715(3), F.S., relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the reemployment assistance law.

In AGO 96-58, the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to s. 401.265(2), F.S., requiring a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to ss. 440.101-440.102, F.S.

**j. Employee assistance program**

An employee's personal identifying information contained in records held by the employing agency relating to that employee's participation in an employee assistance program is confidential and exempt from disclosure. *See* ss. 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.

**k. Employment search or consultant records**

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman,* 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, if an agency uses a recruitment company to conduct an employment search for the agency,



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records made or received by the private company in connection with the search are public records. AGO 92-80. *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates,* 379 So. 2d 633 (Fla. 1980) (firm of consultants hired to conduct an employment search for position of managing director of a public agency was "acting on behalf of" a public agency and thus letters, memoranda, resumes, and travel vouchers made or received by consultants as part of search were public records).

**l. Evaluations of employee performance**

Evaluations of public employee performance are generally subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher,* 345 So. 2d 646, 648 (Fla. 1977):

> No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.

However, there are statutory restrictions on access to evaluations of employee performance for public school system employees. Section 1012.31(3)(a), F.S. Similarly, there are exemptions for evaluations contained in limited-access records prescribed by a hospital or other facility licensed under Ch. 395, F.S., for employees of the facility, s. 395.3025(9), F.S.; prescribed by the State Board of Education for Florida College System institution employees, s. 1012.81, F.S.; or prescribed by a university board of trustees for its employees, s. 1012.91, F.S.

A discussion of each of these exemptions follows:

**(1) Hospital employees**

Section 395.3025(9), F.S., authorizes hospitals to prescribe the content of limited-access employee records which are not available for disclosure for 5 years after such designation. Such records are limited to evaluations of employee performance, including records forming the basis for evaluation and subsequent actions. *See Times Publishing Company v. Tampa General Hospital,* No. 93-03362 (Fla. 13th Cir. Ct. May 27, 1993) (s. 395.3025[9] exemption does not apply to list of terminated hospital employees; hospital ordered to allow newspaper to inspect list and personnel files of those persons named in list after "limited-access" documents have been removed).

**(2) Public school employees**

Employee evaluations of public school system employees prepared pursuant to cited statutes are confidential until the end of the school year immediately following the school year during which the evaluation was made; however, no evaluations made prior to July 1, 1983, shall be made public. Section 1012.31(3)(a)2., F.S. However, the exemption applies only to the "employee evaluation." *See Morris Publishing Group, LLC v. Department of Education,* 133 So. 3d 957, 960 (Fla. 1st DCA 2013), *review denied,* 157 So. 3d 1046 (Fla. 2014) ("While section 1012.31[3][a]2 provides that the evaluation of a public school teacher is not subject to disclosure under the public records law, it does not follow that any information or data used to prepare the evaluation is likewise exempt from disclosure").

Moreover, information obtained from evaluation forms circulated by the local teacher's union to its members that is provided unsolicited to the superintendent is not exempt under this statute. AGO 94-94. In addition, written comments and performance memoranda prepared by individual school board members regarding an appointed superintendent are not exempt from disclosure. AGO 97-23. *Cf.* AGO 11-19, concluding that a superintendent's failure to comply with a statute requiring that a performance evaluation be discussed with an employee before it is filed in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed.



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**(3) State university and Florida College System institution employees**

Limited-access records maintained by a state university on its employees are confidential and exempt from s. 119.07(1), F.S., and may be released only upon authorization in writing from the employee or upon court order. Without such authorization, access to the records is limited to university personnel as specified in the statute. Section 1012.91, F.S.

"Limited-access records" are limited to: information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee; records relating to an investigation of employee misconduct which records are confidential until the conclusion of the investigation or the investigation ceases to be active as defined in the exemption; and records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made. Section 1012.91(1), F.S.

For sexual harassment investigations of university personnel, portions of records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records. Section 1012.91(2), F.S. Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records. Section 1012.91(4), F.S.

Regarding Florida College System institution employees, s. 1012.81, F.S., states that rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a Florida College System institution on its employees. Such records are limited to information reflecting academic evaluations of employee performance and certain disciplinary and grievance records as described in the exemption. Limited access records are confidential and exempt and may not be released except as authorized in the exemption. *Cf. Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about an instructor's classroom behavior qualifies as an exempt "education record").

**m. Examination questions and answer sheets**

Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification, or employment are exempt from mandatory disclosure requirements. Section 119.071(1)(a), F.S. *See Dickerson v. Hayes,* 543 So. 2d 836, 837 (Fla. 1st DCA 1989) (applying exemption to portions of rating sheets used by promotion board which contained summaries of applicants' responses to oral examination questions where the oral questioning "was a formalized procedure with identical questions asked of each applicant [which] 'tested' the applicants' response both as to style and content"). *And see Rush v. High Springs,* 82 So. 3d 1108 (Fla. 1st DCA 2012) (exemption applies to questions and answers contained in pre-employment polygraph examinations).

The exemption from disclosure in s. 119.071(1)(a), F.S., applies to examination questions and answers, and does not include the "impressions and grading of the responses" by the examiners. *See Dickerson v. Hayes, supra* at 837. *Compare* s. 455.229(1), F.S., providing confidentiality for "examination questions, answers, papers, grades, and grading keys" used in licensing examinations administered by the Department of Business and Professional Regulation.

A person who has taken an examination has the right to review his or her own completed examination. Section 119.071(1)(a), F.S. *See* AGO 76-210, stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed. However, the examinee possesses only the right to *review* his or her own completed examination and may not make or obtain copies of that examination. AGO 81-12.

**n. Home addresses, telephone numbers and other personal information**



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In the absence of statutory exemption, home addresses, telephone numbers, photographs, and dates of birth of public officers and employees are not exempt from disclosure. *See* AGO 96-88 (home addresses and telephone numbers and business addresses and telephone numbers of members of state and district human rights advocacy committees are public records); *Browning v. Walton,* 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files). *And see United Teachers of Dade v. School Board of Dade County,* No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992) (home telephone numbers and addresses of school district employees not protected by constitutional right to privacy; only the Legislature can exempt such information). *Cf.* AGO 85-03 (list containing names and addresses of subscribers to state magazine is a public record).

**(1) Listing of public officers and employees covered by exemptions**

The home addresses, telephone numbers, and other specified personal information pertaining to certain public officers and employees and their spouses and children have been exempted in ss. 119.071(4)(d) and 119.071(5)(i) and (k), F.S. The term "home address" for purposes of s. 119.071(4)(d), F.S., means "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address." Section 119.071(4)(d)1.a., F.S.

For purposes of s. 119.071(4)(d), F.S., the term "telephone numbers" includes "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." Section 119.071(4)(d)1.b., F.S.

**(a) Abuse investigators for Department of Children and Families and Department of Health**

a. Scope of exemption: Active or former personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft or other criminal activities; and active or former personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

**(b) Child advocacy personnel and child protection team members**

a. Scope of exemption: Current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirements of s. 39.3035(2) and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended



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by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.t., F.S.

**(c) Code enforcement officers**

a. Scope of exemption: Current or former code enforcement officers

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.i., F.S.

**(d) County addiction facility personnel**

a. Scope of exemption: Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility. The term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401, and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26)

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.s., F.S.

**(e) County tax collectors**

a. Scope of exemption: County tax collectors

b. Information exempted: Home addresses, telephone numbers, and dates of birth

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.n., F.S.

**(f) Domestic violence and other specified crime victims**

Please refer to the discussion on pages 75-76.

**(g) Emergency medical technicians or paramedics**

a. Scope of exemption: Current or former emergency medical technicians or paramedics certified under Ch. 401, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.q., F.S.



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**(h) Firefighters**

a. Scope of exemption: Current or former firefighters certified in compliance with s. 633.408, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of spouses and children of such firefighters; and the names and locations of the schools and day care facilities attended by the children of the firefighters

d. Statutory reference: Section 119.071(4)(d)2.d., F.S.

**(i) Guardians ad litem**

a. Scope of exemption: Current or former guardians ad litem, as defined in s. 39.820, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons

d. Statutory reference: Section 119.071(4)(d)2.j., F.S.

**(j) Hospital employees**

Please refer to the discussion on page 94.

**(k) Human resource managers (local governments)**

a. Scope of exemption: Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.h., F.S.

**(l) Impaired practitioner consultants**

a. Scope of exemption: Current or former impaired practitioner consultants retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession

b. Information exempted: Home addresses, telephone numbers dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees



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d. Statutory reference: Section 119.071(4)(d)2.p., F.S.

**(m) Inspectors general and internal auditors performing specified duties**

a. Scope of exemption: Current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.r., F.S.

**(n) Investigators and inspectors of the Department of Business and Professional Regulation**

a. Scope of exemption: Current or former investigators or inspectors of the Department of Business and Professional Regulation

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.m., F.S.

**(o) Investigators of the Department of Financial Services and Office of Financial Regulation with specified duties**

a. Scope of exemption: Current or former nonsworn investigative personnel of the Department of Financial Services and Office of Financial Regulation whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel.

d. Statutory reference: Section 119.071(4)(d)2.b., and c., F.S.

**(p) Judges, magistrates, and hearing officers (state)**

**I. Administrative law judges, magistrates, and child support hearing officers**

a. Scope of exemption: General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel



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d. Statutory reference: Section 119.071(4)(d)2.g., F.S.

**II. Court justices and judges**

a. Scope of exemption: Current or former Justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of such justices and judges

d. Statutory reference: Section 119.071(4)(d)2.e., F.S.

**(q) Juvenile Justice juvenile probation and detention officers and counselors**

a. Scope of exemption: Current or former juvenile probation officers and supervisors, detention superintendents and assistant superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors, supervisors, and administrators, human services counselor administrators, rehabilitation therapists and social services counselors of the Department of Juvenile Justice

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.k., F.S.

**(r) Law enforcement and correctional personnel**

a. Scope of exemption: Active or former sworn or civilian law enforcement personnel, or active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

**(s) Personnel of the Department of Health with specified duties**

a. Scope of exemption: Current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health

b. Information exempted: Homes addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such



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personnel

d. Statutory reference: Section 119.071(4)(d)2.o., F.S. *See also* s. 119.071(4)(d)2.a., F.S. (child abuse or neglect investigators).

**(t) Prosecutors and judges (federal)**

a. Scope of exemption: Current or former United States attorneys, assistant United States attorneys, judges of the United States Courts of Appeal, United States district judges or United States magistrates if the individual submits to the agency having custody of such information a written request to exempt such information from public disclosure as well as a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public

b. Information exempted: Home address, telephone number and photograph

c. Family information exempted: Home address, telephone number, photograph, and place of employment of the spouse or child; and the name and location of the school or day care facility attended by the child of such attorney, judge or magistrate

d. Statutory reference: Section 119.071(5)(i), F.S.

**(u) Prosecutors (state)**

a. Scope of exemption: Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.f., F.S.

**(v) Public defenders and other specified counsel**

a. Scope of exemption: Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.l., F.S.

**(w) Public guardians**

a. Scope of exemption: Current or former public guardians and employees with fiduciary responsibility, as that term is defined in the exemption, who submit to the custodial agency a written request for maintenance of the exemption. The term "employee with fiduciary responsibility" means an employee of a public guardian who has the ability to direct any transactions of a ward's funds, assets, or property; who under the supervision of the guardian, manages the care of the ward; or who makes any health care decision, as defined in s. 765.101, on behalf of the ward

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs



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c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 744.21031, F.S.

**(x) Revenue collection and enforcement or child support enforcement**

a. Scope of exemption: Active or former personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

Note: In AGO 96-57, the Attorney General's Office concluded that this exemption should be construed as including personnel whose duties include *both* revenue collection and enforcement, as opposed to those personnel whose duties include only revenue collection or only revenue enforcement.

**(y) U.S. military servicemembers**

In 2015, the Legislature enacted s. 119.071(5)(k), F.S., providing an exemption for certain personal information of specificed current or former U.S. military servicemembers. Section 119.071(5)(k)4., F.S., states that the exemption "is subject to the Open Government Sunset Review Act... and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature." The 2020 Legislature did not reenact the exemption.

**(2) Authority to release protected information**

The purpose of the s. 119.071(4)(d), F.S., exemption is to protect the safety of the enumerated individuals and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 10-37. *And see* AGOs 90-50 and 96-57. The statute makes these records exempt from mandatory disclosure requirements, not confidential; thus, an agency is not prohibited from disclosing the information in all circumstances. AGO 10-37. For example, the property appraiser may disclose the address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by s. 162.06, F.S. AGO 17-05.

However, in determining whether to disclose the information, the agency should consider the underlying purpose of the statute, *i.e.,* safety of the listed individuals and their families. AGO 90-50. *See also* AGO 08-24. *Cf.* AGO 90-50, noting that the exemption does not prohibit an agency from "access to, and maintaining information on, its employees, including their names and addresses."

In other words, a police department, in deciding whether to publicly release photographs of law enforcement personnel, should determine whether there is a statutory or substantial policy need for disclosure. AGO 07-21. In the absence of a statutory or other legal duty to be accomplished by disclosure, the agency should consider whether the release of such information is consistent with the purpose of the exemption afforded by s. 119.071(4)(d)2. *Id.* For example, a posting of the names, I.D. numbers and photographs of police officers in the hallway of the police department for public display would appear to be counter to the purpose of the exemption. AGO 90-50. By contrast, information from the city personnel files which reveals the home



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addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S. Inf. Op. to Reese, April 25, 1989.

Similarly, in AGO 08-24, the Attorney General's Office noted that the home addresses and other protected personal information of the spouses of law enforcement officers who are employed by the school board are exempt from disclosure under s. 119.071(4)(d)2., F.S., and therefore, the school board was not required to report such information to the certified bargaining representative. *And see Henderson v. Perez,* 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit").

By contrast, information from the city personnel files which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S. Inf. Op. to Reese, April 25, 1989. Similarly, a police and firefighter pension board may release exempt employee information pursuant to a confidentiality agreement for use by a vendor that has contracted with the board to conduct cybersecurity testing of the board's electronic data storage systems. AGO 19-08.

The s. 119.071(4)(d)2. exemption applies to public agencies, not private entities unless the private entity is acting on behalf of a public agency. Inf. Op. to Gomez, Nov. 3, 2008. *Cf.* s. 843.17, F.S., making it a misdemeanor to maliciously publish or disseminate, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer. *But see Brayshaw v. City of Tallahassee,* Fla., 709 F. Supp. 2d 1244 (N.D. Fla. 2010), holding that s. 843.17, F.S., was unconstitutional on its face.

**(3) Records held by agencies that are not the employer of the designated officers or employees**

An agency that is the custodian of personal information specified in s. 119.071(4)(d)2., F.S., but is not the employer of the officer or employee, may maintain the exempt status of that information only if the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)3., F.S. *See* AGOs 97-67 (Official Records maintained by clerk of court), 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and 04-20 (property appraiser). *And see* AGO 05-38 (request made to the property appraiser for an exemption from disclosure of personal information would follow the property appraiser's records when they are relayed to the clerk of courts carrying out duties for the Value Adjustment Board).

The provisions of s. 119.071(4)(d), F.S., should not be read "to impose a burden on employers to know the past law enforcement employment status of employees who may work for them in other capacities." AGO 10-37. Thus, a former law enforcement officer from one municipality who is currently employed by another municipality in a non-law enforcement capacity must make a written request pursuant to s. 119.071(4)(d)3., F.S., that his or her personal information be maintained as exempt by the current employer. *Id.*

A request made pursuant to s. 119.071(4)(d)3., F.S., for maintenance of exempt information in court records or the official records must specify the document type, identification number, and page number of the court record or official record that contains the exempt information.



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Section 119.0714(2)(f) and (3)(f), F.S.

A covered officer or employee or other specified person may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency shall release the specified information to the party authorized to receive such information. Section 119.071(4)(d)4., F.S.

**(4) Application of exemption to:**

**(a) Telephone numbers of cellular telephones issued by agencies**

Cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure. Inf. Op. to Laquidara, July 17, 2003. In 2012, the Legislature amended s. 119.071(4)(d), F.S., to define the term "telephone numbers" as used in the exemption to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." *See* s. 119.071(4)(d)1.b., F.S. As originally introduced, the 2012 legislation would have also included "telephone numbers associated with agency cellular telephones" within the definition of "telephone numbers." *See* HB 629, filed November 10, 2011. However, this proposed language was removed from the original bill during the legislative process.

**(b) List of names of designated officers and employees**

While s. 119.071(4)(d)2., F.S., exempts home addresses and other personal information of the designated public officers and employees, it does not exempt the *names* of these officers and employees from public disclosure (although typically the names of the *spouses and children* are exempt). *See, e.g.,* s. 119.071(4)(d)2.g., F.S. (names of spouses and children of code enforcement officers are exempt).

Accordingly, if the property appraiser maintains a list of the names of officers and employees who have requested the exemption of their home addresses as authorized by s. 119.071(4)(d)3., F.S., this list is not exempt. AGO 08-29. However, as noted elsewhere in this manual, the property appraiser is not required to *create* or reformat records in order to comply with a request under Ch. 119; the duty of the public records custodian is to provide access to existing records. See the discussion on pages 162-164.

**(c) Prior home addresses**

Section 119.071(4)(d)2., F.S., applies only to the current home address or addresses (including a current vacation home address) of the designated individuals. AGO 10-37.

**(d) Maps showing physical location of homes**

A property appraiser is precluded from making technology available to the public that would enable a user to view a map on the Internet showing the physical location of a law enforcement officer's home, even though the map does not contain the actual home address of the officer, if the property appraiser has received a written exemption request from the officer. AGO 04-20. *See also* the definition of the term "home address" as defined in s. 119.071(4)(d)1.a., F.S.

**(e) Home addresses of persons who are not the owner of the property**

The exemption applies to the home addresses, telephone numbers, and other personal information relating to the specified individuals "without regard to whether or not they own the real property at which they reside." AGO 14-07.

**(f) Booking photographs**



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Section 119.071(4)(d), F.S., exempts the photograph of a current or former law enforcement officer, whether held by the employing agency or by a nonemploying agency which has received a written request to maintain the exempt status of the record. Inf. Op. to Amunds, June 8, 2012. Thus, the agency should determine whether there is a statutory or substantial policy need for disclosure before releasing the booking photograph. *Id.* In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider whether the release of such information is consistent with the purpose of the exemption, *i.e.*, the safety of law enforcement officers and their families. *Id. See also* AGOs 90-50 and 07-21. *Cf.* AGO 94-90 (statute did not preclude release of booking photograph of deputy who was not an undercover officer whose identity would otherwise be protected by s. 119.071(4)(c), F.S.).

**o. Medical information and health insurance participant information**

**(1) Medical information and medical claims records**

Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1), F.S. Section 119.071(4)(b)1., F.S. Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order. *Id. See* AGO 98-17 (exemption "appears to extend to governmental employees the protection for personal medical records that is generally enjoyed by private sector employees"). *Cf. Delaurentos v. Peguero*, 47 So. 3d 879, 881 (Fla. 3d DCA 2010) (s. 119.071[4][b]1., "simply provides an exemption in the event that a citizen makes a public records request for medical records;" but does not "create a privilege which would insulate such records from discovery in litigation").

Public school system employee medical records, including psychiatric and psychological records, are confidential and exempt from s. 119.07(1), F.S. Section 1012.31(3)(a)5., F.S.

Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information is exempt from s. 119.07(1), F.S. Section 760.50(5), F.S.

Patient medical records and medical claims records of current or former employees and eligible dependents enrolled in group insurance plans of specified governmental entities are confidential and exempt from s. 119.07(1), F.S.; such records shall not be furnished to any person other than the employee or the employee's legal representative, except as authorized in the subsection. Sections 110.123(9) (state employees), 112.08(7) (county or municipal employees), and 112.08(8) (water management district employees), F.S. *See* AGO 91-88, citing to *News-Press Company, Inc. v. Kaune,* 511 So. 2d 1023 (Fla. 2d DCA 1987), stating that the exemption applies broadly and is not limited solely to medical records filed in conjunction with an employee's participation in a group insurance plan; rather, the exemption applies to all medical records relating to employees enrolled in a group insurance plan. *And see* AGOs 01-33 (confidentiality of patient records at medical clinic owned and operated by city for the use and benefit of its employees); 94-78 (monthly printout of medical claims paid under city group health insurance plan that identifies the public employees who obtained medical services and the amounts of the claims, together with some account information, is exempt from public inspection), and 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees").

**(2) Health insurance participant information**

While "information relating to an insurance program participant's medical condition is protected from disclosure . . . there is no clear statement that such protection extends to the name, address, age, or other non-medical information of such participants." Inf. Op. to Dockery, November 10, 2008.

Subsequent to the issuance of this opinion, the Legislature enacted an exemption for



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personal identifying information *of a dependent child* of a current or former officer or employee of an agency, whose dependent child (as defined in s. 409.2554, F.S.) is insured by the agency's group insurance plan. Section 119.071(4)(b)2., F.S. However, while personal identifying information relating to the dependent child's participation in an agency's group insurance plan is now confidential, personal identifying information relating to the current or former officer's or employee's participation in such plan is subject to disclosure. *Cf.* s. 110.12301(3), F.S., providing confidentiality for records collected for purposes of dependent eligibility verification services conducted for the state group insurance program and held by the Department of Management Services.

**p. Payroll deduction records**

There is no general exemption from disclosure that applies to agency payroll deduction records. However, *public school system employee* payroll deduction records are confidential. Section 1012.31(3)(a)4., F.S. *See* AGO 09-11 (tax information [such as Federal Withholding Tax Deduction, FICA Tax Deduction and the Medicare Tax Deduction] of a public school system employee would appear to constitute payroll deduction records and would be confidential and exempt from disclosure pursuant to s. 1012.31[3][a]4., F.S.).

**q. Retiree lists**

The names and addresses of retirees are confidential and exempt from s. 119.07(1), F.S., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled or list form except to public agencies engaged in official business, to collective bargaining agents or to retiree organizations for official business use. Section 121.031(5), F.S. "Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired." *Id. Cf.* s. 121.4501(19), F.S. (personal identifying information of members in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt).

Section 121.021(60), F.S., defines the term "retiree" to mean "a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member." Accordingly, the s. 121.031(5) exemption does not apply to employees who are participants in the Deferred Retirement Option Program (DROP); DROP participants "are not retirees since they have not terminated their employment." *Palm Beach Newspapers, Inc. v. School Board of Palm Beach County,* No. 502007CA020000XXXXMB (Fla. 15th Cir. Ct. November 28, 2007).

**r. Salary records**

Salary and other information relating to compensation is subject to disclosure. *Lewis v. Schreiber,* No. 92-8005(03) (Fla. 17th Cir. Ct. June 12, 1992), *per curiam affirmed,* 611 So. 2d 531 (Fla. 4th DCA 1992). *Accord* AGOs 80-92 and 73-30.

**s. Travel records**

Travel vouchers are open to public inspection, after redaction of exempt material such as credit card account numbers (s. 119.071[5][b], F.S.) or social security numbers (ss. 119.071[4] a] and [5][a]F.S). *See Shevin v. Byron, Harless, Schaffer, Reid and Associates,* 379 So. 2d 633 (Fla. 1980). *See also* AGO 72-356 (travel itineraries and plane reservations for use of state aircraft are public records). *Cf. Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2019), finding that premature disclosure of prospective information relating to the Governor's detailed schedule and travel plans would reveal surveillance techniques, procedures, or personnel which are exempt pursuant to s. 119.071(2)(d), F.S.

**t. Undercover personnel of criminal justice agencies**



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Please refer to the discussion of this topic on pages 116-117.

**19. Security system information and blueprints**

**a. Blueprints**

Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the structure, or upon a showing of good cause to a court. Section 119.071(3)(b)3., F.S. Exempt documents may also be released in order to comply with competitive bidding requirements. AGO 02-74. However, the entities or persons receiving such information must maintain its exempt status. *Id. And see* 119.071(3)(e), F.S. (exemption for records which depict structural elements of 911, E911 or public safety radio communications system infrastructure, structures, or facilities owned and operated by an agency; and geographical maps indicating actual or proposed locations of such infrastructure, structures, or facilities).

Section 119.071(3)(c)1., F.S., exempts building plans, blueprints, schematic drawings and diagrams which depict the internal layout or structural elements of various attractions, retail, resort, office, health care facilities, and industrial complexes and developments when the records are held by an agency. The exemption afforded by this statute, however, does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development of regional impact review. Section 119.071(3)(c)4., F.S. *And see* s. 119.071(3)(d) (information relating to the National Public Safety Broadband Network deemed confidential if disclosure would reveal information set forth in the exemption)

**b. Security system records**

Information relating to the security or firesafety systems for property owned by or leased to the state or any of its political subdivisions is confidential and exempt from disclosure. Section 281.301, F.S. Exempt information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such security systems or information. *Id.*

The exemption extends to information relating to or revealing the security or firesafety systems for property owned or leased by the state or its political subdivisions, and also to such information concerning privately owned or leased property which is in the possession of an agency. AGOs 01-75 and 93-86, and Inf. Op. to Sherman, July 2, 2018. *See also* ss. 331.22, F.S. (airport security plans); s. 311.13, F.S. (seaport security plans); and 1004.0962(2), F.S. (campus emergency response of postsecondary education institution).

Section 119.071(3)(a), F.S., provides a similar exemption from disclosure for a security or firesafety system plan of a private or public entity that is held by an agency. The information may be disclosed to the property owner or leaseholder; in furtherance of the official duties and responsibilities of the agency holding the information; to another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or upon a showing of good cause before a court.

The term "security or firesafety system plan" includes: records relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security or firesafety manuals. *Id. Cf. Marino v. University of Florida,* 107 So. 3d 1231 (Fla. 1st DCA 2013), in which the court rejected a university's contention that it could withhold the location of animal research facilities based on a determination that the nature of the public activities occurring at the facility subjects them to physical threats.



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**(1) Security system (alarm) permits and applications**

Sections 281.301 and 119.071(3)(a), F.S., prohibit public disclosure of the name and address of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms "because disclosure would imperil the safety of persons and property." *Critical Intervention Services, Inc. v. City of Clearwater,* 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). *Accord* AGO 04-28.

**(2) Surveillance video recordings**

The term "security or firesafety system plan" as used in s. 119.071(3)(a)1., F.S., includes "audio and visual presentations . . . relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems." Video footage captured by city bus cameras "directly relates to and reveals information about a security system" and thus was determined to be confidential and exempt from disclosure by ss. 281.301 and 119.071(3)(a), F.S. *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401 (Fla. 5th DCA 2015). The videos "reveal the capabilities—and as a corollary, the vulnerabilities" of the security system. *Id.* at 405. *And see* AGO 15-06, relying on *Central Florida Regional Transportation Authority*, and applying the exemption to surveillance tapes from a security system for a public transit authority building. *Cf. Gonzalez v. State*, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested records [CDs] the circuit court could not conclude that the contents were exempt from disclosure under s. 119.071(3)(a)2., or s. 281.301; nor could it determine whether redaction was possible).

Video footage from surveillance cameras at a high school "relates directly" to the security system at the school, including both its capabilities and its vulnerabilities, and thus is confidential and exempt from disclosure unless one of the exceptions to the exemption applies. *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018). As previously discussed on pages 150-151, there are several exceptions to this confidentiality provision, including a court order issued upon a showing of good cause. In *State Attorney's Office*, the appellate court affirmed the trial judge's order mandating release of surveillance video from a school shooting where 17 students and staff were killed. The court found that the media had established good cause because the footage revealed the conduct of public servants in the discharge of their duties and also provided "insight" into the high school's security "net" that failed to protect the students and staff. *Id*. at 215.

By contrast, the First District overturned the trial court's determination that a news organization had shown good cause to obtain security footage from two correctional institutions. *Florida Department of Corrections v. Miami Herald Media Company*, 278 So. 3d 786 (Fla. 1st DCA 2019). At the hearing, the Miami Herald advised that it no longer needed the video recordings as they were no longer newsworthy. Nevertheless the court still found that the Herald had satisfied the statutory exception to confidentiality, noting the awards the journalist received for her reporting on prison issues, and that this fact, combined with the "extremely important right of freedom of the press" constituted good cause. The appellate court reversed, finding that the Herald "extinguished any claim to good cause when it unambiguously renounced its need for the video footage." 278 So. 3d at 790.

**c. Security issues relating to electronic records**

Section 119.01(2)(a), F.S., states that agencies "must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." *And see* Rule 1B-26.003(6)(g)3., F.A.C, adopted by the Division of Library and Information Services of Department of State pursuant to its records management rulemaking authority in s. 257.14, F.S. The rule states that "[i]n providing access to electronic records, agencies shall ensure that procedures and controls are in place to maintain confidentiality for information which is exempt from public disclosure." *Cf.* AGO 19-08 (pension board authorized to release nonpublic personnel information pursuant to a



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confidentiality agreement with a vendor conducting cybersecurity testing of the board's electronic data storage systems).

Accordingly, an agency is not required to provide direct access to the agency's electronic records through a hard drive provided by a requestor, but must otherwise allow inspection and copying of such records in a manner which will accommodate the request, but protect from disclosure exempt or confidential materials. AGO 13-07. *And see Rea v. Sansbury,* 504 So. 2d 1315, 1317-1318 (Fla. 4th DCA 1987), *review denied,* 513 So. 2d 1063 (Fla. 1987) (while county possesses statutory authority to facilitate inspection of public records by electronic means, this "does not mean that every means adopted by the county to facilitate the work of county employees *ipso facto* requires that the public be allowed to participate therein"). *Compare* AGO 05-12 (city may not require use of a code to review e-mail correspondence of city police department and human services department).

Section 282.318(4), F.S., requires state agencies, as defined in the statute, to conduct risk assessments, and internal audits, as well as to develop policies and procedures to address information technology security issues. This section also contains exemptions for records relating to these functions. *See s*s. 282.318(4)(e), (5), and (6), F.S. *Cf.* s. 119.0713(5)(a), F.S. (records relating to security of information technology systems of local government owned or operated utilities); s. 627.352 (Citizens Property Insurance Corporation) and s. 1004.055(1), F.S. (state postsecondary education institutions).

**d. School system security**

Section 943.082(1), F.S., requires the Florida Department of Law Enforcement to acquire a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the department, law enforcement agencies, or school officials is confidential and exempt. Section 943.082(6), F.S. Any other information received through the reporting tool and held by the above agencies is exempt. *Id. And see* ss. 1004.0962(2), F.S. (campus emergency response held by a public postsecondary institution or specified agencies is exempt from disclosure); and 1004.055(1) (certain security incident information records held by state postsecondary education institution).

Any information that would identify whether an individual has been appointed as a safe-school officer pursuant to s. 1006.12, F.S., held by a law enforcement agency, school district, or charter school is exempt. Section 1006.12(6), F.S. *See also* s. 119.071(3)(a), F.S., providing an exemption for agency security system plans, discussed on pages 150-152.

**20. Social security numbers**

Section 119.071(5)(a)5., F.S., states that social security numbers held by an agency are confidential and exempt from public disclosure requirements. *See Department of Health v. Rehabilitation Center at Hollywood Hills*, 259 So. 3d 979, 981 (Fla. 1st DCA 2018), noting the confidential status of social security numbers.

The exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for such numbers. Section 119.071(5)(a)5., F.S. *See, e.g.,* s. 193.114(5), F.S. (social security number submitted on an application for a tax exemption is confidential); and s. 119.071(4)(a), F.S. (social security numbers of current and former employees held by the employing agency are confidential and exempt from disclosure). *And see* s. 119.0714, F.S., regarding confidentiality of social security numbers in court records and in the official records.

Section 119.071(5)(a)6., F.S, authorizes disclosure of social security numbers under



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certain conditions. In addition, s. 119.071(5)(a)7.b., F.S., states that an agency may not deny a commercial entity engaged in "commercial activity," as defined in the exemption, access to social security numbers, "provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers." "Commercial activity" does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer not identifiable by the commercial entity. Section 119.071(5)(a)7.a.(I), F.S. *See* Inf. Op. to Carland, January 12, 2012 (teacher union's access to social security numbers maintained by school district limited to those social security numbers which will be used to verify the accuracy of numbers which the union has already received in the normal course of business) and AGO 19-08 (pension board authorized to release social security numbers pursuant to a confidentiality agreement to a vendor conducting cybersecurity testing on the board's electronic data storage systems).

The written request must be verified as provided in Florida law and meet the other requirements specified in the exemption. *See Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005). *See also* AGO 10-06 (agency authorized to request additional information that is reasonably necessary to verify the identity of the commercial entity and the specific purposes for which the social security numbers will be used).

**21. Telephone records**

Records of telephone calls made from agency telephones are subject to disclosure in the absence of statutory exemption. *See Gillum v. Times Publishing Company,* No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991). *See also Media General Operation, Inc. v. Feeney,* 849 So. 2d 3, 6 (Fla. 1st DCA 2003), rejecting the argument that redaction of telephone numbers for calls made in the course of official business could be justified because disclosure could result in "unreasonable consequences" to the persons called. *Cf.* s. 119.071(5)(d), F.S. (all records supplied by a telecommunications company, as defined by s. 364.02, F.S., to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt). *And see* Inf. to Michelson, January 27, 1992 (cellular telephone company which provided city with statements reflecting amount of usage of cell phones by city staff rather than listing individual calls, did not appear to be an "agency" for purposes of Ch. 119, F.S., making company's records of individual calls subject to disclosure).

In *Bill of Rights, Inc. v. City of New Smyrna Beach,* No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), the court stated that "as a matter of law, . . . billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; and, the 'official business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls." *Compare Media General Operation, Inc. v. Feeney, supra,* in which the court held that under the circumstances of that case (involving access to records of cellular phone service provided by a political party for legislative employees), records of personal or private calls of the employees fell outside the definition of public records.

Additionally, in responding to a question from a police department regarding the provisions of Ch. 934, F.S., (interception of wire and oral communications), the Attorney General's Office advised that recordings of telephone conversations made by the police department in the usual course of business would be public records subject to the inspection, copying, and retention requirements of Ch. 119, F.S. AGO 12-07. "Any such public records would likewise be subject to the exemption and confidentiality provisions of the Public Records Law." *Id. And see Morris Publishing Group, LLC v. State,* 154 So. 3d 528, 532 (Fla. 1st DCA 2015), *review denied,* 163 So. 3d 512 (Fla. 2015) ("No one disputes" that phone recordings of telephone calls made by the defendant while incarcerated and provided in criminal discovery were public records). *Compare Bent v. State,* 46 So. 3d 1047 (Fla. 4th DCA 2010) (recordings of personal telephone calls between minors in jail awaiting trial and third parties made by sheriff's office are not public records when



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contents of the phone calls do not involve criminal activity or a security breach).

**22. Trade secrets and proprietary confidential business information**

**a. Trade secrets**

**(1) Statutory exemptions for specific trade secrets**

**(a) Trade secrets held by specified agencies**

The Legislature has created a number of specific exemptions from Ch. 119, F.S., for trade secrets. *See, e.g.,* s. 1004.22(2), F.S. (trade secrets produced in research within state universities); and s. 570.544(8), F.S. (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services). Please refer to the listing of exemptions in Appendix D for more information on statutes providing confidentiality for trade secrets held by specific agencies.

**(b) Computer systems and software trade secrets**

Data processing software which has been obtained by an agency under a licensing agreement prohibiting its disclosure and which is a trade secret as defined in s. 812.081, F.S., is exempt. Section 119.071(1)(f), F.S. In order for the exemption to apply, two conditions must be present: The licensing agreement must prohibit disclosure of the software and the software must meet the statutory definition of "trade secret" found in s. 812.081, F.S. *See* AGOs 90-104 and 90-102.

Section 815.04(3), F.S., provides that data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency, and that resides or exists internal or external to a computer, computer system, computer network or electronic device is confidential and exempt from s. 119.07(1), F.S.

**(2) Trade secrets identified as confidential and submitted to an agency**

As noted in the preceding discussion, the Legislature has enacted statutes that expressly require certain agencies to maintain the confidentiality of trade secrets submitted to or held by that agency, and has also enacted exemptions for computer trade secrets. However, even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets as defined in [s. 812.081(1)(c), F.S.] . . . ." *Sepro Corporation v. Florida Department of Environmental Protection,* 839 So. 2d 781, 785-787 (Fla. 1st DCA 2003), *review denied sub nom., Crist v. Florida Department of Environmental Protection,* 911 So. 2d 792 (Fla. 2005). (e.s.) According to the court, while "a conversation with a [public] employee is not enough to prevent [alleged trade secrets] from being made available to anyone who makes a public records request," documents submitted by a private party which constitute trade secrets as defined in s. 812.081, and which are stamped as confidential at the time of submission to an agency, are not subject to public access. *Id.* at 784. *And see Seta Corporation of Boca, Inc. v. Office of the Attorney General,* 756 So. 2d 1093 (Fla. 4th DCA 2000). *But see Cubic Transportation Systems, Inc. v. Miami-Dade County,* 899 So. 2d 453, 454 (Fla. 3d DCA 2005) (company, which supplied documents to an agency and failed to mark them as "confidential" and which continued to supply them without asserting even a legally ineffectual post-delivery claim to confidentiality for some thirty days, failed adequately to protect an alleged trade secret claim).

In addition, the claimed trade secrets must actually constitute trade secrets as defined by law. *See* s. 812.081, F.S. For example, in *James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A., v. Rodale, Inc.,* 41 So. 3d 386, 389 (Fla. 1st DCA 2010), the court rejected a company's claim that information in customer complaints and company responses were trade secrets; noting that such information "is not secret and is not [the company's] to control." *See also Managed Care of North America, Inc. v. Florida Healthy Kids,* 268 So. 3d 856, 860 (Fla. 1st DCA 2019) (in order to be entitled to the exemption under s. 812.081(1)(c), the requesting party must not only label the information as secret but must also prove a business advantage or an opportunity to obtain



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an advantage).

Similarly, the Fourth District upheld the trial court's determination, after an in camera inspection, that the aggregate number of airport pick-ups by a transportation service company and the sums of money paid to the county pursuant to a license agreement between the company and the county did not constitute trade secret information. *Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018). The court also found that a provision in the agreement requiring that the county maintain the confidentiality of the company's trade secret information and assert the exempt status in response to a public records request could not transform the information into a confidential record, citing to *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1208 (Fla. 1st DCA 2009). *Cf.* AGO 09-02 (authorized representatives of Division of Plant Industry in Department of Agriculture and Consumer Services prohibited from disclosing trade secrets obtained in carrying out their duties under Ch. 581 to any unauthorized person, provided such trade secrets fall within the statutory definition in s. 812.081, F.S., and owner of trade secrets has taken measures to maintain the information's secrecy). *And see Allstate Floridian Ins. Co. v. Office of Ins. Regulation,* 981 So. 2d 617 (Fla. 1st DCA 2008), *review denied,* 987 So. 2d 79 (Fla. 2008) (to the extent Allstate believed any documents sought by the Office of Insurance Regulation were privileged as trade secrets, Allstate was required to timely seek a protective order in circuit court); Inf. Op. to Brown, March 11, 2016 (if an agency has received material that the sender has identified as "trade secret" and the material does not appear to meet the statutory definition of trade secret or has not been protected as in *Sepro*, the agency should advise the sender "that it has a received a public request and will release the records and allow the sender to seek a protective order for those materials").

The trial court's conclusion as to whether specific information constitutes a trade secret "rests on factual determinations that are assailable on appeal only if unsupported by competent, substantial evidence." *Sepro*, 839 So. 2d at 785. *See Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, at 286 So. 3d at 859 (appellate court's role "is to strictly construe section 812.081(1)(c), including its definition of 'trade secret,' and determine if competent, substantial evidence exists to support the factual findings of the trial court;" the trial court's interpretation of a statute and its application of the law to facts are subject to de novo review); *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017) (trial court's conclusion that insurance policy statistics submitted to the Office of Insurance Regulation had "independent economic value" within the meaning of the statutory definition of trade secret in s. 688.002(4), F.S., was supported by competent, substantial evidence). *Cf. Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court's finding that identities of investors and partners listed in applications to dispense medical cannabis were not trade secrets because the applicants "did not prove" that this information constituted a trade secret). *And see Barfield v. Florida Department of Health*, No. 2015 CA 003014 (Fla. 2d Cir. Ct. October 27, 2017) (identity of consultants and related information contained in application to dispense medical cannabis qualified as a trade secret).

**b. Proprietary confidential business information**

While there is no generic exemption for information claimed to be "proprietary confidential business information," the Legislature has created a number of exemptions from Ch. 119, F.S., for proprietary confidential business information held by certain agencies. The term is generally defined by the statute creating the exemption and frequently includes trade secrets. *See, e.g.,* s. 288.075, F.S. (economic development agency); s. 288.9626, F.S. (Florida Opportunity Fund); and ss. 364.183, 366.093, 367.156, and 368.108, F.S. (Public Service Commission). *Cf. Florida Power & Light Company v. Public Service Commission,* 31 So. 3d 860 (Fla. 1st DCA 2010) (listed categories of proprietary confidential business information in s. 366.093, F.S., as exempt are not exhaustive; information relating to employees' compensation warranted confidential classification as it would have impaired utility's competitive interests). *Compare Southern Bell Telephone and Telegraph Company v. Beard,* 597 So. 2d 873, 876 (Fla. 1st DCA 1992) (Public Service Commission's determination that statutory exemption for proprietary confidential



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business information should be narrowly construed and did not apply to company's internal self-analysis was "consistent with the liberal construction afforded the Public Records Act in favor of open government"). *And see* AGO 08-14 (lease payment amount made by a private company to the city does not constitute "proprietary confidential business information").

## D. PROVIDING PUBLIC RECORDS

### 1. Validity of agency conditions on access

Section 119.07(1)(a), F.S., establishes a right of access to public records in plain and unequivocal terms:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

The term "reasonable conditions" as used in s. 119.07(1)(a), F.S., "refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." *Wait v. Florida Power & Light Company,* 372 So. 2d 420, 425 (Fla. 1979). *See also Chandler v. City of Greenacres,* 140 So. 3d 1080, 1084 (Fla. 4th DCA 2014) (noting the narrow interpretation of the phrase "reasonable conditions"); and *Tribune Company v. Cannella,* 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company,* 105 S.Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction).

Accordingly, the "reasonable conditions" do not include a rule or condition of inspection which operates to restrict or circumvent a person's right of access. AGO 75-50. "The courts of this state have invalidated measures which seek to impose any additional burden on those seeking to exercise their rights to obtain records" under Ch. 119, F.S. Inf. Op. to Cook, May 27, 2011. *And see State v. Webb,* 786 So. 2d 602 (Fla. 1st DCA 2001) (requirement that persons with custody of public records allow records to be examined "at any reasonable time, under reasonable conditions" is not unconstitutional as applied to public records custodian who was dilatory in responding to public records requests).

The Public Records Act "embodies important public policy" and "is designed to provide citizens with a simple and expeditious method of accessing public records." *Orange County v. Hewlings,* 152 So. 3d 812, 817 (Fla. 5th DCA 2014). Thus, an agency violated the Act when instead of complying with Hewlings' "simple request" for records, it "chose to interpose the additional bureaucratic hurdles of forcing her to come to its offices, comb through the records, mark the records in a certain manner, wait for a written estimate of costs, then, after paying the costs, wait again for the records to be mailed to her." *Id.*

The custodian "is at all times responsible for the custody of the [public] records but when a citizen applies to inspect or make copies of them it is his duty to make provision for this to be done in such a manner as will accommodate the applicant and at the same time safeguard the records." *Fuller v. State ex rel. O'Donnell,* 17 So. 2d 607 (Fla. 1944). Thus, the right of inspection may not be frustrated or circumvented through indirect means such as the use of a code book. *State ex rel. Davidson v. Couch,* 158 So. 103, 105 (Fla. 1934) (right of inspection was "hindered and obstructed" by city "imposing conditions to the right of examination which were not reasonable nor permissible under the law"). *Accord* AGO 05-12 (city may not require the use of a code to review e-mail correspondence of city's police department and human resources department). *And see* Inf. Op. to Cook, May 27, 2011, noting that "[a] policy requiring a physical address for mailing copies of requested public records or the personal appearance of the requestor would not appear to relate to the custodian's duty to protect public records from alteration or destruction,



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but to impose additional constraints on the requestor." *Compare Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (state attorney did not violate the Public Records Act by making requested records available for inspection and copying at the main office of the state attorney, rather than at a branch office closer to the requester's home, because the Public Records Act "does not require government officials to move records from where they are being maintained to a different place convenient to the requester").

Moreover, any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. *Tribune Company v. Cannella, supra* at 1077. A policy of a governmental agency cannot exempt it from the application of Ch. 119, F.S., a general law. *Douglas v. Michel,* 410 So. 2d 936, 938 (Fla. 5th DCA 1982), *questions answered and approved,* 464 So. 2d 545 (Fla. 1985). *And see* AGO 90-04 (county official not authorized to assign county's rights to a public record as part of a settlement agreement compromising a lawsuit against the county). *Cf. Herbits v. City of Miami*, 207 So. 3d 274, 275 (Fla. 3d DCA 2016) (claim based on alleged concealment of information in violation of transparency mandates established in local enactments is preempted by the Florida Public Records Act, because the "Florida Legislature has so pervasively legislated regarding this subject area that a local government is precluded from legislating in the same area.").

**2. Individuals authorized to inspect and receive copies of public records**

Section 119.01, F.S., provides that "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person.*" (e.s.) A state citizenship requirement was deleted from the law in 1975. A public employee is a person within the meaning of Ch. 119, F.S. and, as such, possesses the same right of inspection as any other person. AGO 75-175. Likewise, a county is "any person" who is allowed to seek public records under Ch. 119, F.S. *Hillsborough County, Florida v. Buccaneers Stadium Limited Partnership,* No. 99-0321 (Fla. 13th Cir. Ct. February 5, 1999), *affirmed per curiam*, 758 So. 2d 676 (Fla. 2d DCA 2000).

Thus, "the law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal." *Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997). "[A]s long as the citizens of this state desire and insist upon 'open government' and liberal public records disclosure, as a cost of that freedom public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws." *State v. Colby,* No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996). "Even though a public agency may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida." *Salvadore v. City of Stuart,* No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991). *And see Curry v. State,* 811 So. 2d 736, 741 (Fla. 4th DCA 2002) (defendant's conduct in making over 40 public records requests concerning victim constituted a "legitimate purpose," and thus cannot violate the stalking law "because the right to obtain the records is established by statute and acknowledged in the state constitution"). *Cf. James v. Loxahatchee Groves Water Control District,* 820 So. 2d 988 (Fla. 4th DCA 2002), concluding that a trial court erred when it failed to hold a hearing before denying a request to require a district to permit inspection at the district offices, rather than at an off-premises location. The agency argued that it would be "disruptive" to require that the records inspection be conducted at its offices. *Id.* However, the appeals court ruled that a hearing should have been held to determine whether the requestor, who was in litigation with the district, should be allowed to view the records at the district offices, and if so, under what conditions. *Id.*

**3. Purpose of request**

The requester is not required to explain the purpose or reason for a public records request. "The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act." *Curry v. State,* 811 So. 2d 736, 742 (Fla. 4th DCA 2002).



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*See also Barfield v. School Board of Manatee County,* 135 So. 3d 560, 562 (Fla. 2d DCA 2014) ("An individual's reason for requesting a public record is irrelevant"); *Timoney v. City of Miami Civilian Investigative Panel,* 917 So. 2d 885, 886n.3 (Fla. 3d DCA 2005) ("generally, a person's motive in seeking access to public records is irrelevant"); *Staton v. McMillan,* 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom., Staton v. Austin,* 605 So. 2d 1266 (Fla. 1992) (petitioner's reasons for seeking access to public records "are immaterial"); *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied,* 475 So. 2d 695 (Fla. 1985) (legislative objective underlying the creation of Ch. 119 was to insure to the people of Florida the right freely to gain access to governmental records; the purpose of such inquiry is immaterial); and *News-Press Publishing Company, Inc. v. Gadd,* 388 So. 2d 276, 278 (Fla. 2d DCA 1980) ("the newspaper's motives [for seeking the documents], as well as the hospital's financial harm and public harm defenses, are irrelevant in an action to compel compliance with the Public Records Act"). *Cf. Town of Gulf Stream v. O'Boyle,* 654 F. App'x 439 (11th Cir. 2016) (alleged filing of large numbers of frivolous public records requests which are then followed by lawsuits when the requests are not addressed does not constitute a predicate act under the Racketeer Influenced Corrupt Organizations Act), and *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019) ( "In short, a citizen's public records requests and lawsuits against the government can clearly constitute protected First Amendment activity").

Thus, an agency is not authorized to impose conditions or limit access to public records based on a suspicion that the request may be for an improper purpose. Inf. Op. to Cook, May 27, 2011. However, as noted in that opinion, Florida Statutes impose criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes and for the criminal use of a public record or public records information. *See* ss. 817.568 and 817.569, F.S.

Similarly, "the fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida's public records law." *Microdecisions, Inc. v. Skinner,* 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied,* 902 So. 2d 791 (Fla. 2005), *cert. denied,* 126 S.Ct. 746 (2005). *See also State ex rel. Davis v. McMillan,* 38 So. 666 (Fla. 1905) (abstract companies may copy documents from the clerk's office for their own use and sell copies to the public for a profit); *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.,* 718 So. 2d 227, 228n.2 (Fla. 3d DCA 1998), *review denied,* 729 So. 2d 389 (Fla. 1999) ("Booksmart's reason for wanting to view and copy the documents is irrelevant to the issue of whether the documents are public records").

**4. Role of the records custodian**

Section 119.011(5), F.S., defines the term "custodian of public records" to mean "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee."

The custodian of public records, or a person having custody of public records, may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records. Section 119.07(1)(b), F.S. *and see* s. 119.0701(2), F.S. (discussed more fully on page 63) requiring that certain agency contracts for public services must contain contact information pertaining to the agency's custodian of public records; and s. 119.12(1)(b) and (2), F.S., mandating that the complainant in a public records lawsuit must provide written notice identifying the public records request to the custodian at least 5 business days prior to filing a civil action, but stipulating that the notice is not required if the agency fails to prominently post the contact information for the agency's custodian in the manner prescribed in the statute. *Cf. Remia v. City of St. Petersburg Police Pension Board of Trustees*, 14 F.L.W. Supp. 854a (Fla. 6th Cir. Ct. July 17, 2007), *cert. denied*, 996 So. 2d 860 (Fla. 2d DCA 2008) (since city clerk's responsibility to provide public records was ministerial, city was not entitled to protective order prohibiting attorney in litigation with the city from directly contacting the clerk with a public



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records request without first contacting the city attorney). Questions relating to the application of the Rules of Professional Conduct should be addressed to The Florida Bar. *See* Florida Bar Ethics Opinion 09-01, issued December 10, 2010.

However, the courts have concluded that the statutory reference to the records custodian does not alter the "duty of disclosure" imposed by s. 119.07(1), F.S., upon "*[e]very person* who has custody of a public record." *Puls v. City of Port St. Lucie,* 678 So. 2d 514 (Fla. 4th DCA 1996). [Emphasis supplied by the court]. Thus, the term "custodian" for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records. *Mintus v. City of West Palm Beach,* 711 So. 2d 1359 (Fla. 4th DCA 1998) (citing *Williams v. City of Minneola,* 575 So. 2d 683, 687 [Fla. 5th DCA 1991]). But, "the mere fact that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07." *Id.* at 1361. In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship. *Id.*

In *Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018), the court rejected the requester's claim that he was entitled to view the records at the office of an assistant state attorney in Lake City when office policy required that the records be sent to the state attorney's main office in Live Oak to be reviewed for exemptions. The court reasoned that the assistant state attorney "couldn't have, for instance simply handed over the records on the spot" when the requester asked for them in Lake City because both the "[Public Records] Act and office policy" required that the records "be reviewed for exempt information by the public records custodian (who was also responsible for supervising the record inspection and copying process)" as provided in s. 119.07(1)(a), F.S. *Id*. at 74

The custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), F.S. *See Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 128 (Fla. 2016), noting that the "good faith language" was intended "to strengthen the responsibilities of records custodians by imposing an explicit requirement on public agencies that they act in good faith in responding to public records requests."

A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed. *Id. Cf. SDE Media LLC v. City of Doral*, 25 F.L.W. Supp 243a (Fla. 11th Cir. Ct. May 5, 2017) (city violated the Public Records Law by "misrepresenting to SDE Media LLC that all responsive records had been located and produced when, in fact, [the city] knew that a good faith search had not been made and that additional responsive records may not have been produced").

The duty of "good faith" imposed on public officers who are charged with the responsibility of complying with the law is "subjective." *Consumer Rights, LLC v. Union County,* 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied,* 177 So. 3d 1264 (Fla. 2015). "Whether a governmental entity acted in 'good faith' in the manner in which it responded to a request for disclosure of public records is necessarily a question for the court to decide based on the circumstances of a case." *Id.*

**5. Requests for copies versus requests to inspect public records**

"It is the policy of this state that all state, county, and municipal records are open for personal inspection and *copying* by any person." (e.s.) Section 119.01(1), F.S. In addition, s. 119.07(1)(a), F.S., provides that "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so . . . ." Finally, s. 119.07(4), F.S., requires the custodian to "furnish a copy or a certified copy of the record upon payment of the fee prescribed by law . . . ." *And see Fuller v. State ex rel. O'Donnell,* 17 So. 2d 607 (Fla. 1944) ("The best-reasoned authority in this country holds that the right to inspect public



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records carries with it the right to make copies"); and *Schwartzman v. Merritt Island Volunteer Fire Department,* 352 So. 2d 1230, 1232n.2 (Fla. 4th DCA 1977) (Public Records Act requires custodian to furnish copies). *Cf. Wootton v. Cook,* 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (if the requestor identifies a record with sufficient specificity to permit the agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

**6. Records maintained by more than one agency**

The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption. AGO 86-69. If information contained in the public record is available from other sources, a person seeking access to the record is not required to make an unsuccessful attempt to obtain the information from those sources as a condition precedent to gaining access to the public records. *Warden v. Bennett,* 340 So. 2d 977, 979 (Fla. 2d DCA 1976).

**7. Records not in physical possession of agency**

An agency is not authorized to refuse to allow inspection of public records it made or received in the course of official business on the grounds that the documents are in the actual possession of another agency or official other than the records custodian. *See Wallace v. Guzman,* 687 So. 2d 1351 (Fla. 3d DCA 1997) (public records cannot be hidden from the public by transferring physical custody of the records to the agency's attorneys); *Tober v. Sanchez*, 417 So. 2d 1053 (Fla. 3d DCA 1982), *review denied sub nom., Metropolitan Dade County Transit Agency v. Sanchez,* 426 So. 2d 27 (Fla. 1983) (official charged with maintenance of records may not transfer actual physical custody of records to county attorney and thereby avoid compliance with request for inspection under Ch. 119, F.S.); and AGO 92-78 (public housing authority not authorized to withhold its records from disclosure on the grounds that the records have been subpoenaed by the state attorney and transferred to that office). "Given the aggressive nature of the public's right to inspect and duplicate public records, a governmental agency may not avoid a public records request by transferring custody of its records to another agency." *Chandler v. City of Sanford,* 121 So. 3d 657, 660 (Fla. 5th DCA 2013).

Thus, in *Barfield v. Florida Department of Law Enforcement,* No. 93-1701 (Fla. 2d Cir. Ct. May 19, 1994), the court held that an agency that received records from a private entity in the course of official business and did not make copies of the documents could not "return" them to the entity following receipt of a public records request. The court ordered the agency to demand the return of the records from the private entity so they could be copied for the requestor.

Similarly, in *Times Publishing Company v. City of St. Petersburg,* 558 So. 2d 487, 492-493 (Fla. 2d DCA 1990), the court found that both the city and a private entity violated the Public Records Act when, pursuant to a plan to circumvent Ch. 119, F.S., the city avoided taking possession of negotiation documents reviewed and discussed by both parties and instead left them with the private entity's attorney. The court determined that although city officials may have intended merely to "avoid" the law, the effect of their actions was to "evade the broad policy of open government." *And see Wisner v. City of Tampa Police Department,* 601 So. 2d 296, 298 (Fla. 2d DCA 1992) (city may not allow a private entity to maintain physical custody of public records [polygraph chart used in internal investigation] "to circumvent the public records chapter"); and *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010) (records on private entity's secure website that were viewed and used by a state university in carrying out its official duties were public records even though the university did not take physical possession); and AGO 98-54 (registration and disciplinary records stored in a computer database maintained by a national securities association which are used by a state agency in licensing and regulating securities dealers doing business in Florida are public records).

**8. "Overbroad" public records requests**

In *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied,* 475 So. 2d



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695 (Fla. 1985), the court recognized that the "breadth of such right [to gain access to public records] is virtually unfettered, save for the statutory exemptions . . . ." Accordingly, in the absence of a statutory exemption, a custodian must produce the records requested regardless of the number of records involved or possible inconvenience. Note, however, s. 119.07(4)(d), F.S., authorizes a custodian to charge, in addition to the cost of duplication, a reasonable service charge for the cost of the extensive use of information technology resources or of personnel, if such extensive use is required because of the nature or volume of public records to be inspected or copied. *See* AGO 92-38.

Thus, a person seeking to inspect "all" financial records of a municipality may not be required to specify a particular book or record he or she wishes to inspect. *State ex rel. Davidson v. Couch,* 156 So. 297, 300 (Fla. 1934). In *Davidson*, the Florida Supreme Court explained that if this were the case, "one person may be required to specify the book, while another and more favored one, because of his pretended ignorance of the name of the record might be permitted examination of all of them." *Id.* Such a result would be inconsistent with the mandate in the Public Records Act that public records are open to all who wish to inspect them. *Id. Cf. Salvadore v. City of Stuart,* No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991), stating that if a public records request is insufficient to identify the records sought, the city has an affirmative duty to promptly notify the requestor that more information is needed in order to produce the records; it is the responsibility of the city and not the requestor to follow up on any requests for public records. *Compare Woodard v. State,* 885 So. 2d 444, 446 (Fla. 4th DCA 2004) (records custodian must furnish copies of records when the person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record and forwards the statutory fee).

**9. Written request or form requirements**

Chapter 119, F.S., does not authorize an agency to require that requests for records be in writing. *See Dade Aviation Consultants v. Knight Ridder, Inc.,* 800 So. 2d 302, 305n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing"). As noted in AGO 80-57, a custodian must honor a request for copies of records which is sufficient to identify the records desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid. "In sum, the city could not properly condition disclosure of the public records, to the then-anonymous requester on filling out the city's form . . . ." *Chandler v. City of Greenacres,* 140 So. 3d 1080, 1085 (Fla. 4th DCA 2014).

If a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require that the *custodian* complete an appropriate form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request to inspect or copy public records. *See Sullivan v. City of New Port Richey,* No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), *per curiam affirmed,* 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a requestor's failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records.

However, a request for records of the judicial branch (which is not subject to Ch. 119, F.S., *see Times Publishing Company v. Ake,* 660 So. 2d 255 [Fla. 1995]), must be in writing. Rule 2.420(m)(1), Fla. R. Jud. Admin. In its commentary accompanying the rule change that incorporated this requirement, the Court said that the "writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing." *In re Report of the Supreme Court Workgroup on Public Records,* 825 So. 2d 889, 898 (Fla. 2002).

**10. Identification of requester**

A person requesting access to or copies of public records may not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is



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required by law to obtain this information prior to releasing the records. AGOs 92-38 and 91-76. *Accord* Inf. Op. to Cook, May 27, 2011. *See also Bevan v. Wanicka,* 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself). *Cf.* s. 1012.31(2)(f), F.S., providing that the custodian of *public school employee* personnel files shall maintain a record in the file of those persons reviewing an employee personnel file each time it is reviewed.

Thus, a city may not require an anonymous requester who made a public records request via e-mail to provide an "address or other identifiable source for payment of the associated costs." *Chandler v. City of Greenacres,* 140 So. 3d 1080, 1085 (Fla. 4th DCA 2014). Instead, "the city could have sent an estimate of costs through e-mail to the requester just as it could through regular mail, had the request been made via paper by an anonymous requester." *Id. Cf. Consumer Rights, LLC v. Union County, Florida,* 159 So. 3d 882, 886 (Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015) ("We know of no law that requires a governmental entity to provide public records to a generic email address, at least not until such time as it is made clear that the address belongs to a person"); and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.,* 195 So. 3d 396, 402 (Fla. 4th DCA 2016) ("There is a difference between allowing anonymous public records requests and evaluating an agency's response when such requests are justifiably handled with caution").

**11. Remote access**

Section 119.07(2)(a), F.S., states that "[a]s an additional means of inspecting or copying public records, a custodian may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed." *And see* s. 119.01(2)(e), F.S. Thus, an agency is authorized but not required to permit remote electronic access to public records.

Similarly, access to public records by remote electronic means is merely an additional means of inspecting or copying public records; this "additional means of access, however, is insufficient where the person requesting the records specifies the traditional method of access via paper copies." *Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332, 333 (Fla. 1st DCA 2015).

Section 119.07(2)(b), F.S., requires the custodian to provide safeguards to protect the contents of the public records from unauthorized electronic access or alteration and to prevent the disclosure or modification of those portions of the records which are exempt from disclosure.

Unless otherwise required by law, the custodian may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. However, fees for remote electronic access provided to the general public must be in accordance with the provisions of s. 119.07, F.S. Section 119.07(2)(c), F.S.

**12. Requests to create new records, answer questions about the records, or reformat existing records**

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records" provided that the required fees are paid. Section 119.07(1)(a) and (4), F.S. However, a custodian is not required to give out *information* from the records of his or her office. AGO 80-57. The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. AGO 92-38. *Cf. In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002) (the custodian of judicial records "is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request").



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In other words, Ch. 119, F.S., provides a right of access to inspect and copy an agency's existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency. Thus, the clerk of court is not required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request. *Wootton v. Cook,* 590 So. 2d 1039 (Fla. 1st DCA 1991). *See also* AGO 08-29. *Cf.* s. 120.53, F.S., relating to maintenance of final orders by agencies subject to Ch. 120, F.S.

However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs. *Wootton v. Cook, supra. See also Woodard v. State,* 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records. *Cf. Gilliam v. State,* 996 So. 2d 956 (Fla. 2d DCA 2008) (clerk, as custodian of judicial records, had a legal duty to respond to Gilliam's request for information regarding costs) and *Blackshear v. State,* 115 So. 3d 1093 (Fla. 1st DCA 2013) (clerk is "duty-bound to respond to a request about copying costs for the records sought").

Similarly, as stated in *Seigle v. Barry,* 422 So. 2d 63, 66 (Fla. 4th DCA 1982), *review denied,* 431 So. 2d 988 (Fla. 1983), the intent of Ch. 119, F.S., is "to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." Accordingly, an agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. AGO 08-29. As explained in *Seigle*:

> If the health department maintains a chronological list of dog-bite incidents with rabies implications [a] plaintiff, bitten by a suspect dog, may not require the health department to reorder that list and furnish a record of incidents segregated by geographical areas. Nothing in the statute, case law or public policy imposes such a burden upon our public officials. 422 So. 2d at 65.

Thus, in AGO 97-39, the Attorney General's Office concluded that a school district was not required to furnish electronic public records in an electronic format other than the standard format routinely maintained by the district.

Despite the general rule, however, the *Seigle* court recognized that an agency may be required to provide access through a specially designed program, prepared by or at the expense of the requestor, where:

1) available programs do not access all of the public records stored in the computer's data banks; or

2) the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or

3) for any reason the form in which the information is proffered does not fairly and meaningfully represent the records; or

4) the court determines other exceptional circumstances exist warranting this special remedy. 422 So. 2d at 66-67.

For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium that is not routinely used by the agency, or if it elects to compile information that is not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4), F.S. (authorizing imposition of a special service charge if extensive information technology resources or labor are required). Section 119.01(2)(f), F.S.

**13. Records available in more than one medium**



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An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee which shall be in accordance with Ch. 119, F.S. Section 119.01(2)(f), F.S. *See* AGO 13-07. Accordingly, an agency violated the Public Records Act when it referred the requester to a website instead of providing paper copies as the requester asked. *Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332 (Fla. 1st DCA 2015).

Similarly, a custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript would not satisfy the requirements of s. 119.07(1), F.S. AGO 91-61. *See also Miami-Dade County v. Professional Law Enforcement Association,* 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request). *Cf.* AGO 06-30, stating that an agency may respond to a public records request requiring the production of thousands of documents by composing a static web page where the responsive public documents are posted for viewing if the requesting party agrees to the procedure and agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost.

**14. Amount of time allowed for response to public records requests**

**a. Duty to acknowledge requests promptly**

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), F.S. *Cf. Hewlings v. Orange County,* 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request by voicemail and fax is not dispositive of whether county's 45-day delay in *complying* with the request was unjustified for purposes of s. 119.12, F.S., authorizing an award of attorney's fees to a party who succeeds in a civil action resulting from an unlawful refusal to provide public records).

**b. Automatic delay impermissible**

A policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company v. Cannella,* 458 So. 2d 1075, 1078-1079 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company,* 105 S.Ct. 2315 (1985). *And see Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332, 333-334 (Fla. 1st DCA 2015) (agency not authorized to automatically delay production by imposing a 24-hour notice requirement).

Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his or her records. *Tribune Company v. Cannella,* 458 So. 2d at 1078. *Compare* s. 1012.31(3)(a)3., F.S., in which the Legislature has expressly provided that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified as prescribed by statute.

Similarly, the Attorney General's Office has advised that a board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote. AGO 96-55. *And see Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (city may not delay public access to board meeting minutes until after the city commission has approved the minutes).

**c. Unjustified delay**

The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. However, "delay in making public records available is permissible under very limited circumstances." *Promenade D'Iberville, LLC v. Sundy,* 145 So. 3d 980, 983 (Fla. 1st DCA, 2014). In *Promenade*, the court noted that a records custodian could delay production to determine whether the records exist, s. 119.07[1][c], F.S.; if the custodian believes the some or all of the record is exempt, s. 119.07[1][d]-[e]; or if the requesting party



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fails to forward the appropriate fees, s. 119.07[4], F.S. Otherwise, the only delay in producing records permitted under Ch. 119, F.S., "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Id.* at 983, citing *Tribune Company v. Cannella,* 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company,* 105 S.Ct. 2315 (1985). Where the delays aren't justified, "the Public Records Act holds officials accountable." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018).

Thus, an agency's unjustified delay in producing public records constitutes an unlawful refusal to provide access to public records. *See Lilker v. Suwannee Valley Transit Authority,* 133 So. 3d 654, 655 (Fla. 1st DCA 2014) ("Unlawful refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them"). *See also State v. Webb,* 786 So. 2d 602, 604 (Fla. 1st DCA 2001) (error for a lower court judge to vacate a misdemeanor conviction of a records custodian [Webb] who had been found guilty of willfully violating s. 119.07(1)(a), F.S., based on her "dilatory" response to public records requests).

For example, in *Promenade D'Iberville, LLC v. Sundy, supra,* the appellate court determined that an agency violated the Public Records Act by refusing to provide non-exempt public records until a court denied its motion for a protective order to block the requestor (an adversary in out-of-state litigation) from using the Act. Similarly, a trial judge erred by granting the agency's motion to dismiss on the grounds that the agency ultimately provided the record three months after the request was made and two weeks after the request for mandamus relief had been filed. *Consumer Rights, LLC v. Bradford County, Florida*, 153 So. 3d 394, 398 (Fla. 1st DCA 2014). Instead, the judge should have conducted a hearing to determine whether the delay was justified. *Id.*

By contrast, in *Lang v. Reedy Creek Improvement District,* No. CJ-5546 (Fla. 9th Cir. Ct. October 2, 1995), *affirmed per curiam*, 675 So. 2d 947 (Fla. 5th DCA 1996), the circuit court rejected the petitioner's claim that the agency should have produced requested records within 10, 20 and 60-day periods. The court determined that the agency's response to numerous (19) public records requests for 135 categories of information and records filed by the opposing party in litigation was reasonable in light of the cumulative impact of the requests and the fact that the requested records contained exempt as well as nonexempt information and thus required a considerable amount of review and redaction. *And see Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), in which the court said that in view of the "nature and volume of the materials requested [over 9000 pages], their location, and the need for close supervision by some knowledgeable person of the review of those records for possible exemptions," the amount of time expended by the county to produce the records (several weeks) to opposing counsel was not unreasonable.

Moreover, recent cases have emphasized that in order for a delay to constitute an "unlawful refusal" for purposes of the award of attorney's fees under s. 119.12, F.S., the delay must be "unjustified." *See e.g.*, *Consumer Rights, LLC v. Union County,* 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied,* 177 So. 3d 1264 (Fla. 2015) and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.,* 195 So. 3d 396, 401 (Fla. 4th DCA 2016). *See also* the discussion on pages 190-193 relating to attorney's fees awarded under s. 119.12, F.S., for an "unlawful refusal" to provide access to public records.

Stated another way, the Public Records Act "demands prompt attention and a reasonable response time, not the quickest-possible response." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018). In *Siegmeister*, the court noted that the agency had not "intentionally or unjustifiably delayed responding" to a public records request because it took two weeks for the response to be delivered to the requester. *Id*. at 74. *Cf. Florida Agency for Health Care Administration v. Zuckerman, Spaeder, LLP*, 221 So. 3d 1260, 1264 (Fla. 1st DCA 2017) (trial court abused its discretion by issuing a writ of mandamus requiring health care agency to produce



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a large number of public records within 48 hours when the records could not be reviewed for redaction of exempt information within this "compressed time period;" trial court also erred by requiring the agency to produce the records prior to the requester's payment of the agency's invoices associated with production of the records).

**d. Arbitrary time for inspection**

The Public Records Act authorizes inspection and copying of public records "at any reasonable time." Section 119.07(1)(a), F.S. While the custodian may reasonably restrict inspection to those hours during which his or her office is open to the public, an agency policy that restricts inspection of public records to the hours of 8:30 a.m. to 9:30 a.m., Monday through Friday with 24-hour advance notice violates the Public Records Act. *Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332 (Fla. 1st DCA 2015). *Accord* AGO 81-12 (custodian not authorized to establish an arbitrary time period during which records may or may not be inspected).

There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical problems in retrieving the records and protecting them is necessary; however, the adoption of a schedule in which public records may be viewed only during certain hours is impermissible. Inf. Op. to Riotte, May 21, 1990, concluding that an agency policy which permits inspection of its public records only from 1:00 p.m. to 4:30 p.m., Monday through Friday, violates the Public Records Act.

**e. Standing requests**

The Attorney General's Office has stated that upon receipt of a public records request, the agency must comply by producing all non-exempt documents in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, F.S. However, this mandate applies only to those documents in the custody of the agency at the time of the request; nothing in the Public Records Act appears to require that an agency respond to a so-called "standing" request for production of public records that it may receive in the future. *See* Inf. Op. to Worch, June 15, 1995.

**15. Confidentiality agreements**

An agency "cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements." *The Tribune Company v. Hardee Memorial Hospital,* No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991) (confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act).

Thus, in *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010), the court held that a confidentiality agreement entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA's secure custodial website that were used by the university in preparing a response to possible NCAA sanctions, had no impact on whether such records were public records, stating that "[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private." *And see Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018) (provision in license agreement between company and county which required county to maintain the confidentiality of company's trade secret information and assert its exempt status in response to a public records request could not transform information found to be a public record into a private record); *City of Pinellas Park, Florida v. Times Publishing Company,* No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) ("there is absolutely no doubt that promises of confidentiality [given to employees who were asked to respond to a survey] do not empower the Court to depart from the public records law"); and *Gadd v. News-Press Publishing Company,* 412 So. 2d 894 (Fla. 2d DCA 1982) (records of a county hospital's utilization review committee were not exempt from Ch. 119, F.S., even though the information may have come from sources who expected or were promised confidentiality).



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Similarly, in *Times Publishing Company v. City of St. Petersburg,* 558 So. 2d 487, 494 (Fla. 2d DCA 1990), the court determined that a baseball organization and a city improperly attempted to circumvent the Public Records Act by agreeing to keep negotiation documents relating to use of a municipal stadium confidential and in the exclusive custody of the organization. Noting the dangers that exist if private entities "are allowed to demand that they retain custody [and prevent inspection] of documents as a condition of doing business with a governmental body," the court ruled that both the organization and the city violated the Public Records Act. *Cf. WPTV-TV v. State,* 61 So. 3d 1191 (Fla. 5th DCA 2011) (trial court may not require media to enter into confidentiality agreement in order to receive advance notice of information relating to jury selection in criminal case).

Additionally, s. 69.081(8), F.S., part of the Sunshine in Litigation Act, provides, subject to limited exceptions, that any portion of an agreement which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced. Settlement records must be maintained in compliance with Ch. 119, F.S. *See* Inf. Op. to Barry, June 24, 1998 (agency not authorized to enter into a settlement agreement authorizing the concealment of information relating to an adverse personnel decision from the remainder of a personnel file). *Cf.* s. 215.425(5), F.S. (any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract).

Moreover, to allow the maker or sender of records to dictate the circumstances under which the records are to be deemed confidential would permit private parties as opposed to the Legislature to determine which public records are subject to disclosure and which are not. Such a result would contravene the purpose and terms of Ch. 119, F.S. *Browning v. Walton,* 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who filled out forms requesting that city maintain the confidentiality of all material in their personnel files); AGO 97-84 (architectural and engineering plans under seal pursuant to s. 481.221 or s. 471.025, F.S., that are held by a public agency in connection with the transaction of official business are subject to public inspection); and Inf. Op. to Echeverri, April 30, 2010 (taxpayer may not request that records submitted to value adjustment board be kept confidential).

Accordingly, it is clear that the determination as to when public records are to be deemed confidential rests exclusively with the Legislature. *See Sepro Corporation v. Florida Department of Environmental Protection,* 839 So. 2d 781 (Fla. 1st DCA 2003), *review denied sub nom., Crist v. Department of Environmental Protection,* 911 So. 2d 792 (Fla. 2005) (private party cannot render public records exempt from disclosure merely by designating as confidential the material it furnishes to a state agency). *See also* AGO 90-104 (desire of data processing company to maintain "privacy" of certain materials filed with Department of State is of no consequence unless such materials fall within a legislatively created exemption to Ch. 119, F.S.). *And see Hill v. Prudential Insurance Company of America,* 701 So. 2d 1218 (Fla. 1st DCA 1997), *review denied,* 717 So. 2d 536 (Fla. 1998) (materials obtained by state agency from anonymous sources during its investigation of an insurance company were public records subject to disclosure in the absence of statutory exemption, notwithstanding the company's contention that the records were "stolen" or "misappropriated" privileged documents that were delivered to the state without the company's permission).

Therefore, unless the Legislature has expressly authorized the maker of records received by an agency to keep the material confidential, the wishes of the sender or the agency in this regard cannot supersede the requirements of Ch. 119, F.S. *Compare*, *e.g.*, s. 377.2409(1), F.S. (information on geophysical activities conducted on state-owned mineral lands received by Department of Environmental Protection shall, on the request of the person conducting the activities, be held confidential and exempt from Ch. 119, F.S., for 10 years). *And see Morris*



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*v. Whitehead,* 588 So. 2d 1023, 1024 (Fla. 2d DCA 1991) (upholding the nondisclosure of confidential records received by housing authority from the federal government pursuant to agreement authorized by state housing law). *Cf. Doe v. State,* 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney's office which led to a criminal investigation was justified in inferring or had a reasonable expectation that he would be treated as a confidential source in accordance with statutory exemption now found at s. 119.071[2][f], F.S., the citizen was entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney's office).

**16. Redaction of confidential or exempt information**

If the custodian asserts that an exemption applies to part of the record, the custodian "shall redact that portion . . . and shall produce the remainder of such record for inspection and copying." Section 119.07(1)(d), F.S. *Ocala Star Banner Corp. v. McGhee,* 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact information identifying confidential informant from police report but must produce the rest for inspection); *City of Riviera Beach v. Barfield,* 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied,* 651 So. 2d 1192 (Fla. 1995) (police department authorized to withhold statutorily exempt criminal investigative information but must allow inspection of nonexempt portions of the records); and AGO 95-42 (statute providing for confidentiality of certain audit information did not make the entire report confidential and exempt from disclosure; the portions of the report which do not contain exempt information must be released).

The fact that an agency believes that it would be impractical or burdensome to redact confidential information from its records does not excuse noncompliance with the mandates of the Public Records Act. AGO 99-52. *See also* AGO 02-73 (agency must redact confidential and exempt information and release the remainder of the record; agency not authorized to release records containing confidential information, albeit anonymously). *Compare Florida Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (trial court order mandating that agency produce a large number of public records within 48 hours "effectively requires AHCA to ignore its statutory duty to redact exempted information"); and *Department of Health v. Rehabilitation Center at Hollywood Hills* 259 So. 3d 979, 982 (Fla. 1st DCA 2018), reversing a lower court order that ordered production of death certificates without addressing the Department's "statutory duty to safeguard confidential and exempt information contained in the requested certificates."

A custodian of records containing both exempt and nonexempt material may comply with s. 119.07(1)(d), F.S., by any reasonable method which maintains and does not destroy the exempted portion while allowing public inspection of the nonexempt portion. AGO 84-81. *And see* AGOs 97-67 and 05-37 (Official Records).

Section 119.011(13), F.S., defines the term "redact" to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information." *See* AGO 02-69 (statute providing for redaction of certain information in court records available for public inspection does not authorize clerk of court to permanently remove or obliterate such information from the original court records).

Section 119.07(1)(e), F.S., states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), F.S. *See Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2000) (agency's response that it had provided all records "with the exception of certain information relating to the victim" deemed inadequate because the response "failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis



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for any exemption"); and *Langlois v. City of Deerfield Beach,* Florida, 370 F. Supp. 2d 1233 (S.D. Fla. 2005) (city fire chief's summary rejection of request for employee personnel file violated the Public Records Act because the chief gave no statutory reason for failing to produce the records).

However, in *City of St. Petersburg v. Romine ex rel. Dillinger,* 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court cautioned that the Public Records Act "may not be used in such a way to obtain information that the legislature has declared must be exempt from disclosure." Thus, a request for agency records may not be phrased or responded to in terms of a request for the specific documents asked for and received by a law enforcement agency during the course of an active criminal investigation. AGO 06-04. *Compare* AGO 08-33 (list of law enforcement officers who have been placed on administrative duty is a public record; the list is not confidential pursuant to section 112.533[2][a], F.S., providing for confidentiality of complaints filed against a law enforcement officer); and AGO 07-15 (statutory exemption authorizing certain corporations to request confidentiality of information relating to the company's interest or plans to relocate to the state may be cited by a records custodian as statutory authority for withholding information from public disclosure without violating the confidentiality provisions of the exemption).

However, s. 119.07(1)(e), F.S., "requires only record-by-record—not redaction-by-redaction—identification of the exemptions authorizing the redactions in each record." *Jones v. Miami Herald Media Company,* 198 So. 3d 1143 (Fla. 1st DCA 2016). The court upheld the agency's use of a form with checkboxes identifying the various statutory exemptions relied upon for the redactions in the records and rejected the petitioner's contention that the agency should have specified which exemption applied to which redaction. *And see Lopez v. State,* 696 So. 2d 725 (Fla. 1997) (state attorney's contention that requested records were work product and not subject to public records disclosure was sufficient to identify asserted statutory exemptions). "The merit of imposing a duty on the Department to identify each document in a record that it asserts to be exempt under the [Public Records] Act—similar to the generation of a privilege log in response to a civil discovery request—is a matter properly addressed to the legislature rather than this court." *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018).

It has been held that a *federal* agency subject to the federal Freedom of Information Act, 5 U.S.C. s. 552, must, in addition to providing a detailed justification of the basis for claimed exemptions under the Act, specifically itemize and index the documents involved so as to show which are disclosable and which are exempt. *See Vaughn v. Rosen,* 484 F.2d 820, 827-828 (D.C. Cir. 1973), *cert. denied,* 94 S.Ct. 1564 (1974). However, a Florida court refused to apply the *Vaughn* requirements to the state Public Records Act. *See Lorei v. Smith,* 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied,* 475 So. 2d 695 (Fla. 1985).

**17. Privacy rights**

It is well established in Florida that "neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency." *Williams v. City of Minneola,* 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied,* 589 So. 2d 289 (Fla. 1991).

In reaching the conclusion that public records must be open to public inspection unless the Legislature provides otherwise, the courts have rejected claims that the constitutional right of privacy bars disclosure. Article I, s. 23, Fla. Const., provides:

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. *This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.* (e.s.)

Accordingly, the Florida Constitution "does not provide a right of privacy in public



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records" and a state or federal right of disclosural privacy does not exist. *Michel v. Douglas,* 464 So. 2d 545, 546 (Fla. 1985). *See also Forsberg v. Housing Authority of City of Miami Beach,* 455 So. 2d 373 (Fla. 1984); and AGO 09-19 (to extent that information on an agency's Facebook page constitutes a public record within the meaning of Ch. 119, F.S., Art. I, s. 23, Fla. Const., "is not implicated"). "[I]n Florida the right to privacy is expressly subservient to the Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.,* 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *But see Post-Newsweek Stations, Florida Inc. v. Doe,* 612 So. 2d 549 (Fla. 1992) (public's right of access to pretrial criminal discovery materials must be balanced against a nonparty's constitutional right to privacy).

In *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018), the court recognized that a public official's use of a private cell phone to conduct public business via text messaging could create a written public record subject to disclosure. "The purpose of both Article I, section 24 and Chapter 119 is to ensure that citizens may review (and criticize) government actions. That purpose would be defeated if a public official could shield the disclosure of public records by conducting business on a private phone." 257 So. 3d at 1042. The court acknowledged that the public's right to public records "does not extinguish an individual's constitutional and statutory rights in private information." However, the court found that a judicial review of the records could safeguard "all legitimate privacy concerns." *Id*.

### 18. Liability for disclosure

Nothing in Ch. 119, F.S., indicates an intent to give private citizens a right to recovery for an agency negligently maintaining and providing information from public records. *City of Tarpon Springs v. Garrigan,* 510 So. 2d 1198 (Fla. 2d DCA 1987); *Friedberg v. Town of Longboat Key,* 504 So. 2d 52 (Fla. 2d DCA 1987). *Cf. Layton v. Florida Department of Highway Safety and Motor Vehicles,* 676 So. 2d 1038 (Fla. 1st DCA 1996) (agency has no common law or statutory duty to citizen to maintain accurate records). *Accord Hillsborough County v. Morris,* 730 So. 2d 367 (Fla. 2d DCA 1999).

However, a custodian is not protected against tort liability resulting from that person *intentionally* communicating public records or their contents to someone outside the agency which is responsible for the records unless the person inspecting the records has made a bona fide request to inspect the records or the communication is necessary to the agency's transaction of its official business. *Williams v. City of Minneola,* 575 So. 2d 683 (Fla. 5th DCA 1991), *review denied,* 589 So. 2d 289 (Fla. 1991). On appeal, after remand, the Fifth District held the claim against the city was barred on the basis of sovereign immunity. *Williams v. City of Minneola,* 619 So. 2d 983 (Fla. 5th DCA 1993). *Cf.* AGO 97-09 (law enforcement agency's release of sexual offender records for purposes of public notification is consistent with its duties and responsibilities).

## E. STATUTORY EXEMPTIONS

### 1. Creation of exemptions

"Courts cannot judicially create any exceptions, or exclusions to Florida's Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.,* 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *Wait v. Florida Power and Light Company*, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). *Accord Wait v. Florida Power and Light Company,* 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). *See* s. 119.011(8), F.S., defining the term "exemption" to mean "a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution."



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Article I, s. 24(c), Fla. Const., authorizes the *Legislature* to enact general laws creating exemptions provided that such laws "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." "The Constitution allows for the legislature, not the courts to provide for exceptions to the public records act." *Cruz v. State*, 297 So. 3d 154 (Fla. 4th DCA, 2019). *See Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (statute providing an exemption from the Sunshine Law for portions of hospital board meetings is unconstitutional because it does not meet the constitutional standard of specificity as to stated public necessity and it is broader than necessary to achieve its purpose). *Compare Memorial Hospital-West Volusia v. News-Journal Corporation,* 729 So. 2d 373, 380 (Fla. 1999), in which the Court refused to "imply" an exemption from open records requirements, stating "we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in article I, section 24(c) of the Florida Constitution." *And see Campus Communications, Inc. v. Earnhardt,* 821 So. 2d 388, 395 (Fla. 5th DCA 2002), *review denied,* 848 So. 2d 1153 (Fla. 2003) (statutory exemption for autopsy photographs serves identifiable public purpose and is no broader than necessary to meet that public purpose); *Bryan v. State,* 753 So. 2d 1244 (Fla. 2000) (statute exempting from public disclosure certain prison records satisfies the constitutional standard because the Legislature set forth the requisite public necessity [personal safety of prison officials and inmates] for the exemption); and *State, Department of Financial Services v. Danahy & Murray, P.A.*, 246 So. 3d 466 (Fla. 1st DCA 2018) (distinguishing *Halifax* and finding that a statute exempting certain information held by the Department of Financial Services under the Florida Insurance Code met the constitutional standard in Article I s. 24[c], Fla. Const.).

Laws enacted pursuant to Art. I, s. 24, Fla. Const., shall relate to one subject and must contain only exemptions or provisions governing enforcement. *Cf. State v. Knight,* 661 So. 2d 344 (Fla. 4th DCA 1995) (while exemptions when enacted must contain a public necessity statement, exceptions to an exemption are not required to contain such a statement; thus, a trial judge erred in overturning a statute providing a limited exception to the public records exemption for grand jury materials).

Article I, s. 24(c) also requires that laws providing exemptions from public records or public meetings requirements must be passed by a two-thirds vote of each house. The two-thirds vote requirement applies when an exemption is readopted in accordance with the Open Government Sunset Review Act, s. 119.15, F.S., as well as to the initial creation of an exemption. AGO 03-18.

In accordance with s. 24(d), all statutory exemptions in effect on July 1, 1993, are grandfathered into the statutes and remain in effect until they are repealed. Rules of court in effect on November 3, 1992, that limit access to records remain in effect until repealed. *See* Rule 2.420, Fla. R. Jud. Admin. (originally adopted by the Florida Supreme Court on October 29, 1992, as Rule 2.051, and subsequently renumbered in 2006 as Rule 2.420). Rule 2.420 may be accessed online at www.floridabar.org.

The Open Government Sunset Review Act, codified at s. 119.15, F.S., provides for the review and repeal or reenactment of an exemption from s. 24, Art. I, Fla. Const., and s. 119.07(1), or s. 286.011, F.S. The act does not apply to an exemption that is required by federal law or applies solely to the Legislature or the State Court System. Section 119.15(2)(a) and (b), F.S. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S.

**2. Strict construction**

The general purpose of Ch. 119, F.S., "is to open public records to allow Florida's citizens to discover the actions of their government." *Christy v. Palm Beach County Sheriff 's Office,* 698 So. 2d 1365, 1366 (Fla. 4th DCA 1997). The Public Records Act is to be liberally construed in



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favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *See National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1206 (Fla.1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010); *Krischer v. D'Amato,* 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood,* 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), *review denied,* 520 So. 2d 586 (Fla. 1988); *Tribune Company v. Public Records,* 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company,* 503 So. 2d 327 (Fla. 1987).

An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. *See Barfield v. School Board of Manatee County,* 135 So. 3d 560, 562 (Fla. 2d DCA 2014); *Woolling v. Lamar,* 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001); *Barfield v. City of Fort Lauderdale Police Department,* 639 So. 2d 1012, 1015 (Fla. 4th DCA), *review denied,* 649 So. 2d 869 (Fla. 1994); and *Florida Freedom Newspapers, Inc. v. Dempsey,* 478 So. 2d 1128, 1130 (Fla. 1st DCA 1985). *See also Bludworth v. Palm Beach Newspapers, Inc.,* 476 So. 2d 775, 780n.1 (Fla. 4th DCA 1985), *review denied,* 488 So. 2d 67 (Fla. 1986); *Tribune Company v. Public Records, supra,* stating that doubt as to the applicability of an exemption should be resolved in favor of disclosure rather than secrecy. *And see Times Publishing Company v. City of St. Petersburg,* 558 So. 2d 487, 492, noting that the judiciary cannot create a privilege of confidentiality to accommodate the desires of government and that "[a]n open government is crucial to the citizens' ability to adequately evaluate the decisions of elected and appointed officials"; rather the "right to access public documents is virtually unfettered, save only the statutory exemptions designed to achieve a balance between an informed public and the ability of the government to maintain secrecy in the public interest." *Accord* AGO 80-78 ("policy considerations" do not, standing alone, justify nondisclosure of public records).

**3. Retroactive application of new exemptions**

Access to public records is a substantive right. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation,* 784 So. 2d 438 (Fla. 2001). Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *Id.* Generally, the critical date in determining whether a document is subject to disclosure is the date the public records request is made; the law in effect on that date applies. *Baker County Press, Inc. v. Baker County Medical Services,* 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004).

However, if the Legislature is "clear in its intent," an exemption may be applied retroactively. *Campus Communications, Inc. v. Earnhardt,* 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied,* 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). *See also Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC,* 226 So. 3d 969 (Fla. 4th DCA, 2017); *City of Orlando v. Desjardins,* 493 So. 2d 1027, 1028 (Fla. 1986); and *Roberts v. Butterworth,* 668 So. 2d 580 (Fla. 1996). *Cf. Cebrian By and Through Cebrian v. Klein,* 614 So.2d 1209 (Fla. 4th DCA 1993) (amendment to child abuse statute limiting access to unfounded reports was remedial in nature and therefore applied retroactively); AGO 11-16 (applying exemption to a public records request received before the statute's effective date because the legislation creating the exemption states that it "applies to information held by an agency, before, on, or after the effective date of this exemption"); and AGO 94-70 (amendment to expungement statute appears to be remedial and, therefore, should be retroactively applied to those records ordered expunged prior to the effective date of the amendment).

**4. Retroactive application of statutes eliminating confidentiality**

In *Baker v. Eckerd Corporation,* 697 So. 2d 970 (Fla. 2d DCA 1997), the court held that an amendment eliminating protection against disclosure of certian records applies prospectively from the effective date of the amendment. *See also* AGO 95-19 (expanded disclosure provisions for juvenile records apply only to records created after the effective date of the amendment); and *Coventry First, LLC v. Office of Insurance Regulation,* 30 So. 3d 552 (Fla. 1st DCA 2010) (although



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intended to apply retroactively, statutory amendment imposing a time limitation on the exempt status of certain records submitted to an agency applied prospectively since retroactive application improperly deprived company of its vested property rights in records already submitted to the agency).

Records made before the date of a repeal of an exemption under s. 119.15, F.S., the Open Government Sunset Review Act, "may not be made public unless otherwise provided by law." Section 119.15(7), F.S.

**5. Difference between exempt and confidential records**

**a. Confidential records**

There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act *and confidential*. *WFTV, Inc. v. School Board of Seminole County,* 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied,* 892 So. 2d 1015 (Fla. 2004). *And see State v. Wooten*, 260 So. 3d 1060, 1069-1070 (Fla. 4th DCA 2018) (Ch. 119, F.S., refers to both "exempt" records and records which are "confidential and exempt").

If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute. *Id. And see* AGOs 08-24, 04-09 and 86-97. Thus, where a statute provided confidentiality for all records in the city's risk management claims file, the trial judge lacked authority to order the city to produce certain records based on a determination that their production would not harm the city. *City of Homestead v. McDonough*, 232 So. 3d 1069 (Fla. 4th DCA 2017). *And see City of Miami Beach v. Miami New Times*, 45 F.L.W. D2805 (Fla. 3d DCA December 16, 2020), concluding that draft audit reports relating to towing companies did not become subject to disclosure when the companies (without the knowledge of the agency) disclosed them to a third party.

However, a statute restricting release of confidential emergency call information does not prevent the city's attorneys or other city officials who are responsible for advising the city regarding the provision of emergency medical services or for defending the city against a possible claim arising from such services, from reviewing the records related to such emergency calls that contain patient examination or treatment information. AGO 95-75.

An agency is authorized to take reasonable steps to ensure that confidential records are not improperly released. *Lee County v. State Farm Mutual Automobile Insurance Company,* 634 So. 2d 250, 251 (Fla. 2d DCA 1994) (county policy requiring the patient's notarized signature on all release forms for emergency services medical records "not unreasonable or onerous;" requirement was a valid means of protecting records made confidential by s. 401.30[4], F.S.). *Accord* AGO 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees"). *Cf. Florida Department of Revenue v. WHI Limited Partnership,* 754 So. 2d 205 (Fla. 1st DCA 2000) (administrative law judge [ALJ] not authorized to mandate that agency disclose confidential records because ALJ is not a judge of a court of competent jurisdiction for purposes of statute permitting disclosure of confidential records in response "to an order of a judge of a court of competent jurisdiction"); and AGO 94-86 (if custodian of confidential library circulation records believes that such records should not be disclosed in response to a subpoena because the subpoena is not a "proper judicial order" as provided in s. 257.261, F.S., custodian may assert the confidentiality provisions in a motion to quash the subpoena but should not ignore the subpoena for production of such records). *And see State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205, 214 (Fla. 4th DCA 2018) (when statute authorizes release of confidential security system records upon a showing of "good cause," the Legislature "intended the courts to apply a common law approach to 'good cause,' where meaning emerges over time, on a case-by-case basis, and courts arrive at a desirable equilibrium between the competing needs of disclosure and secrecy of



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government records"). *Cf. Florida Department of Corrections v. Miami Herald Media Company*, (Fla. 1st DCA 2019) (trial court erred when it found "good cause" for release of confidential prison video footage even though newspaper had admitted at the hearing that it no longer needed the recordings).

**b. Exempt records**

If records are not made confidential but are simply exempt from the mandatory disclosure requirements in s. 119.07(1), F.S., the agency is not prohibited from disclosing the documents in all circumstances. *See Williams v. City of Minneola,* 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied,* 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S. [now s. 119.071(2)(c), F.S.], "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not *prohibit* the showing of such information. There are many situations in which investigators have reasons for displaying information which they have the option not to display." [Emphasis supplied by the Court] *See also* AGO 07-21 (while statute makes photographs of law enforcement personnel exempt rather than confidential, custodian, in deciding whether such information should be disclosed, must determine whether there is a statutory or substantial policy need for disclosure and in the absence of a statutory or other legal duty to be accomplished by disclosure, whether release of such information is consistent with the exemption's purpose). *Accord* AGO 08-24. *And see* AGO 17-05 (property appraiser authorized to disclose addresses that are exempt from public inspection, but not confidential, to the code inspector seeking to provide notice of code violations pursuant to s. 162.06, F.S.).

Once an agency has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information. *Downs v. Austin,* 522 So. 2d 931, 935 (Fla. 1st DCA 1988). *Cf.* AGO 01-74 (taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F. S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute).

However, in *City of Riviera Beach v. Barfield,* 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied,* 651 So. 2d 1192 (Fla. 1995), the court held that when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status. *And see Ragsdale v. State,* 720 So. 2d 203, 206 (Fla. 1998) ("the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands"); *Alice P. v. Miami Daily News,* Inc., 440 So. 2d 1300 (Fla. 3d DCA 1983), *review denied,* 467 So. 2d 697 (Fla. 1985) (confidential birth information contained in license application submitted to state health agency not subject to disclosure); AGO 04-44 (if the prison industry agency sends exempt proprietary confidential business information to the Secretary of the Department of Corrections in his capacity as a member of the board of directors of the prison industry agency, that information does not lose its exempt status by virtue of the fact that it was sent to the Secretary's office in the department); and AGO 94-77 (work product exception authorized in former s. 119.07[3][l], F.S. [now s. 119.071(1)(d), F.S.], will be retained if the work product is transferred from the county attorney to the city attorney pursuant to a substitution of parties to the litigation).

**6. Discovery of exempt or confidential records**

An exemption from disclosure under the Public Records Act does not render the document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings. *See Department of Health v. Poss,* 45 So. 3d 510 (Fla. 1st DCA 2010); *Department of Professional Regulation v. Spiva,* 478 So. 2d 382 (Fla. 1st DCA 1985). "Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope." *Department of Highway Safety and Motor Vehicles v. Kropff ,*



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445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984). *See also Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.,* 570 So. 2d 1322 (Fla. 2d DCA 1990), *review denied,* 576 So. 2d 286 (Fla. 1991) (records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records). *Cf. League of Women Voters v. Florida House of Representatives,* 132 So. 3d 135, 153 (Fla. 2013) ("if the circuit court concludes, after undertaking an in camera review of any disputed documents, that draft [apportionment] plans are exempt from public records disclosure, the circuit court should still require the Legislature to produce the draft apportionment maps and supporting documents under appropriate litigation discovery rules, to the extent these documents do not contain information regarding individual legislators' or legislative staff members' thoughts or impressions").

For example, in *B.B. v. Department of Children and Family Services,* 731 So. 2d 30 (Fla. 4th DCA 1999), the court ruled that as a party to a dependency proceeding involving her daughters, a mother was entitled to discovery of the criminal investigative records relating to the death of her infant. The court found that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure." *Id.* at 34. *Compare Henderson v. Perez,* 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit"). *And see Delaurentos v. Peguero*, 47 So. 3d 879 (Fla. 3d DCA 2010 (while the exemption for employee medical information in s. 119.071[4][b] did not preclude the discovery of a police officer's pre-employment psychological evaluation, the estate's request for the evaluation in a wrongful death case filed against the officer and county was, under the circumstances of the case, outside the scope of permissible discovery).

## F. FEDERAL LAW AND THE FLORIDA PUBLIC RECORDS LAW

### 1. Application of federal confidentiality requirements to Florida public records

Generally, records that would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be withheld from a public records request, and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Art. VI, U.S. Const., the state must keep the records confidential. *See Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law prohibits public disclosure of social security numbers in state teacher certification database); AGOs 90-102 and 74-372. *Compare State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); AGOs 85-03, 81-101, and 80-31. *See also Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997) (exemptions from disclosure set forth in federal Freedom of Information Act apply to federal agencies but not to state agencies).

Federal confidentiality requirements may be a concern if the Florida governmental entity or officer is acting as an instrumentality or agent of the federal government. In such a case, a federal agency may assert ownership of records and assert federal jurisdiction and protection of such records. *See, e.g., U.S. v. Story County, Iowa*, 28 F. Supp. 3d 861, 872 (S.D. Iowa 2014) (emails of sheriff from his county email account were sent in his capacity of an appointed board member of an independent authority within an agency of the United States Department of Commerce, and were federal records subject to federal jurisdiction since "the subject emails were not 'produced by or originated from' [the sheriff's] role as … Sheriff nor were they held by [the sheriff] in his official capacity as … sheriff."). *Compare Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994) (tenant records of a state public housing authority were not protected under federal law because the federal agency was not involved in the day-to-day operations of the authority).



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Records received from a federal agency may have a statutory or regulatory basis for protection. *Morris v. Whitehead*, 588 So. 2d 1023 (Fla. 2d DCA 1991) (holding confidential records received by a state run housing authority from the federal government may not be disclosed where there was a statutorily-authorized agreement between agencies that the state housing authority will maintain the confidentiality of the materials received); *Miami Herald Media Company v. Florida Department of Transportation*, 345 F. Supp. 3d 1349, 1356 (N.D. Fla. 2018) (state agency could not disclose records when federal safety board investigating bridge collapse took control over dissemination of records relating to the investigation, designated the Florida Department of Transportation (FDOT) as a party to assist NTSB in the investigation, and directed the state agency to not disclose the information contained in those records by agreement and as authroized by federal regulation). *But see Lakeland Ledger Publishing Co. v. Sch. Bd. of Polk Co.*, GV-G-91-3803 (Fla. 10th Cir. Ct. Nov. 21, 1991) (relying on *Morris v. Whitehead, supra*, to determine a map prepared by the U.S. Justice Department concerning desegregation of Lakeland schools and given to school district employees was a public record and open to inspection).

If litigation ensues with respect to whether the disclosure of a record is subject to federal law, under some circumstances the federal agency may be considered a real party in interest, and the matter may be removed to federal court. *See e.g., Miami Herald Media Company v. Florida Department of Transportation, supra*, 345 F. Supp. 3d at 1356 (denying a motion to remand case to state court after the United States removed matter to federal district court because the federal agency in the suit was a real party in interest); *compare In re Motion to Compel Compliance to Minnesota Department of Health v. All Temporaries Midwest, Inc,* 423 F. Supp. 3d 670, 678 (D. Minn. 2019) (remanding matter to state court despite assertion of federal agency that it was a real party in interest; subpoenaed records were collected pursuant to state law and a state investigation, and thus subject to state law, notwithstanding a joint investigation by the federal agency.).

Records do not become subject to disclosure merely because they are not entitled to federal protection. *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683 (S.D. Fla. 1990) (records provided by the United States Attorney's Office to a criminal defendant were active criminal investigative records in the hands of the Florida governmental entities).

**2. Copyrighted records**

**a. Copyrights held by agencies**

In the absence of statutory authorization, a public official is not empowered to obtain a copyright for material produced by his or her office in connection with the transaction of official business. *Microdecisions, Inc. v. Skinner,* 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied,* 902 So. 2d 791 (Fla. 2005), *cert. denied,* 126 S.Ct. 746 (2005) (property appraiser not authorized to assert copyright protection for the Geographic Information System maps created by his office). *Accord* AGOs 03-42, 88-23, and 86-94. *Cf.* AGO 00-13 (in the absence of express statutory authority, state agency not authorized to secure a trademark).

Section 119.084(2), F.S., however, specifically authorizes agencies to hold a copyright for data processing software created by the agency. The agency may sell the copyrighted software to public or private entities or may establish a license fee for its use. *See also* s. 24.105(10), F.S., authorizing the Department of the Lottery to hold patents, copyrights, trademarks and service marks; and see ss. 286.021 and 286.031, F.S., prescribing duties of the Department of State with respect to authorized copyrights obtained by state agencies.

**b. Copyrighted material obtained by agencies**

The federal copyright law vests in the owner of a copyright, subject to certain limitations, the exclusive right to do or to authorize, among other things, the reproduction of the copyrighted work and the distribution of the copyrighted work to the public by sale or other transfer of ownership. *See* AGO 97-84, citing to pertinent federal law and interpretive cases. However, the



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Attorney General's Office has concluded that the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record. For example, AGO 90-102 advised that copyrighted data processing software which was not specifically designed or created for the county but was being used by the county in its official capacity for official county business fell within the definition of "public record."

Moreover, in *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy,* 636 So. 2d 1377, 1382-1383 (Fla. 1st DCA 1994), the court rejected a state agency's argument that a transcript of a hearing that had been copyrighted by the court reporter and filed with the agency should not be copied without the copyright holder's permission. The court stated that the agency was under a statutory obligation to preserve all testimony in the proceeding and make a transcript available in accordance with the fees set forth in Ch. 119, F.S. *And see* AGO 75-304 (agency may not enter into agreement with court reporter to refer all requests for copies of agency proceedings to court reporter who originally transcribed proceedings; agency must provide copies of transcripts in accordance with charges set forth in Public Records Act).

The federal copyright law, when read together with Ch. 119, F.S., authorizes and requires the custodian of records of the Department of State to make maintenance manuals supplied to that agency pursuant to law, available for examination and inspection purposes. AGO 03-26. "With regard to reproducing, copying, and distributing copies of these maintenance manuals which are protected under the federal copyright law, state law must yield to the federal law on the subject." *Id.* The custodian should advise individuals seeking to copy such records of the limitations of the federal copyright law and the consequences of violating its provisions; such notice may take the form of a posted notice that the making of a copy may be subject to the copyright law. AGOs 03-26 and 97-84. However, it is advisable for the custodian to refrain from copying such records himself or herself. AGO 03-26. *But see State v. Allen,* 14 F.L.W. Supp. 172a (Fla. 7th Cir. Ct. November 2, 2006) (defendant entitled to inspect and copy copyrighted operating manual for the radar unit and speedometer used by the police under Art. I, s. 24, Fla. Const.; if police department declined to make copies, defendant or his representative must be allowed reasonable access to the documents and a copy machine to make copies).

Moreover, as noted by the court in *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy, supra,* once a transcript of an administrative hearing conducted by or on behalf of an agency has been filed with the agency, the transcript becomes a public record, without regard to who ordered the transcription or bore its expense. The agency which is under a statutory obligation to preserve all testimony can charge neither the parties nor the public more than the charges authorized by Ch. 119, F.S., regardless of the fact that the court reporter may have copyrighted the transcript.

## G. FEES FOR INSPECTING AND COPYING PUBLIC RECORDS

### 1. Inspection of public records

Providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. AGO 85-03. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law. *See State ex rel. Davis v. McMillan,* 38 So. 666 (Fla. 1905). *See also* AGOs 84-03 and 76-34 (only those fees or charges which are authorized by statute may be imposed upon an individual seeking access to public records). *Cf.* AGO 75-50 (the fact that the record sought to be inspected is a tape recording as opposed to a written document is of no import insofar as the imposition of a fee for inspection is concerned).

Section 119.07(4)(d), F.S., however, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require *extensive* use of information technology resources, or *extensive* clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the



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agency. *See Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31 (Fla. 2d DCA 2008) (special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required).

In addition, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for clerical personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during their inspection. AGO 00-11. For example, in AGO 00-11, the requested records were described as "original documents that have no recorded or maintained counterparts, such that, by their nature, they would need a heightened degree of protection from alteration or destruction." A determination of whether the nature or volume of the public records requires such extensive assistance must be made on a case-by-case basis; the special service charge may not be routinely imposed. *Id.*

Moreover, it would be difficult to justify the imposition of a fee for extensive clerical or supervisory assistance if the personnel providing such assistance were simultaneously performing regular duties. *Id. And see Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) (affirming trial court finding that two conditions—an hourly photocopying fee and an hourly supervisory fee—were imposed in violation of s. 119.07, F.S.).

**2. Copies of public records**

If no fee is prescribed elsewhere in the statutes, s. 119.07(4)(a)1., F.S., authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 81/2 inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. Section 119.07(4)(a)2., F.S. *And see* s. 119.011(7), F.S., defining the term "duplicated copies" to mean "new copies produced by duplicating, as defined in s. 283.30," F.S. "Duplicating" means "the process of reproducing an image or images from an original to a final substrate through the electrophotographic, xerographic, laser, or offset process or any combination of these processes, by which an operator can make more than one copy without rehandling the original." Section 283.30(3), F.S.

A charge of up to $1.00 per copy may be assessed for a certified copy of a public record. Section 119.07(4)(c), F.S.

For other copies, the charge is limited to the actual cost of duplication of the record. Section 119.07(4)(a)3., F.S. The phrase "actual cost of duplication" is defined to mean "the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication." Section 119.011(1),F.S. An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and overhead associated with their duplication. Section 119.07(4)(b), F.S. *Cf.* AGO 13-03 (while agency may charge "actual cost of duplication" if it sends public records via e-mail, agency did not identify any actual costs of duplication involved in forwarding copies of electronic mail in lieu of photocopying and "the definition [of actual cost of duplication] does not allow for the imposition of labor costs or associated overhead costs").

**3. Special service charge for *extensive* use of clerical or supervisory labor or *extensive* information technology resources**

Section 119.07(4)(d), F.S. provides that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel. When warranted, the special service charge applies to requests for both inspection and copies of public records. *Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31 (Fla. 2d DCA 2008).



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Thus, while an agency may not refuse to allow inspection or copying of public records based upon the amount of records requested or the span of time which is covered by the public records request, if extensive use of information technology resources or clerical or supervisory personnel is needed in order to produce the requested records, the agency may impose a reasonable special service charge that reflects the actual costs incurred for the extensive use of such resources or personnel. *See* AGOs 92-38 and 90-07. *Cf. Trout v. Bucher,* 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections authorized to charge a reasonable fee based on the labor costs "actually incurred" to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S.).

**a. Meaning of the term "extensive"**

Section 119.07(4)(d), F.S., "does not identify the Legislature's intent as to what may constitute 'extensive use' and provides no definition of that term." AGO 13-03. In 1991, a divided First District Court of Appeal upheld a hearing officer's order rejecting an inmate challenge to a Department of Corrections rule that defined "extensive" for purposes of the special service charge to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. *Florida Institutional Legal Services, Inc. v. Florida Department of Corrections,* 579 So. 2d 267 (Fla. 1st DCA 1991), *review denied,* 592 So. 2d 680 (Fla. 1991). The court agreed with the hearing officer that the burden was on the challenger to show that the administrative rule was invalid under Ch. 120, F.S, and the record did not indicate that the officer's ruling was "clearly erroneous" in this case.

In light of the lack of clear direction in the statute as to the meaning of the term "extensive," the Attorney General's Office has suggested that agencies implement the service charge authorization "in a manner that reflects the purpose and intent of the Public Records Act and that does not constitute an unreasonable infringement upon the public's statutory and constitutional right of access to public records." AGO 13-03. In addition, the Attorney General's Office also strongly encourages agencies to adopt a public records procedure that addresses imposition of special service charge. *Id.*

Moreover, the statute mandates that the special service charge be "reasonable." *See Carden v. Chief of Police,* 696 So. 2d 772, 773 (Fla. 2d DCA 1996), in which the court reviewed a challenge to a service charge that exceeded $4,000 for staff time involved in responding to a public records request, and said that an "excessive charge could well serve to inhibit the pursuit of rights conferred by the Public Records Act." Accordingly, the court remanded the case and required the agency to "explain in more detail the reason for the magnitude of the assessment." *Id. And see Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 129 (Fla. 2016), noting that "excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled."

**b. Meaning of the term "information technology resources"**

"Information technology resources" is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training. Section 119.011(9), F.S. The term does not include a videotape or a machine to view a videotape. AGO 88-23. The fact that the request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather, *extensive* use of such resources is required. AGOs 13-03 and 99-41.

**c. Cost to review records for exempt information**

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. AGO 84-81. However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. *See Florida Institutional Legal Services v. Florida Department of Corrections,* 579 So. 2d at 269. *And see Agency for Health Care Administration v. Zuckerman Spaeder, LLP,* 221 So. 3d 1260 (Fla. 1st DCA 2017) (prior court decisions as well as the language



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in s. 119.07[4], F.S., dictate that the requester, who had submitted several voluminous public records requests for records which included confidential information "should be required to pay for the cost of searching, review, and redaction of exempted information prior to production").

**d. Calculation of labor cost**

In *Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31 (Fla. 2d DCA 2008), the court approved a county's special service charge pursuant to s. 119.07(4), F.S., which included both an employee's salary and benefits in calculating the labor cost for the special service charge, recognizing, however, that the charge must be reasonable and based upon the actual labor costs incurred by or attributable to the county. *See Trout v. Bucher,* 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections not required to charge the lowest hourly rate of the employee capable of doing the work needed to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S., because s. 119.07[4][d] allows the agency to charge the labor cost of the personnel that is "actually incurred" by the agency where extensive assistance is required).

The term "supervisory assistance" has not been widely interpreted. *See Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), concluding that an appropriate charge for supervisory review is "reasonable" in cases involving a large number of documents that contain some exempt information. In *State v. Gudinas,* No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999), the circuit judge approved a rate based on an agency attorney's salary when the attorney was required to review exempt material in a voluminous criminal case file. The court noted that "only an attorney or paralegal" could responsibly perform this type of review because of the "complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions."

**e. Reasonable deposit or advance payment**

Section 119.07(4)(a)1., F.S., states that the custodian of public records shall furnish a copy or a certified copy of the record "upon payment of the fee prescribed by law . . . ." *See Wootton v. Cook,* 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (if a requestor "identifies a record with sufficient specificity to permit [the agency] to identify it *and forwards the appropriate fee*, [the agency] must furnish by mail a copy of the record.") (e.s.); and *Promenade D'Iberville, LLC v. Sundy* 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (a records custodian may delay production "if the requesting party fails to remit the appropriate fees").

Accordingly, an agency's policy of requiring the payment of a deposit prior to redaction and delivery of hundreds of telephone recordings related to a criminal trial was determined to be "facially reasonable." *Morris Publishing Group, LLC v. State,* 154 So. 3d 528, 534 (Fla. 1st DCA 2015), *review denied,* 163 So. 3d 512 (Fla. 2015). *Accord Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31, 37 (Fla. 2d DCA 2008), noting that a "policy of requiring an advance deposit seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." "[T]he reasonableness of a policy and its application — based on the facts in a particular case — guides whether an abuse of discretion is shown." *Morris Publishing Group, LLC* at 534. *And see Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (lower court abused its discretion by ordering the agency to produce a large number of responsive public records within 48 hours of the issuance of the order without requiring advance payment of the agency's invoices associated with production of the records).

An agency may refuse to produce additional records if the fees for a previous request for records have not been paid by the requestor. *See Lozman v. City of Riviera Beach,* 995 So. 2d 1027 (Fla. 4th DCA 2008) (s. 119.07[4], F.S., "does not require the City to do any more than what it did in this case," *i.e.*, require Lozman to pay the bill for the first group of records he requested before the city would make any further documents available). *Cf.* AGO 05-28



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(custodian authorized to bill the requestor for any shortfall between the deposit and the actual cost of copying the public records when the copies have been made and the requesting party subsequently advises the city that the records are not needed).

**4. Requests for information regarding costs to obtain public records**

In order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests for information as to copying costs. *Wootton v. Cook, supra. See also Woodard v. State,* 885 So. 2d 444 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total cost to copy the requested records. *And see, Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), in which the court said that if an agency is asked for a large number of records, the fee should be communicated to the requestor before the work is undertaken. "If the agency gives the requesting party an estimate of the total charge, or the hourly rate to be applied, the party can then determine whether it appears reasonable under the circumstances." *Id.*

**5. Requests for free copies of public records**

An agency is not precluded from choosing to provide informational copies of public records without charge. AGO 90-81.

However, chapter 119, F.S., does not contain a provision that prohibits agencies from charging indigent persons or inmates the applicable statutory fee to obtain copies of public records. *See Roesch v. State,* 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are "in the same position as anyone else seeking public records who cannot pay" the required costs); *Potts v. State,* 869 So. 2d 1223 (Fla. 2d DCA 2004) (no merit to inmate's contention that Ch. 119, F.S., entitles him to free copies of all records generated in his case); *Bennett v. Clerk of Circuit Court Citrus County,* 150 So. 3d 277 (Fla. 5th DCA 2014) (authority providing indigent criminal defendants with free copies does not extend beyond the direct appeal of judgment and sentence and transcripts of evidentiary hearings held on postconviction claims); *Milner v. State*, 196 So. 3d 569 (Fla. 4th DCA 2016) (indigent prisoners are not entitled to free copies of records under the Public Records Act); and *Yanke v. State,* 588 So. 2d 4 (Fla. 2d DCA 1991), *review denied,* 595 So. 2d 559 (Fla. 1992), *cert. denied,* 112 S.Ct. 1592 (1992) (prisoner must pay copying and postage charges to have copies of public records mailed to him). *And see State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy,* 636 So. 2d 1377, 1382n.7 (Fla. 1st DCA 1994) (indigent person "is not relieved by his indigency" from paying statutory costs to obtain public records). *Cf. Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (Public Records Act does not require government officials to move records from where they are being maintained to a different place convenient to the requester, citing to *Roesch v. State*).

Similarly, a labor union must pay the costs stipulated in Ch. 119, F.S., for copies of documents it has requested from a public employer for collective bargaining purposes because "[a] labor union seeking information from the employer with whom it is locked in collective bargaining negotiations is not exempt from the Florida Public Records Act." *City of Miami Beach v. Public Employees Relations Commission,* 937 So. 2d 226 (Fla. 3d DCA 2006). *And see* Inf. Op. to Garganese, April 14, 1998 (authority to charge city council member for copies of public records).

A school district is under no statutory obligation to provide copies of public records free of charge to individual members of a school advisory council, but a school district may formulate a policy for the distribution of such records. AGO 99-46. If it is found that the *advisory council* needs certain school records in order to carry out its statutory functions, such records should be provided to the *council* in the same manner that records related to agenda items are provided to school board members. *Id. Cf.* Inf. Op. to Martin, November 21, 2006 (school board policy requiring that a request for information by an individual board member requiring more than



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sixty minutes of staff time to prepare must be presented to the school board for approval would be invalid if the school board member is asking under public records law; however, the school board member would be subject to any charges allowed by Chapter 119, F.S.).

**6. Authority to charge for development, travel or overhead costs**

An agency should not consider the furnishing of public records to be a "revenue-generating operation." AGO 85-03. *See also* AGO 89-93 (city not authorized to sell copies of its growth management book for $35.00 each when the actual cost to reproduce the book is $15.10 per copy; city is limited to charging only the costs authorized by Ch. 119, F.S.).

The Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records. AGO 99-41. Similarly, an agency may not charge for travel time to obtain public records stored off-premises. AGO 90-07. For example, if municipal pension records are stored in a records storage facility outside city limits, the city may not pass along to the public records requester the costs to retrieve the records. Inf. Op. to Sugarman, September 5, 1997. *Cf. Cone & Graham, Inc. v. State,* No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997) (an agency's decision to "archive" older e-mail messages on tapes so that they could not be retrieved or printed without a systems programmer was analogous to an agency's decision to store records off-premises in that the agency rather than the requester must bear the costs for retrieving the records).

An agency may not assess fees designed to recoup the original cost of developing or producing the records. AGO 88-23 (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual cost of duplication of the tape). *And see State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy,* 636 So. 2d 1377, 1382 (Fla. 1st DCA 1994) (once a transcript of an administrative hearing is filed with the agency, the transcript becomes a public record regardless of who ordered the transcript or paid for the transcription; the agency can charge neither the parties nor the public a fee that exceeds the charges authorized in the Public Records Act). *Cf.* s. 119.07(4)(b), F.S., providing that the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

Therefore, unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information technology resources so as to trigger the special service charge authorized by s. 119.07(4)(d), F.S., an agency may charge only the actual cost of duplication for copies of computerized public records. AGO 99-41. The imposition of the service charge, however, is dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system. *Id.*

**7. Fees to obtain agency records held by private companies**

Although an agency may contract with private companies to provide information also obtainable through the agency, it may not abdicate its duty to produce such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services. AGO 02-37. The agency is the custodian of its public records and, upon request, must produce such records for inspection and copy such records at the statutorily prescribed fee. *Id. Accord* AGO 13-03. *And see* AGO 05-34 (while the property appraiser may provide public records, excluding exempt or confidential information, to a private company, the property appraiser may receive only those fees that are authorized by statute and may not, in the absence of statutory authority, enter into an agreement with the private company where the property appraiser provides such records in exchange for either in-kind services or a share of the profits or proceeds from the sale of the information by the private company). *Cf.* s. 119.0701(2)(b)2., F.S., requiring that certain contracts contain a provision stipulating that upon request from the public agency's custodian of public records, the contractor must provide the public agency with a copy of the requested records or allow the



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records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in ch. 119 or as otherwise provided by law.

**8. Sales tax**

In AGO 86-83, the Attorney General's Office advised that the sales tax imposed pursuant to s. 212.05, F.S., is not applicable to the fee charged for providing copies of records under s. 119.07, F.S. *See* s. 5(a) of Department of Revenue Rule 12A-1.041, F.A.C., stating that "[t]he fee prescribed by law, or the actual cost of duplication, for providing copies of public records . . . under Chapter 119, F.S., is exempt from sales tax."

**9. Confidential records**

Unless another fee to obtain a particular record is prescribed by law, an agency may not charge fees that exceed those in Ch. 119, F.S, when providing copies of confidential records to persons who are authorized to obtain them. For example, in AGO 03-57, the Attorney General's Office advised that persons who are authorized by statute to obtain otherwise confidential autopsy photographs should be provided copies in accordance with the provisions of the Public Records Act, *i.e.,* s. 119.07(4), F.S. The medical examiner is not authorized to charge a fee that exceeds those charges. *Id.*

**10. Requester makes his/her own copies**

Section 119.07(3)(a), F.S., provides a "right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records." This subsection "applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court" if the clerk can provide a copy of the microfilm. Section 119.07(3)(b), F.S.

The photographing is to be done in the room where the public records are kept. Section 119.07(3)(d), F.S. However, if in the custodian's judgment, this is impossible or impracticable, the copying shall be done in another room or place, as close as possible to the room where the public records are kept. *Id.* Where provision of another room or place is necessary, the expense of providing the same shall be paid by the person who wants to copy the records. *Id.* The custodian may charge the person making the copies for supervision services. Section 119.07(4)(e)2., F.S. In such cases the custodian may not charge the copy charges authorized in s. 119.07(4)(a), F.S., but may charge only the supervision service charge authorized in s. 119.07(4)(e)2., F.S. *See* AGO 82-23. *Cf. Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 122 (Fla. 2016) (affirming trial court finding that two conditions—"an hourly photocopying fee and an hourly supervisory fee"—were imposed in violation of s. 119.07, F.S.).

**11. Fee issues relating to specific records**

**a. Clerk of court records**

**(1) County records**

Pursuant to s. 125.17, F.S., the clerk of the circuit court serves as the ex officio clerk to the board of county commissioners. Records maintained by the clerk which relate to this function (*e.g.*, county resolutions, budgets, minutes, etc.) are public records which are subject to the copying fees set forth in Ch. 119, F.S., and not the service charges set forth in Ch. 28, F.S. AGO 85-80. *Accord* AGO 94-60 (documents such as minutes of public meetings, which are in the custody of the clerk as ex officio clerk of the board of county commissioners, are not subject to the $1.00 per page charge prescribed in Ch. 28). *See also* AGO 82-23 (when members of the public use their own photographic equipment to make their own copies, the clerk is not entitled to the fees prescribed in s. 28.24, F.S., but is entitled only to the supervisory service charge now found in s. 119.07[4][e]2., F.S.).

**(2) Judicial records**



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When the clerk is exercising his or her duties derived from Article V of the Constitution, the clerk is not subject to legislative control. *Times Publishing Company v. Ake,* 660 So. 2d 255 (Fla. 1995). Thus, when the clerk is acting in his or her capacity as part of the judicial branch of government, access to the judicial records under the clerk's control is governed exclusively by Fla. R. Jud. Admin. 2.420, Public Access to and Protection of Judicial Records. *Id.* See Fla. R. Jud. Admin. 2.420(b)(2), defining the term "judicial branch" for purposes of the rule, to include "the clerk of court when acting as an arm of the court."

Florida Rule of Judicial Administration 2.420(m)(3) states that "[f]ees for copies of records in all entities in the judicial branch of government, *except for copies of court records*, shall be the same as those provided in section 119.07, Florida Statutes." (e.s.). The fees to obtain copies of court records are set forth in s. 28.24, F.S. This statute establishes fees that are generally higher than those in Ch. 119, F.S. For example, the charge to obtain copies of court records is $1.00 per page, rather than 15 cents per page as established in s. 119.07(4)(a)1., F.S. *See also WFTV, Inc. v. Wilken,* 675 So. 2d 674 (Fla. 4th DCA 1996) (the $1.00 per page copying charge in s. 28.24, F.S., applies to all court documents, whether unrecorded or recorded).

**b. Department of Highway Safety and Motor Vehicles crash reports**

In the absence of statutory provision, the charges authorized in s. 119.07(4), F.S., govern the fees to obtain copies of crash reports from law enforcement agencies. However, there are specific statutes which apply to fees to obtain copies of reports from the Department of Highway Safety and Motor Vehicles. Section 321.23(2)(a), F.S., provides that the fee to obtain a copy of a crash report from the department is $10.00 per copy. A copy of a homicide report is $25 per copy. Section 321.23(2)(b), F.S. Separate charges are provided for photographs. Section 321.23(2)(d), F.S.

## H. REMEDIES AND PENALTIES

### 1. Voluntary mediation program

Section 16.60, F.S., establishes an informal mediation program within the Office of the Attorney General as an alternative for resolution of open government disputes. For more information about the voluntary mediation program, please contact the Office of the Attorney General at the following address: The Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; telephone (850)245-0140; or you may visit the Office of the Attorney General website: www.myfloridalegal.com.

### 2. Civil action

**a. Remedies**

A person denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119, F.S. *Cf.* s. 119.07(8), F.S. (s. 119.07, F.S., may not be used by an inmate as the basis for failing to timely litigate any postconviction action).

Before filing a lawsuit, the petitioner must have furnished a public records request to the agency. *Villarreal v. State,* 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied,* 694 So. 2d 741 (Fla. 1997), *cert. denied,* 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply); and *Maraia v. State,* 685 So. 2d 851 (Fla. 2d DCA 1995) (public records action dismissed where petitioner failed to file a request for public records with the records custodian before filing suit). *Cf. Coconut Grove Playhouse, Inc. v. Knight-Ridder, Inc.,* 935 So. 2d 597 (Fla. 3d DCA 2006) (trial court order departed from essential requirements of law by requiring defendant in a public records action to produce its records as a sanction for failure to respond to a discovery subpoena).

Where a multi-agency law enforcement task force had been created by a mutual aid



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agreement and the agreement did not indicate an intent to create a separate legal entity capable of being sued in its own name, a requestor could not sue the task force for production of records; however, as the agreement did not specify which agency would be responsible for responding to public records requests, an action could be brought against any of the member agencies to produce records in the possession of the task force. *Ramese's, Inc. v. Metropolitan Bureau of Investigation,* 954 So. 2d 703 (Fla. 5th DCA 2007).

**(1) Mandamus**

Mandamus is an appropriate remedy to enforce compliance with the Public Records Act. *See Chandler v. City of Greenacres,* 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014); *Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2000); *Smith v. State,* 696 So. 2d 814 (Fla. 2d DCA 1997); *Donner v. Edelstein,* 415 So. 2d 830 (Fla. 3d DCA 1982). *See also Farmer v. State,* 927 So. 2d 1075 (Fla. 2d DCA 2006) (trial court should treat motion to compel production of public records as petition for writ of mandamus); *Major v. Hallandale Beach Police Department*, 219 So. 3d 856 (Fla. 4th DCA 2017) (petition for writ of mandamus filed against a governmental agency must attach a copy of any record that supports the petition).

A petition for writ of mandamus is an appropriate vehicle to challenge the denial of a public records request, even where an exemption has been asserted. *Deeson Media, LLC v. City of Tampa*, 291 So. 3d 974 (Fla. 2d DCA 2019). *Cf. Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (mandamus relief ordering agency to produce records within 48 hours and prior to requester's payment of invoices or agency's opportunity to review and redact exempt material was improper because agency's duty was not "ministerial" and requester's right to the records was not "indisputable").

If the requester's petition presents a prima facie claim for relief, an order to show cause should be issued so that the claim may receive further consideration on the merits. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992). *Accord Gay v. State,* 697 So. 2d 179 (Fla. 1st DCA 1997). *See Radford v. Brock,* 914 So. 2d 1066 (Fla. 2d DCA 2005) (trial judge dismissal of a writ of mandamus directed to clerk of court and court reporter who were alleged to be records custodians was erroneous because trial judge did not issue an alternative writ of mandamus requiring the clerk and court reporter to show cause why the writ should not be issued, and because there was no sworn evidence refuting the petitioner's allegations).

Thus, a petition for writ of mandamus should not have been dismissed based on the agency's response that the requested records "would have been destroyed" in accordance with agency policy. *Brown v. State,* 152 So. 3d 739, 741 (Fla. 4th DCA 2014). Similarly, the trial judge erred in dismissing a petition seeking records relating to the chain of custody for a weapon without issuing an alternative writ of mandamus. *Tracy v. State*, 219 So. 3d 958 (Fla. 1st DCA 2017). The agency had produced an evidence card showing that the weapon in question had been destroyed; accordingly, the trial court concluded that dismissal was appropriate as there were no records to produce. However, because the petitioner contended that additional records were available, the appellate court found that "factual disputes remain." On remand, "if the [agency] fails to provide sworn evidence that all available information has been provided, the trial court must conduct an evidentiary hearing on the issue prior to denying the claim."

Mandamus is a "one time order by the court to force public officials to perform their legally designated employment duties." *Town of Manalapan v. Rechler,* 674 So. 2d 789, 790 (Fla. 4th DCA 1996), *review denied,* 684 So. 2d 1353 (Fla. 1996). Thus, a trial court erred when it retained continuing jurisdiction to oversee enforcement of a writ of mandamus granted in a public records case. *Id. See also Stone v. Ward,* 752 So. 2d 100, 101 (Fla. 2d DCA 2000) ("It is well-settled that mandamus is not appropriate to control or regulate a general course of conduct for an unspecified period of time"). *Cf. Areizaga v. Board of County Commissioners of Hillsborough County,* 935 So. 2d 640 (Fla. 2d DCA 2006), *review denied,* 958 So. 2d 918 (Fla. 2007) (circuit courts may not refer extraordinary writs to mediation; thus, trial judge should not have ordered



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mediation of petition for writ of mandamus seeking production of public records).

**(2) Injunction**

Injunctive relief may be available upon an appropriate showing for a violation of Ch. 119, F.S. *See Daniels v. Bryson,* 548 So. 2d 679 (Fla. 3d DCA 1989) (injunctive relief appropriate where there is a demonstrated pattern of noncompliance with the Public Records Act, together with a showing of likelihood of future violations; mandamus would not be an adequate remedy since mandamus would not prevent future harm). However, an injunction is not appropriate if the acts complained of have already been committed and there is not a well-grounded probability of similar future conduct. *Id. See Promenade D'Iberville, LLC v. Sundy,* 145 So. 3d 980, 984 (Fla. 1st DCA 2014).

**(3) Declaratory relief sought by agencies**

Occasionally an *agency*, faced with a demand for public records, seeks guidance from the court in the form of a complaint for declaratory judgment instead of complying with the request for public records or asserting an exemption. *See Butler v. City of Hallandale Beach,* 68 So. 3d 278, 279 (Fla. 4th DCA 2011) ("Michael Butler appeals from a final judgment in a declaratory action filed by The City of Hallandale Beach [the City] . . . which sought a declaration that a list of recipients of a personal email . . . was not sent in connection with the discharge of any municipal duty and therefore, is not a public record under Florida's Public Records Law"). *Cf. Sarasota Herald-Tribune Company, Inc. v. Schaub,* No. CA87-2949 (Fla. 12th Cir. Ct. July 20, 1988), *per curiam affirmed,* 539 So. 2d 478 (Fla. 2d DCA 1989) (state attorney cannot litigate a declaratory judgment action to obtain judicial advice on how to perform his public duties under the Public Records Act); *Wille v. McDaniel,* 18 Med. L. Rptr. 2144, No. CL-91-154-AE (Fla. 15th Cir. Ct. February 18, 1991) (sheriff's stated purpose in litigating declaratory judgment action [to avoid being assessed attorney fees under the Public Records Act] is insufficient to support a declaratory action). *See also Askew v. City of Ocala,* 348 So. 2d 308 (Fla. 1977) (trial court properly dismissed complaint for declaratory relief for failure to state a cause of action where public officials disagreed with Attorney General's advisory opinion and sought different judicial opinion).

In *WFTV, Inc. v. Robbins,* 625 So.2d 941 (Fla. 4th DCA 1993), the court held that a supervisor of elections who denied a public records request to inspect certain election results on the grounds that a court order entered in another case involving the election prohibited disclosure, "unlawfully refused" access to public records. The court determined that the supervisor herself had sought the confidentiality order by means of a motion seeking "directions" from the court in the election lawsuit. The supervisor was thus liable for payment of attorney fees incurred by the requestor in the subsequent public records action pursuant to s. 119.12, F.S., providing for an assessment of attorney fees and costs if an agency unlawfully refuses to permit examination and inspection of documents under the Public Records Act. *See also City of St. Petersburg v. St. Petersburg Junior College,* No. 93-0004210-CI-13, Order Awarding Attorney's Fees (Fla. 6th Cir. Ct. March 25, 1994), in which a city that had initially filed an action for declaratory relief as to whether records requested under Ch. 119 were confidential under federal law was ultimately determined to be liable for attorney fees under s. 119.12, F.S., after the party seeking the records filed a counterclaim and the judge determined that the records were not exempt.

**(4) Damages**

Section 119.12, F.S. does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of Ch. 119, F.S. Section 119.12(4), F.S. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of Ch. 119, F.S. *Id.*

**b. Procedural issues**

**(1) Discovery**



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In the absence of an evident abuse of power, the trial court's exercise of discretion in matters associated with pretrial discovery in a public records action will not be disturbed. *Lorei v. Smith,* 464 So. 2d 1330, 1333 (Fla. 2d DCA 1985), *review denied,* 475 So. 2d 695 (Fla. 1985). In *Lorei*, the appellate court upheld the trial judge's denial of a request to permit discovery pertaining to the agency's procedures for maintaining public records. *Id.* The court noted that the interrogatories related to "the mechanics associated with the department's record maintenance, the internal policies or actions which lead to the development of files," and other matters which were not relevant to the question of whether the requested records were exempt from disclosure. *Id.*

The court cautioned, however, that "discovery in a context such as the one at hand may well be appropriate in the circumstance where a good faith belief exists that the public agency may be playing 'fast and loose' with the requesting party or the court, once its statutorily delegated authority is activated." *Id. Cf. Lopez v. State,* 696 So. 2d 725, 727 (Fla. 1997) (trial court's denial of motion to depose custodian affirmed because there were "no allegations that any documents had been removed"); and *Johnson v. State,* 769 So. 2d 990, 995 (Fla. 2000) (discovery not warranted based on "bare allegations" that additional records "should" exist).

**(2) Hearing**

Section 119.11(1), F.S., mandates that actions brought under Ch. 119 are entitled to an immediate hearing and take priority over other pending cases. *See Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 124 (Fla. 2016), in which the Court observed that "an accelerated civil action plays a critical role in the enforcement of the Public Records Act as is reflected in the title of section 119.11— 'Accelerated hearing; immediate compliance.'" *See also Matos v. Office of the State Attorney for the 17th Judicial Circuit,* 80 So. 3d 1149 (Fla. 4th DCA 2012) (an "immediate hearing does not mean one scheduled within a reasonable time, but means what the statute says: immediate"); and *Woodfaulk v. State,* 935 So. 2d 1225 (Fla. 5th DCA 2006) (s. 119.11, F.S., does not place specific requirements on a party requesting public records to obtain an accelerated hearing except the filing of an action to enforce the public records law).

The purpose of the hearing "is to allow the court to hear argument from the parties and resolve any dispute as to whether there are public records responsive to the request and whether an exemption from disclosure applies in whole or in part to the requested records." *Kline v. University of Florida*, 200 So. 3d 271 (Fla. 1st DCA 2016). For example, an order dismissing a public records complaint filed against a sheriff was overturned on appeal because the judge failed to hold a hearing before entering the order. "Although the sheriff may ultimately not be able to retrieve these records, because of their age or another reason, the order in this case, entered without an evidentiary hearing, was premature." *Grace v. Jenne,* 855 So. 2d 262, 263 (Fla. 4th DCA 2003). *And see Rogers v. State*, 271 So. 3d 79, 80 (Fla. 3d DCA 2019) (hearing required where "there remains a disputed factual issue as to whether the State possesses the requested records"); *Ferrier v. Public Defender's Office, Second Judicial Circuit of Florida*, 171 So. 3d 744 (Fla. 1st DCA 2015) (circuit court erred in not conducting an evidentiary hearing "on the contested issue of whether [the agency] had the requested materials in its possession"); and *Holley v. Bradford County Sheriff's Department*, 171 So. 3d 805 (Fla. 1st DCA 2015) (because petitioner disputed the agency's "unsworn claim that it did not possess the requested records, the trial court could not deny [the] petition without conducting an evidentiary hearing on this issue"). The failure to hold a hearing may be remedied by a petition for writ of certiorari. *See Martinez v. State,* 969 So. 2d 1174, 1174-75 (Fla. 5th DCA 2007). *Cf. Paylan v. Office of the State Attorney*, 45 F.L.W. D1285 (Fla. 2d DCA 2020) (petitioner was denied due process when the judge issued an order scheduling a case management conference and then conducted an evidentiary hearing on the petition; the order did not give the petitioner notice that the judge would actually conduct a final evidentiary hearing and decide the petition on the merits.)

"A motion to dismiss tests the legal sufficiency of a complaint and does not resolve factual issues." *Clay County Education Association v. Clay County School Board,* 144 So. 3d 708, 709 (Fla.



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1st DCA 2014). Therefore, the trial judge erred when he granted the agency's motion to dismiss based on the agency's "unsworn response . . . that it either had already provided the documents, did not have the information in the format requested, or could not produce the documents because they did not exist." *Id.* The appellate court remanded the case "for an immediate hearing under section 119.11[1] and, if necessary, further proceedings to resolve any factual disputes that remain between the parties' complaint and answer." *Id. See also McDonough v. City of Homestead*, 305 So. 3d 316 (Fla. 3d DCA 2020) (absent waiver, an order denying mandamus relief without a hearing is premature); *Williams v. State,* 163 So. 3d 618 (Fla. 4th DCA 2015) (where petitioner asserted that the record produced by the agency was not the record he requested, trial judge erred by denying prison inmate's petition for writ of mandamus without issuing an alternative writ to show cause and failing to hold an evidentiary hearing to resolve disputed issues of fact). *Cf. Morgan v. Wagner,* 73 So. 3d 815 (Fla. 4th DCA 2011), in which the Fourth District said it was "compelled to affirm" the lower court order dismissing the petitioner's public records action because there was no transcript or documentation in the appendix to show that petitioner had preserved "what may have been a valid procedural argument."

**(3) In camera inspection**

Section 119.07(1)(g), F.S., provides that in any case in which an exemption is alleged to exist pursuant to s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), F.S., the public record or part of the record in question shall be submitted to the trial court for an in camera examination. *See City of St. Petersburg v. Romine ex rel. Dillinger,* 719 So. 2d 19 (Fla. 2d DCA 1998) (in camera review mandated when confidential informant exemption now found at s. 119.071[2][f], F.S., is asserted); *Walton v. Dugger,* 634 So. 2d 1059 (Fla. 1993); *Lopez v. Singletary,* 634 So. 2d 1054 (Fla. 1993) (records claimed by state attorney to constitute exempted work product must be produced for an in camera inspection); and *Environmental Turf, Inc. v. University of Florida Board of Trustees,* 83 So. 3d 1012 (Fla. 1st DCA 2012) (in camera inspection required where university claimed that records were exempt pursuant to s. 119.071[1][d], F.S. [attorney work product] and s. 1004.22, F.S. [proprietary research records]). *And see Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2009) ("We fail to see how the trial court can [determine whether an agency is entitled to a claimed exemption] without examining the records"). *Cf. Agrosource, Inc. v. Florida Department of Citrus,* 148 So. 3d 138 (Fla. 2d DCA 2014) (trial court finding after in camera review that certain prelitigation emails were exempt attorney work product was supported by competent substantial evidence).

An in camera inspection is also required so that the trial judge can determine whether the records can be redacted to remove exempt information. *See Holley v. Bradford County Sheriff's Department,* 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants); and *Gonzalez v. State*, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested CDs, the circuit court could not conclude that their contents are exempt from disclosure under s. 119.071[3][a][2] or section 281.301; nor could it determine whether redaction was possible). *Cf. Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2018) (reversing trial judge order which found prospective information relating to Governor's detailed schedule and travel plans to be public even though the judge did not inspect the records and despite special agent's undisputed affidavit that premature disclosure of such information would reveal state law enforcement agency's "surveillance techniques, procedures, and personnel" made exempt under s. 119.071(2)(d), F.S., and jeopardize the security of the Governor and the agents who protect him).

Similarly, the Fourth District held that "it is fundamental error" for a trial court to decide whether a statutory exemption from disclosure for mediation communications required that such communications be redacted from the otherwise public transcript of a closed attorney client session without conducting an in camera hearing to assess whether the redactions were appropriately applied. *Everglades Law Center v. South Florida Water Management District*, 290



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So. 3d 123 (Fla. 4th DCA 2019). The appellate court also observed that the trial court was "led astray by the parties' agreement that an in camera review of the transcript was not needed." *Id*.

While s. 119.07(1)(g), F.S., states that an in camera inspection is "discretionary" in cases where an exemption is alleged under s. 119.071(2)(c), F.S. (the exemption for active criminal investigative or intelligence information), it has been held that an in camera inspection is necessary in order for the court to determine whether the exemption applies to the records at issue. For example, in *Woolling v. Lamar,* 764 So. 2d 765, 768-769 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001), the Fifth District noted that the state attorney had not presented "evidence to meet its burden that the records are exempt" under s. 119.071(2)(c), F.S.; therefore, an "in camera inspection by the lower court is . . . required so that the trial judge will have a factual basis to decide if the records are exempt. . . ." *See also Garrison v. Bailey,* 4 So. 3d 683 (Fla. 1st DCA 2009). *Compare Althouse v. Palm Beach County Sheriff's Office,* 89 So. 3d 288, 289 (Fla. 4th DCA 2012) (while trial court's failure to conduct an in camera inspection usually constitutes reversible error, in this case petitioner objected to an inspection and thereby precluded judge from conducting "an intelligent review of the documents;" accordingly, appellate court was "compelled to affirm" trial court's denial of a petition seeking documents relating to a pending criminal investigation).

Similarly, if a public records request involves electronic information stored on privately-owned devices, an agency's reasons for its lack of disclosure, "whether for reasons related to relevancy, the application of possible privileges, or otherwise, necessitates a judicial review of the available communications to identify those which are subject to disclosure and any defenses to allegations of noncompliance." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1042 (Fla. 4th DCA 2018).

**(4) Mootness**

In *Puls v. City of Port St. Lucie,* 678 So. 2d 514 (Fla. 4th DCA 1996), the court, noting that "[p]roduction of the records after the [public records] lawsuit was filed did not moot the issues raised in the complaint," remanded the case for an evidentiary hearing on whether there was an unlawful refusal of access to public records. *See also Times Publishing Company v. City of St. Petersburg,* 558 So. 2d 487, 491 (Fla. 2d DCA 1990) (while courts do not ordinarily resolve disputes unless a case or controversy exists, "since the instant situation is capable of repetition while evading review, we find it appropriate to address the issues before us concerning applicability of the Public Records Act for future reference"); *Mazer v. Orange County,* 811 So. 2d 857, 860 (Fla. 5th DCA 2002) ("the fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute"); *Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (because damage occurred when city refused to produce canvassing board minutes until approved by city commission, production after the fact did nothing to mollify appellants' injury and therefore issue was not moot as city's refusal "denied any realistic access for the only purpose appellants sought to achieve--review of the Minutes before the Commission meeting."); and S*chweickert v. Citrus County, Florida Board*, 193 So. 3d 1075, 1079 (Fla. 5th DCA 2016) ("We agree that Appellant's case was not rendered moot simply because the Board produced the requested documents after the filing of the initial complaint but prior to filing the amended complaint"). *Accord O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1043 (Fla. 4th DCA 2018) (public records case did not become moot after the town provided unredacted records prior to the hearing, because there were collateral issues "yet to be decided by the trial court—specifically a determination whether the Town's initial redactions . . . were proper and whether any reasonable attorney's fees, costs, and expenses, should be awarded"). *Compare, State v. Ingram,* 170 So. 3d 727 (Fla. 2015) (opinion of district court of appeal holding that prison inmate was entitled to unredacted version of videotaped statement of minor victim vacated following State's uncontested representation at oral argument before the Supreme Court that the videotape does not exist).



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Similarly, in *Microdecisions, Inc. v. Skinner,* 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied,* 902 So. 2d 791 (Fla. 2005), *cert. denied,* 126 S.Ct. 746 (2005), the court found that a public records lawsuit over a custodian's requirement that a commercial company obtain a licensing agreement before using the records did not become moot when the custodian provided the company with the requested data after the lawsuit was filed. Because the data was delivered subject to a condition that it was for personal use only, a controversy remained concerning the validity of the custodian restriction on the use of the data. *And see Southern Coatings, Inc. v. City of Tamarac,* 916 So. 2d 19 (Fla. 4th DCA 2005) (federal court's dismissal of pendent claims based on state public records law is not a judgment on the merits and, therefore, not *res judicata* in a subsequent lawsuit in state court).

**(5) Stay**

If the person seeking public records prevails in the trial court, the public agency must comply with the court's judgment within 48 hours unless otherwise provided by the trial court or such determination is stayed within that period by the appellate court. Section 119.11(2), F.S. An automatic stay shall exist for 48 hours after the filing of a notice of appeal for public records and public meeting cases, which stay may be extended by the lower tribunal or the court on motion. Fla. R. App. P. 9.310(b)(2).

**c. Attorney fees and costs**

Section 119.12, F.S., provides authority for an award of attorney fees and reasonable costs in civil actions filed to enforce the provisions of the Public Records Act, provided that certain conditions are met. *Cf. Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, 268 So. 3d 856, 862 (Fla. 1st DCA 2019) (s. 119.12 does not provide authority to award attorney's fees to a third party intervenor in a case where the litigation involved a request for a declaratory judgment to determine whether portions of bid documents constituted trade secrets); *Cf. Department of Health and Rehabilitative Services v. Martin,* 574 So. 2d 1223 (Fla. 3d DCA 1991) (error to award attorney's fees where order requiring production of records was entered pursuant to Adult Protective Services Act, rather than the Public Records Act); and *Downs v. Austin,* 559 So. 2d 246 (Fla. 1st DCA 1990), *review denied,* 574 So. 2d 140 (Fla. 1990) (s. 119.12, F.S., does not constitute authority for the award of attorney's fees for efforts expended to obtain the fee provided by that statute). *And see State, Department of Economic Opportunity v. Consumer Rights, LLC,* 181 So. 3d 1239 (Fla. 1st DCA 2015), rejecting appellee's argument that the requirements in s. 284.30, F.S. (establishing procedures to be followed by those seeking to have attorney's fees paid by the state or any of its agencies) are inapplicable to public records cases. *Cf.* AGO 16-16 (hospital district not authorized to reimburse an individual *board member's* attorney fees incurred by her in responding to a public records request pertaining to her board service when no suit, claim, charge or action has been instituted against the commissioner during the time the attorney fees were incurred).

A successful pro se litigant may recover reasonable costs under this section. *Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2000); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992). *And see Weeks v. Golden,* 846 So. 2d 1247 (Fla. 1st DCA 2003) (awarding costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred by inmate who prevailed in public records lawsuit). *Accord Yasir v. Forman,* 149 So. 3d 107 (Fla. 4th DCA 2014).

As amended in 2017, s. 119.12(1), F.S., provides that, if a civil action is filed against an agency to enforce the provisions of this chapter the court shall assess and award the reasonable costs of enforcement including reasonable attorney fees against the responsible agency if the court determines that the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action. *Cf. B & L Service, Inc. v. Broward County*, 300 So. 3d 1205 (Fla. 4th DCA 2020) (trial court did not err in refusing



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to award attorney's fees, because petitioner waived issue of whether county unlawfully refused its public records request by failing to cross-appeal the trial court's initial ruling that the county had not violated the public records law, even though the trial court subsequently modified its prior order by granting the petitioner's motion for rehearing in part).

However, notice is not required if the agency fails to prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website. Section 119.12(2), F.S.

The court must also determine whether the complainant made the public records request or participated in the civil action for an improper purpose. Section 119.12(3), F.S. If the court determines that there was an improper purpose, the court may not award attorney fees or the costs of enforcement, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. *Id*. The term "improper purpose" means "a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose." *Id*.

Section 119.12, F.S., is designed to encourage voluntarily compliance with the requirements of Ch. 119, F.S. "If public agencies are required to pay attorney's fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents." *New York Times Company v. PHH Mental Health Services, Inc.,* 616 So. 2d 27, 29 (Fla. 1993). Stated another way, the statute "has the dual role of both deterring agencies from wrongfully denying access to public records and encouraging individuals to continue pursuing their right to access public records." *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 125 (Fla. 2016). There is no additional requirement that the court find that the "public agency did not act in good faith, acted in bad faith or acted unreasonably." *Lee*, 189 So. 3d at 122. However, as noted previously, s. 119.12, F.S., was amended in 2017, to add other conditions which must be met prior to an award of fees and costs under this statute.

An "unlawful refusal" may include unlawful conditions or requirements for obtaining public records. As the Supreme Court explained in *Lee*: "Unlawful conditions or excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled . . . . Even if not malicious or done in bad faith, the Pension Fund's actions—which were found be unlawful--had the effect of frustrating Lee's constitutional right to access public records and required him to turn to the courts to vindicate that right." *Lee*, 189 So. 3d at 129-130.

An "unjustified failure to respond to a public records request until after an action has been commenced to compel compliance amounts to an unlawful refusal" for purposes of s. 119.12, F.S. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). *See also Mazer v. Orange County,* 811 So. 2d 857, 860 (Fla. 5th DCA 2002) ("[T]he fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute.); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (appellant entitled to attorney's fees because "[t]he evidence clearly establishes that it was only after the appellant filed a lawsuit that the documents he had previously sought by written request to the Town were finally turned over to him); *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 984 (Fla. 1st DCA 2014) ") (an agency's "production of the records on the eve of the enforcement hearing did not cure its unjustified delay"); and *Schweickert v. Citrus County, Florida Board*, 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016) (county's failure to produce a complaint alleging inappropriate conduct by a county commissioner until litigation was filed was an unlawful refusal because the exemption for records relating to an investigation of alleged



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discrimination did not apply to the complaint; court rejected the county's argument that the delay was justified because the investigation into the complaint might have ultimately produced records which related to discriminatory behavior).

Stated another way, a delay in disclosing records can rise to the level of a refusal if "there was no good reason for the delay." *Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015). For example, in *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996), the court held that a town was liable for attorney's fees even if the delay in providing records was due to either the intentional wrongdoing or ineptitude of its clerk. *And see Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So. 2d 759 (Fla. 2d DCA 2007) (attorney's fees authorized even if failure to turn over the records was due to a mistake or ineptitude). *Cf. Hewlings v. Orange County, Florida*, 87 So. 3d 839 (Fla. 5th DCA 2012) (the mere fact that a county quickly *responded* to public records request via voicemail and fax is not dispositive of whether the county's 45-day delay in complying with the request was justified).

"However, it is equally clear that a delay does not in and of itself create liability under s. 119.12, F.S." *Consumer Rights, LLC v. Union County*, 159 So. 3d at 885. *See also Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) (where delay is the issue, the court must determine whether the delay was justified under the facts of the particular case). and *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 3d 375 (Fla. 4th DCA 2019) (trial court correctly denied attorney's fees because the requested record was exempt at the time that the request was made and did not become public until the investigation conducted pursuant to s. 112.3188 (2)(b), F.S., was concluded). *Cf. Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 401 (Fla. 4th DCA 2016) ("The public records law should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney's fees.").

As to calculation of the reasonable costs of enforcement including reasonable attorney fees to which the prevailing party is entitled, "the trial judge is in a better position than the appellate court to make "a factual determination regarding the objectives sought by the [prevailing party], the extent of statutory enforcement obtained, and the time expended in achieving those results." *Daniels v. Bryson*, 548 So. 2d 679, 682 (Fla. 3d DCA 1989). However, where the contract between the client and attorney provided that the attorney would be compensated on a flat hourly basis regardless of the outcome at trial, the trial court erred in awarding an enhanced fee based upon a contingency risk multiplier. *Id. And see Grapski v. City of Alachua*, 134 So. 3d 987 (Fla. 1st DCA 2012), *review denied,* 118 So. 3d 220 (Fla. 2012) (the trial court's findings of fact on the issue of attorney's fees are presumed correct; the standard of review is abuse of discretion).

A different rule has been applied when it is unclear whether a *private* corporation is an "agency" for purposes of the Public Records Act. Section 119.12, F.S., "was not intended to force private entities to comply with the inspection requirements of chapter 119 by threatening to award attorney's fees against them." *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993). *Accord Fox v. News-Press Publishing Company, Inc.*, 545 So. 2d 941 (Fla. 2d DCA 1989).

Thus, attorney fees "are not warranted when the [private] entity in charge of the public records at issue was reasonably and understandably unsure of its status as an agency." *Lee v. Board of Trustees, Jacksonville Police & Fire Pension Fund*, 113 So. 3d 1010 (Fla. 1st DCA 2013), *approved*, 189 So. 3d 120 (Fla. 2016). *And see Economic Development Commission v. Ellis,* 178 So. 3d 118, 123 (Fla. 5th DCA 2016) ("attorney's fees should not be awarded in those cases where the party refusing to provide documents acted on the good-faith belief that it was not an agent, subject to compliance with the [Public Records] Act").

Attorney fees may also be awarded for a successful appeal of a denial of access, provided



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that at the time of appeal a motion is filed in accordance with the appellate rules. *Downs v. Austin, supra*. *And see Office of the State Attorney v. Gonzalez, supra* (where motion seeking appellate attorney fees is granted by appellate court and remanded only for calculation of such fees, lower court required to follow court's mandate without further consideration); and *Cf. Johnson v. Jarvis*, 107 So. 3d 428 (Fla. 1st DCA 2012) (trial court erred in denying motion for costs based on appellant's failure to comply with the notice requirement in s. 284.30, F.S; "[f]or purposes of appellate costs, the appellant was the prevailing party . . . and is entitled to an award of his costs incurred therein").

Appellate attorney fees were also considered in *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 254 So.3d 461 (Fla. 4th DCA 2018). In that case, the court denied the media's request for appellate attorney's fees from the state attorney's office and school board. The agencies had appealed the lower court's order allowing the media to access certain video footage taken by security cameras at a high school where a gunman killed students and staff. Although the media prevailed in the appeal, the court observed that the video footage was confidential security information under s. 119.071(3)(a), F.S. The media obtained access because a judge found "good cause" to release the video footage as authorized by a statutory exception to the confidentiality provision. Thus, the school board's conduct was not 'unlawful' for purposes of s.119.12(1)(a), F.S. Additionally, the court refused to award fees against the state attorney because the state attorney was not the custodian of the records at issue; the state attorney was only an intervenor in the lawsuit below.

### 3. Criminal and noncriminal infraction penalties

Section 119.10(1)(b), F.S., states that a public officer who knowingly violates the provisions of s. 119.07(1), F.S., is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or $1,000 fine, or both. *See State v. Webb,* 786 So. 2d 602 (Fla. 1st DCA 2001) (s. 119.10[1][b] authorizes a conviction for violating s. 119.07 only if a defendant is found to have committed such violation "knowingly"; statute cannot be interpreted as allowing a conviction based on mere negligence).

Section 119.10(1)(a), F.S., provides that a violation of any provision of Ch. 119, F.S., by a public officer is a noncriminal infraction, punishable by fine not exceeding $500. *Cf.* s. 838.022(1)(b), F.S. (unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act).

A state attorney may prosecute suits charging public officials with violations of the Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. AGO 91-38.

## I. MAINTENANCE, STORAGE AND RETENTION REQUIREMENTS

### 1. Maintenance and storage of records

All public records should be kept in the buildings in which they are ordinarily used. Section 119.021(1)(a), F.S. Moreover, insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. Section 119.021(1)(b), F.S. Records that are in need of repair, restoration, or rebinding may be authorized by the head of the governmental entity to be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them. Section 119.021(1)(c), F.S.

Thus, public records may not routinely be removed from the building or office in which such records are ordinarily kept except for official purposes. AGO 93-16. The retention of



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such records in the home of a public official would appear to circumvent the public access requirements of the Public Records Act and compromise the rights of the public to inspect and copy such records. *Id. And see* AGO 04-43 (mail addressed to city officials at City Hall and received at City Hall should not be forwarded unopened to the private residences of the officials, but rather the original or a copy of the mail that constitutes a public record should be maintained at city offices); and AGO 07-14 ("Although the Public Records Law does not prescribe a location at which public records must be maintained, it does suggest that such records be kept where they are ordinarily used"). *Cf.* Inf. Op. to Sola, March 9, 2010 (municipal election records are municipal records which should be maintained by city even though election conducted by county supervisor of elections) and AGO 88-26 (while Ch. 119, F.S., does not require a county to transport microfilmed copies of public records maintained in a storage facility outside the county to the county courthouse when the originals are available at the courthouse, the microfilmed copies must be available for copying at their location outside the county).

**2. Delivery of records to successor**

Section 119.021(4)(a), F.S., provides that whoever has custody of public records shall deliver such records to his or her successor at the expiration of his or her term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. *See Maxwell v. Pine Gas Corporation,* 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer); AGO 98-59 (records in the files of the former city attorney which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor); and AGO 75-282 (public records regardless of usefulness or relevancy must be turned over to the custodian's successor in office or to the Department of State). *And see* s. 119.021(4)(b), F.S., providing that "[w]hoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her."

In the absence of contrary direction in the legislation dissolving a special taxing district, the district's records should be delivered to the Department of State. AGO 95-03. *Compare* AGO 09-39, stating that in light of a court order holding that an independent special district is the successor-in-interest to the powers and duties of a municipal services benefit unit [MSBU], the records of the MSBU should be delivered to the special district. *Cf.* s. 257.36(2)(b), F.S., specifying procedures for disposition of agency records stored in the state records center in the event that the agency is dissolved or its functions are transferred to another agency.

**3. Transition records of certain officers-elect**

Section 119.035(4), F.S., states that "upon taking the oath of office, the officer-elect shall, as soon as practicable deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office." The term "officer-elect" for purposes of this section means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 119.035(5), F.S.

**4. Retention and disposal of records**

**a. Retention schedules**

Section 119.021(2)(a), F.S. requires the Division of Library and Information Services (division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules. Section 119.021(2)(b), F.S. *See generally* Chs. 1B-24 and 1B-26, Florida Administrative Code. The approved records retention schedule for state and local governmental entities is located online at http://dlis.dos.state.fl.us/barm/genschedules/GS1-SL.pdf. *Cf. L.R. v. Department of State, Division of Archives, History and Records Management*, 488 So. 2d 122 (Fla. 3d DCA 1986) (an affected party seeking



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to challenge an agency's approved records retention schedule may be entitled to a hearing pursuant to Ch. 120, F.S).

Retention schedules for judicial branch records are established by court rule. *See* Fla. R. Jud. Admin. 2.430 (court records) and Fla. R. Jud. Admin. 2.440 (judicial branch administrative records). Similarly, procedures for maintenance and destruction of legislative records are established in legislative rules. Legislative rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

**b. Disposal of records**

Section 257.36(6), F.S., states that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division." Section 119.021(2)(c), F.S., provides that public officials must "systematically dispose" of records no longer needed, subject to the consent of the division in accordance with s. 257.36, F.S. *Compare* s. 119.021(3), F.S., stating that notwithstanding the provisions of Chs. 119 or 257, F.S., certain orders that comprise final agency action must be permanently maintained.

Thus, for example, a municipality may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the statutory restrictions on disposal of records. AGO 94-75. *See also* AGOs 09-19 (city must follow public records retention schedules established by law for information on its Facebook page which constitutes a public record); 96-34 (e-mail messages are subject to statutory limitations on destruction of public records); and 75-45 (tape recordings of proceedings before a public body must be preserved in compliance with statutory record retention and disposal restrictions).

Similarly, registration and disciplinary records stored in a national association securities dealers database and used by state banking department for regulatory purposes are public records and may not be destroyed merely because an arbitration panel of the national association has ordered that they be expunged; such records are subject to statutory mandates governing destruction of records. AGO 98-54. *Accord* Inf. Op. to Hernandez, July 1, 2003 (agency not authorized to purge or expunge documents it created while carrying out what it perceived to be its official duty based upon an accusation that the agency may have been mistaken in such an assessment). *Cf.* AGO 91-23 (clerk of court not authorized to expunge a court order from the Official Records, in the absence of a court order directing such action).

**c. Exempt records**

The statutory restrictions on destruction of public records apply even if the record is exempt from disclosure. For example, in AGO 81-12, the Attorney General's Office concluded that the City of Hollywood could not destroy or dispose of licensure, certification, or employment examination question and answer sheets except as authorized by statute. *And see* AGO 87-48 (statutory prohibition against placing anonymous materials in the personnel file of a school district employee did not permit the destruction of such materials received in the course of official school business, absent compliance with statutory restrictions on destruction of records). An exemption only removes the records from public access requirements, it does not exempt the records from the other provisions of Ch. 119, F.S., such as those requiring that public records be kept in a safe place or those regulating the destruction of public records. AGO 93-86. *See* s. 119.021, F.S.

Moreover, if an assertion is made by the custodian that a requested record is not a public record subject to public inspection or copying, the requested record may not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was made to the custodian; if a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties. Section



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119.07(1)(h), F.S

**d. Evidence obtained by law enforcement agencies**

Documentary evidence obtained by a police department is a public record subject to retention schedules approved by the division. AGO 04-51. *Accord* Inf. Op. to Blair, August 24, 2011 (evidence that constitutes a public record may be destroyed only in accordance with retention schedules established by the division and noting that the division has adopted a General Records Schedule GS2 for law enforcement agencies).

However, "the disposition of evidence *not* constituting a public record within the meaning of Chapter 119, Florida Statutes, would appear to be dependent upon an agency's determination that it is no longer needed." Inf. Op. to Blair, August 24, 2011. (e.s.) *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records because in order to constitute a "public record" for purposes of Ch. 119, "the record itself must be susceptible of some form of copying").

**e. Duplicate records**

Section 257.36(6), F.S., requires the division to adopt rules which, among other things, establish "[s]tandards for the reproduction of records for security or with a view to the disposal of the original record." *See* AGO 18-04 (according to a division rule, "an agency that designates an electronic or microfilmed copy as the record (master) copy may then designate the paper original as a duplicate and dispose of it in accordance with the retention requirement for duplicates in the applicable retention schedule unless another law, rule, or ordinance specifically requires its retention").

Accordingly, the division is responsible for determining whether an agency may dispose of an audiotape of a witness statement without regard to the retention schedule, if there is also a transcript of the statement. Inf. Op. to Mathews, July 12, 2004. *Cf.* AGO 91-09 (if a facsimile document is subsequently copied by the receiving agency, the facsimile document is considered an intermediate document which may be destroyed; the copy of the facsimile then is retained as a public record). *See also* AGO 92-85, stating that individual school board members are not required to retain copies of public records which are regularly maintained in the course of business by the clerk of the school board in the school board administrative offices.



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# APPENDICES

## A. PUBLIC RECORDS AND MEETINGS CONSTITUTIONAL AMENDMENT

**Article I, Section 24, Florida Constitution**

**Section 24. Access to public records and meetings.**

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

## B. GOVERNMENT IN THE SUNSHINE LAW AND RELATED STATUTES

**286.011 Public meetings and records; public inspection; criminal and civil penalties.—**

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.



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(3) (a)Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding $500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy



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sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

Related sections read as follows:

**286.0105 Notices of meetings and hearings must advise that a record is required to appeal.—**

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

**286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.—**

The provisions of s. 119.15, the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15.

**286.0113 General exemptions from public meetings.—**

(1) That portion of a meeting that would reveal a security or firesafety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) (a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.
2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from



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s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(3)(a) That portion of a meeting held by a utility owned or operated by a unit of local government which would reveal information that is exempt under s. 119.0713(5) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting are exempt from disclosure under s. 119.07(1) and s. 24(a) of the State Constitution unless a court of competent jurisdiction, following an in-camera review, determines that the meeting was not restricted to the discussion of data and information made exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, the term "public safety radio" is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R 90 for public safety purposes.



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(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

**286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—**

(1) For purposes of this section, "board or commission" means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court



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finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

**286.01141 Criminal justice commissions; public meetings exemption.—**

(1) As used in this section, the term:

(a) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.

(b) "Active" has the same meaning as provided in s. 119.011.

(c) "Criminal intelligence information" has the same meaning as provided in s. 119.011.

(d) "Criminal investigative information" has the same meaning as provided in s. 119.011.

(2) That portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, provided that at any public meeting of the criminal justice commission at which such matter is being considered, the commission members publicly disclose the fact that the matter has been discussed.

**286.012 Voting requirement at meetings of governmental bodies.—**

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

**286.26 Accessibility of public meetings to the physically handicapped.—**

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible



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to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

## C. THE PUBLIC RECORDS ACT (SELECTED PORTIONS ONLY)

## CHAPTER 119, FLORIDA STATUTES

**119.01 General state policy on public records.—**

(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

(2)(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

(b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(c) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

**119.011 Definitions.—** As used in this chapter, the term:

(1) "Actual cost of duplication" means the cost of the material and supplies used to duplicate



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the public record, but does not include labor cost or overhead cost associated with such duplication.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h) or (o).
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h) or (m), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:

a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means:

(a) Any law enforcement agency, court, or prosecutor;

(b) Any other agency charged by law with criminal law enforcement duties;

(c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of



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active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or

(d) The Department of Corrections.

(5) "Custodian of public records" means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

(6) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(7) "Duplicated copies" means new copies produced by duplicating, as defined in s. 283.30.

(8) "Exemption" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.

(9) "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.

(10) "Paratransit" has the same meaning as provided in s. 427.011.

(11) "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(12) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(13) "Redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

(14) "Sensitive," for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:

(a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1);

(b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or

(c) Control and direct access authorizations and security measures for automated systems.

(15) "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

**119.021 Custodial requirements; maintenance, preservation, and retention of public records.—**

(1) Public records shall be maintained and preserved as follows:

(a) All public records should be kept in the buildings in which they are ordinarily used.

(b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.



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(c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.

3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.

(2)(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.

(b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

(c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36.

(d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

(3) Agency final orders rendered before July 1, 2015, that were indexed or listed pursuant to s. 120.53, and agency final orders rendered on or after July 1, 2015, that must be listed or copies of which must be transmitted to the Division of Administrative Hearings pursuant to s. 120.53, have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.

(4)(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business.

(b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

**119.035 Officers-elect.—**

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.



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(2) Public records of an officer-elect shall be maintained in accordance with the policies and procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.

(5) As used in this section, the term "officer-elect" means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

**119.07 Inspection and copying of records; photographing public records; fees; exemptions.—**

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the



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date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8½ inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead



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associated with their duplication.

(c) An agency may charge up to $1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

**119.0701 Contracts; public records.—**

(1) For purposes of this section, the term:

(a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) **CONTRACT REQUIREMENTS—** In addition to other contract requirements provided by law, each public agency contract for services entered into or amended on or after July 1, 2016, must include:

(a) The following statement, in substantially the following form, identifying the contact



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information of the public agency's custodian or public records in at least 14-point boldfaced type:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT** (telephone number, e-mail address, and mailing address).

(b) A provision that requires the contractor to comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records, or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**(3) REQUEST FOR RECORDS; NONCOMPLIANCE. —**

(a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

(b) If a contractor does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

(c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

**(4) CIVIL ACTION. —**

(a) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

(b) A notice complies with subparagraph (a)2., if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by



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common carrier delivery services or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which must be in an electronic format.

(c) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

NOTE: Due to space limitations, the exemptions from disclosure found in ss. 119.071, 119.0711, 119.0712, and 119.0713 are summarized in pages 226-231 of Appendix D. To review the complete text of these exemptions, please access the Florida Statutes at **www.leg.state.fl.us**

**119.0714 Court files; court records; official records.—**

**(1) COURT FILES.—**Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(a) A public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in s. 119.071(1)(d).

(b) Data processing software as provided in s. 119.071(1)(f).

(c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).

(d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).

(e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).

(f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).

(g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).

(h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h) or (m).

(i) Social security numbers as provided in s. 119.071(5)(a).

(j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document hearing, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in



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person to the clerk of court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

**(2) COURT RECORDS.—**

(a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

(b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

(d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.

(e)1. The clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

(g) The clerk of the court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of the court.

**(3) OFFICIAL RECORDS.—**

A person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(a) If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

1. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (d), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to



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official records.

(b) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

1. A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.
2. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.
3. A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(c) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.
2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(d) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction is deemed to be the best effort in performing the redaction and is deemed in compliance with the requirements of this subsection.

(e) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

**119.084 Copyright of data processing software created by governmental agencies; sale price and licensing fee.—**

(1) As used in this section, "agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An agency is authorized to acquire and hold a copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that



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the agency complies with the requirements of this subsection.

(a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

**119.092 Registration by federal employer's registration number.—**

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

**119.10 Violation of chapter; penalties.—**

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding $500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**119.105 Protection of victims of crimes or accidents.—**

Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit the publication of such information to



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the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

**119.11 Accelerated hearing; immediate compliance.—**

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

**119.12 Attorney fees.—**

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provides written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

(3) The court shall determine whether the complainant requested to inspect or copy a public record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. For purposes of this subsection, the term "improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement,



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including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

**119.15 Legislative review of exemptions from public meeting and public records requirements.—**

(1) This section may be cited as the "Open Government Sunset Review Act."

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:

(a) Is required by federal law; or

(b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;
2. Exempt from s. 119.07(1) or s. 286.011; and
3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) By June 1 in the year before the repeal of an exemption under this section, the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) An exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the office fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)(a) As part of the review process, the Legislature shall consider the following:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

(b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of



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the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

**D. Exempt and confidential records and meetings- exemption summaries. It is recommended that these summaries be used as a reference only—interested parties should refer to the full text in the Florida Statutes before drawing legal conclusions.**

**Section 11.0431(2), F.S.** – The text of s. 11.0431, F.S., relating to exemptions from disclosure for legislative records, is set forth in Appendix E.

**Section 11.045(5)(b), F.S.** – The legislative committee responsible for ethical conduct of lobbyists shall make sufficient deletions in advisory opinions issued pursuant to this subsection to prevent disclosing the identity of persons in the decisions or opinions.

**Section 11.26(1), F.S.** – Subject to s. 11.0431, legislative employees may not reveal to anyone outside the area of their direct responsibility the contents or nature of any request for services made by a legislator except with the consent of the member making the request.

**Section 11.45(3)(i), F.S.** – The identity of a donor or prospective donor to Enterprise Florida, Inc., who desires to remain anonymous is confidential and exempt from public disclosure requirements and such anonymity shall be maintained in the auditor's report.

**Section 11.45(3)(j), F.S.** – The identity of a donor or prospective donor to the capital development board who desires to remain anonymous is confidential and exempt from public disclosure requirements and such anonymity shall be maintained in the auditor's report.

**Section 11.45(4)(c), F.S.** – Audit reports prepared by the Auditor General become public records when final. Audit workpapers and notes are not public records; however, those materials necessary to support the computations in the final audit report may be made available by majority vote of the Legislative Auditing Committee after a public hearing showing proper cause.

**Section 11.51(4), F.S**. -- Work papers held by the Office of Program Policy Analysis and Government Accountability (OPPAGA) which relate to an authorized project or a research



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product are exempt.

**Section 14.28, F.S.** – All records developed or received by a state entity relating to a Board of Executive Clemency investigation are exempt from disclosure; however, such records may be released upon the approval of the Governor.

**Section 15.07, F.S.** – The journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon order of the Senate or court of competent jurisdiction.

**Section 17.0401, F.S.** – Except as otherwise provided by this section, information relative to an investigation by the Chief Financial Officer pursuant to s. 17.04 is confidential and exempt from disclosure until the investigation is complete or ceases to be active, or if the Chief Financial Officer submits such information to a law enforcement or prosecutorial agency, until that agency's investigation is complete or ceases to be active as that term is defined in the section.

**Section 17.076(5), F.S.** – All direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1). With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries, as defined in the section, are confidential and exempt.

**Section 17.325(3), F.S.** – A caller on the governmental efficiency hotline established by the Chief Financial Officer under this section may remain anonymous, and, if the caller provides his or her name, the name is confidential.

**Section 20.055(6)(b), F.S.** – Inspector general audit workpapers and reports are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1). However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual shall not be disclosed to anyone else without the individual's written consent, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.

**Section 24.1051(1)(3), F.S.** – Specified information, including records relating to security, lottery games and tickets, background checks, and nonpublic financial information about an entity that is provided in connection with financial responsibility review by the Department of the Lottery, is confidential and exempt. Confidential and exempt information may be released to other governmental entities as needed in connection with the performance of their duties; such governmental entities shall maintain the confidential status of the information.

**Section 24.1051(2), F.S.** – The street address and telephone number of a winner are confidential and exempt from disclosure, unless the winner consents to the release of such information, or as provided for in s. 24.115(4) or s. 409.2577.

**Section 24.108(7)(b), F.S.** – The portion of the Lottery Department's security report that contains specific recommendations is confidential and exempt from disclosure and may be released only as authorized in the subsection.

**Section 27.151, F.S.** – An executive order assigning or exchanging state attorneys pursuant to s. 27.14 or s. 27.15, if designated by the Governor to be confidential, is exempt from disclosure. The Governor may make public any such executive order by a subsequent executive order and at the expiration of a confidential executive order or any extensions thereof, the executive order and all associated orders and reports shall be open to the public pursuant to Ch. 119 unless the information contained in the executive order is confidential pursuant to cited laws.

**Section 28.222(3)(g), F.S.** – Certified copies of death certificates authorized for issuance by the Department of Health which exclude information made confidential under s. 382.008



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and certified death certificates issued by another state shall be recorded by the clerk of circuit court.

**Section 28.2221, F.S.** – The clerk of court is prohibited from placing certain records (military discharge or death certificate, and family law, probate, or juvenile court records) on a publicly available Internet website. Those records which have already been placed on the Internet must be removed if the subject of the record requests removal.

**Section 39.00145(4), F.S.** – Notwithstanding any other provision of law, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the listed agencies, and any provider contracting with such agencies, may share with each other confidential records or information if the records or information are reasonably necessary to ensure access to appropriate services for the child. However, records or information made confidential by federal law may not be shared. Also, this subsection does not apply to information concerning clients and records of certified domestic violence centers which are confidential under s. 39.908 and privileged under s. 90.5036.

**Section 39.0132(3), F.S.** – The clerk shall keep official records required by this chapter separate from other court records. The records may be inspected only upon court order by persons deemed to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, guardian ad litem, law enforcement agencies, the Department of Children and Family Services and its designees shall have a right to inspect and copy records pertaining to the child.

**Section 39.0132(4)(a)1., F.S.** -- All information obtained pursuant to this part in the discharge of official duty by any of the officials specified in the subsection is confidential and may not be disclosed to anyone other than persons entitled to receive such information under Ch. 39 or upon court order.

**Section 39.0132(4)(a)2., F.S.** – The following information held by a guardian ad litem is confidential and exempt: medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a guardian ad litem which is identified as confidential information under Ch. 39, F.S. Such confidential and exempt information may not be disclosed to anyone except as authorized in the exemption.

**Section 39.201(1)(d), F.S.** – Reporters to the central abuse hotline in the designated occupation categories are required to provide their names to the hotline staff. The names of reporters shall be entered into the record of the report but shall be held confidential as provided in s. 39.202.

**Section 39.201(2)(h), F.S.** – A telephone number, fax number, or Internet protocol (IP) address from which the report was received by the hotline which is included in the abuse report pursuant to this subsection shall enjoy the same confidentiality provided to the identity of the reporter pursuant to s. 39.202.

**Section 39.202(1), F.S.** – All records held by the Department of Children and Family Services concerning reports of child abandonment, abuse or neglect including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in possession of those entities granted access pursuant to this section.

**Section 39.202(2)(o), F.S.** – Access to records concerning reports of child abuse or neglect shall be granted to any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or



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neglect shall not be released, nor shall any information otherwise made confidential or exempt by law.

**Section 39.202(5), F.S.** – The name of, or other identifying information with respect to, any person reporting child abuse, abandonment, or neglect shall not be released to any person except as authorized in the subsection, without the written consent of the reporter.

**Section 39.202(6), F.S.** – All records and reports of the Child Protection Team of the Department of Health are confidential and exempt from ss. 119.07(1) and 456.057, and shall not be disclosed, except as provided in the subsection.

**Section 39.301(18), F.S.** – When the initial interview with the child in a child protective investigation or criminal investigation is conducted at school in the presence of school staff, information received during the interview or from any other source regarding the alleged abuse or neglect of the child shall be confidential and exempt, except as otherwise provided by court order.

**Section 39.507(2), F.S.** – Dependency adjudicatory hearings are open to the public, unless by special order the court determines that the public interest or welfare of the child is best served by closing the hearing.

**Section 39.510(4) and (5), F.S.** – The case on appeal in a dependency proceeding and any papers filed in appellate court shall be entitled with child's initials. The papers shall remain sealed and shall not be open to public inspection. The original order of the appellate court with papers filed in an appeal shall be sealed and not open to inspection except by order of the appellate court.

**Section 39.702(5)(d), F.S.** – An independent not-for-profit agency authorized to administer a citizen review panel established to make recommendations concerning foster care as provided in this section shall ensure that all panel members have read, understood, and signed an oath of confidentiality relating to written or verbal information provided to members for review hearings.

**Section 39.809(4), F.S.** – All hearings involving termination of parental rights are confidential and closed to the public.

**Section 39.814(3) and (4), F.S.** – All court records required by this part (termination of parental rights) shall be kept separate from other records. Such records are not open to public inspection. All information obtained pursuant to this part by officials specified therein shall be confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized officials and agencies, except by court order.

**Section 39.815(4) and (5), F.S.** – An appeal in a case involving a termination of parental rights must be docketed, and any papers filed in the appellate court must be titled with the initials, but not the name, of the child and the court case number, and the papers must remain sealed in the office of the appellate court clerk when not in use by the court and may not be open to public inspection. The original order of the appellate court, with all papers filed in the case on appeal, must remain in the clerk's office, sealed and not open to inspection except by court order.

**Section 39.821(1), F.S.** – Information collected pursuant to the security background investigation for a guardian ad litem is confidential and exempt from s. 119.07(1).

**Section 39.827(4), F.S.** – The hearing for appointment of a guardian advocate is confidential. The court records are confidential and exempt from s. 119.07(1) and may be inspected only upon court order or by the persons and entities identified in the subsection. All information obtained pursuant to this part is confidential and exempt from s. 119.07(1) and shall not be disclosed to anyone other than authorized personnel of the court or the Department of Children and Family Services and its designees, except upon court order.



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**Section 39.908, F.S.** – Information about clients received by the Department of Children and Family Services or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise is confidential and exempt from s. 119.07(1). Except as provided in the section, information about the location of domestic violence centers and facilities is confidential and exempt from s. 119.07(1).

**Section 40.50(2), F.S.** – The court should emphasize the confidentiality of notes taken by jurors as provided in this subsection.

**Section 44.102(3), F.S.** – All written communications in a court-ordered mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of Ch. 119.

**Section 44.201(5), F.S.** – Any information relating to a dispute which is obtained by any person while performing any duties for a Citizen Dispute Settlement Center is exempt from s. 119.07(1).

**Section 44.405(1), F.S.** – Except as provided in the section, mediation communications, as defined in the Mediation Confidentiality and Privilege Act, are confidential.

**Section 61.1827, F.S.** – Any information that reveals the identity of applicants for or recipients of child-support services, including the name, address, and telephone number of such persons, held by a non-Title IV-D county child-support enforcement agency is confidential and exempt from public disclosure requirements.

**Section 61.183(3), F.S.** – Information concerning mediation proceedings involving contested issues relating to custody parental responsibility, primary residence, access to, visitation with, or support of a child pursuant to this section which is obtained by any person performing mediation duties is exempt from s. 119.07(1).

**Section 61.404, F.S.** – A guardian ad litem shall maintain as confidential all information and documents received from any source described in s. 61.403(2) and may not disclose such information or documents except, in the guardian ad litem's discretion, in a report to the court or as directed by the court.

**Section 63.022(4)(i), F.S.** – The records of all proceedings concerning custody and adoption of a minor are confidential and exempt except as provided in s. 63.162.

**Section 63.0541, F.S.** – All information contained in the Florida Putative Father Registry is confidential and exempt except as provided in the section.

**Section 63.089(8), F.S.** – Except as provided in the exemption, all records relating to a petition to terminate parental rights pending adoption are subject to the provisions of s. 63.162, F.S.

**Section 63.102(1), F.S.** – Except for a joint petition for the adoption of a stepchild, a relative, or an adult, any name by which the minor was previously known may not be disclosed in the petition for adoption, the notice of hearing, or the judgment of adoption, or the court docket as provided in s. 63.162(3).

**Section 63.162(1), F.S.** – Hearings held in proceedings under the Florida Adoption Act are closed.

**Section 63.162(2), F.S.** – All papers and records pertaining to an adoption are confidential and subject to inspection only upon court order except as provided in s. 63.162(4), authorizing disclosure without a court order in certain circumstances. Adoption papers and records of the



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Department of Children and Families, a court, or any other governmental agency are exempt from s. 119.07(1).

**Section 63.162(6), F.S.** – Except as provided in s. 63.162(4), identifying information regarding birth parents, adoptive parents, and adoptees may not be disclosed unless a birth parent, adoptive parent, or adoptee has authorized in writing the release of such information concerning himself or herself.

**Section 63.165(1), F.S.** – Except as provided in this section, information in the state registry of adoption information is confidential and exempt.

**Section 68.083(8), F.S.** – The complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the False Claims Act is confidential and exempt and may not be disclosed until the investigation is complete, or as otherwise provided in the exemption.

**Section 69.081(8), F.S.** – Any portion of an agreement which conceals information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy and may not be enforced.

**Section 73.0155, F.S.** – Except as provided in the exemption, specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages is confidential and exempt from disclosure requirements, if the owner requests in writing that the business information be held confidential and exempt.

**Section 90.502(5), F.S.** – Communications made by a person who seeks or receives services from the Department of Revenue under the child support enforcement program to the attorney representing the department shall be confidential and privileged and shall not be disclosed to anyone other than the agency except as provided in this section.

**Section 92.56, F.S.** – The confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h) must be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

**Section 97.057(2)(a)4. and 5., F.S.** – All declinations to register to vote pursuant to this section (relating to voter registration by the Department of Highway Safety and Motor Vehicles) will remain confidential and may be used only for voter registration purposes. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

**Section 97.0585, F.S.** – The following information held by an agency and obtained for the purpose of voter registration is confidential and exempt and may be used only for purposes of voter registration: declinations to register to vote made pursuant to ss. 97.057 and 97.058; information relating to the place where a person registered to vote or where a person updated a voter registration; the social security number, driver license number, and Florida identification number of a voter registration applicant or voter; information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored by the Board of Executive Clemency or pursuant to the State Constitution; and all information concerning preregistered voter registration applicants who are 16 or 17 years of age. The signature of a voter registration applicant or a voter is exempt from the copying requirements.

**Section 98.045(3), F.S.** – Each supervisor shall maintain for at least 2 years and make available for public inspection and copying, all records concerning implementation of registration list maintenance programs and activities conducted pursuant to cited statutes. The records must include lists of the name and address of each person to whom a notice was sent and information



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as to whether each such person responded to the mailing, but may not include any information that is confidential or exempt from public records requirements under the Election Code.

**Section 98.075(2)(c), F.S.** – Information received by the Department of State from another state or the District of Columbia upon the department becoming a member of the nongovernmental entity provided in this subsection to share and exchange information in order to verify voter registration information, which is confidential or exempt pursuant to the laws of that state or the District of Columbia, is exempt from disclosure requirements.

**Section 101.5607(1)(d), F.S.** – Section 119.071(1)(f) which provides an exemption from s. 119.07(1) for data processing software designated as sensitive, applies to all software on file with the Department of State.

**Section 101.62(3), F.S.** – Information regarding a request for a vote-by-mail ballot that is recorded by the supervisor of elections pursuant to this subsection is confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only.

**Section 106.0706, F.S.** – All user identifications and passwords held by the Department of State pursuant to s. 106.0705 are confidential and exempt from disclosure. Information entered in the electronic filing system for purposes of generating a report pursuant to s. 106.0705 is exempt but is no longer exempt once the report is generated and filed with the Division of Elections.

**Section 106.25(7), F.S.** – Except as otherwise provided in the subsection, sworn complaints filed pursuant to Ch. 106 with the Florida Elections Commission, investigative reports or other papers of the commission relating to a violation of Chs. 106 or 104, and proceedings of the commission relating to a violation of said chapters are confidential and exempt from s. 119.07(1) and s. 286.011.

**Section 110.1091(2), F.S.** – A state employee's personal identifying information contained in records held by the employing agency relating to an employee's participation in an employee assistance program is confidential and exempt.

**Section 110.1127(2)(d) and (e), F.S.** – It is a first degree misdemeanor to willfully use information contained in records obtained pursuant to employment screening required for certain positions for purposes other than background screening or investigation for employment, or to release such information to other persons for purposes other than preemployment screening or investigation. It is a felony of the third degree for any person willfully, knowingly, or intentionally to use juvenile records information for any purpose other than those specified in this section or to release such information to other persons for purposes other than those specified in the section.

**Section 110.123(5)(a), F.S.** – A physician's fee schedule used in the health and accident plan is not available for inspection or copying by medical providers or other persons not involved in the administration of the state group insurance program.

**Section 110.123(9), F.S.** – Patient medical records and medical claims records of state employees, former state employees, and their eligible covered dependents, in the custody or control of the state group insurance program are confidential and exempt.

**Section 110.12301(3), F.S.** – Records collected for the purpose of dependent eligibility verification services conducted for the state group insurance program and held by the Department of Management Services are confidential and exempt. This subsection does not apply to records that are otherwise open for inspection and copying which are held by the Department for purposes other than for the performance of dependent eligibility verification services.

**Section 110.201(4), F.S.** – All discussions between the Department of Management



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Services and the Governor, and between the Department of Management Services and the Administration Commission, or agency heads, or between any of their respective representatives, relative to collective bargaining, are exempt from s. 286.011 and all work products relative to collective bargaining developed in conjunction with such discussions are confidential and exempt.

**Section 112.0455(8)(l), F.S.** – All documentation relative to a state agency employer's explanation as to why a job applicant or employee's explanation of positive drug test results is unsatisfactory, along with the report of the positive test results, are confidential and exempt.

**Section 112.0455(8)(t), F.S.** – The documentation prepared by a state agency employer which formed the basis of the employer's determination that reasonable suspicion existed to warrant drug testing under this section is confidential and exempt, except that a copy of this documentation shall be given to the employee upon request.

**Section 112.0455(11)(a), F.S.** – Except as provided in the subsection, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a state agency's drug testing program are confidential and are exempt from disclosure except as provided in this section.

**Section 112.08(7), F.S.** -- Medical records and medical claims records in the custody of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan are confidential and are exempt from s. 119.07(1). Such records shall not be furnished to any person other than the employee or the employee's legal representative, except as provided in the subsection.

**Section 112.08(8), F.S.** – Patient medical records and medical claims records of water management district employees, former employees, and eligible dependents in the custody or control of a water management district under its group insurance plan established pursuant to s. 373.605 are confidential and exempt. Such records shall not be furnished to any person other than the employee or the employee's legal representative except as provided in the subsection.

**Section 112.21(1), F.S.** – All records identifying individual participants in any contract or account under s. 112.21 (relating to tax-sheltered annuities or custodial accounts for governmental employees) and their personal account activities are confidential and exempt.

**Section 112.215(7), F.S.** – All records identifying individual participants in any deferred compensation plan and their personal account activities shall be confidential and exempt from s. 119.07(1).

**Section 112.31446(6)(a), F.S.** – All secure login credentials held by the Commission on Ethics for the purpose of allowing access to the electronic filing system are exempt from disclosure requirements.

S**ection 112.31446(6)(b), F.S.,** – Information entered in the electronic filing system for purposes of financial disclosure is exempt from disclosure requirements. The information is no longer exempt once the disclosure of financial interests or statement of financial interests is submitted to the Commission on Ethics or, in the case of a candidate, filed with a qualifying officer, whichever occurs first.

**Section 112.3188(1), F.S.** – The identity of an individual who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated certain laws or committed, or is suspected of committing, specified acts may not be disclosed to anyone other than staff of the above officials without the written consent of the individual, unless such official determines that disclosure is authorized for



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the reasons specified in the subsection.

**Section 112.3188(2), F.S.** – Except as specifically authorized by s. 112.3189, or this subsection, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Department of Law Enforcement or the Florida Commission on Human Relations, is confidential and exempt from disclosure if the information is being received or derived from allegations as set forth in subsection (1) and an investigation is active. All information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding or investigations conducted by a local government pursuant to s. 112.3187(8)(b), is confidential and exempt if the information is received or derived from allegations as set forth in s. 112.3188(1)(a) or (b) and the investigation is active.

**Section 112.31901, F.S.** – If certified pursuant to the exemption, an investigatory record of the Chief Inspector General within the Office of the Governor or of the employee designated by an agency head as the agency inspector general under s. 112.3189 is exempt from disclosure requirements for the time period specified in the exemption. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act.

**Section 112.3215(8)(b), F.S.** – All proceedings, the complaint, and other records relating to the investigation of a sworn complaint of a violation of this section which relates to executive branch and Constitution Revision Commission lobbyists, and any meeting held pursuant to the investigation, are confidential and exempt from disclosure until the alleged violator requests in writing that such investigation and associated records and meetings be made public, or until the Ethics Commission determines whether probable cause exists to believe that a violation has occurred.

**Section 112.3215(8)(d), F.S.** – Records relating to an audit of a lobbying firm lobbying the executive branch or the Constitution Revision Commission or an investigation of violations of the lobbying compensation reporting laws and any meetings held pursuant to the investigation or at which such an audit is discussed are exempt from public records and meetings requirements either until the lobbying firm requests in writing that such records and meetings be made public or until the Commission on Ethics determines there is probable cause that the audit reflects a violation of the reporting laws.

**Section 112.324(2), F.S.** – The complaint and records relating to the complaint or to any preliminary investigation held by the Ethics Commission or other specified entities are confidential and exempt from public disclosure. Written referrals and records relating to such referrals held by the Commission and referring entities, and records relating to any preliminary investigation of such referrals held by the Commission are confidential and exempt. Any portion of a proceeding conducted by the Commission or other specified entities pursuant to a complaint or referral are exempt from open meetings requirements. The above exemptions apply until: the complaint is dismissed as legally insufficient; the alleged violator requests in writing that such records and proceedings be made public; the Commission determines that it will not investigate a referral; or the Commission or other listed entity determines whether probable cause exists to believe that a violation has occurred.

**Section 112.532(4)(b), F.S.** – The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal.

**Section 112.533(2)(a), F.S.** – Except as otherwise provided in this subsection, a complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation of the complaint is confidential until the investigation ceases to be active, or until the agency head or agency head's



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designee provides written notice to the officer who is the subject of the complaint, that the agency has either concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or concluded the investigation with a finding to proceed with disciplinary action or to file charges.

**Section 119.071(1)(a), F.S.** – Examination questions and answer sheets of examinations administered for the purpose of licensure, certification, or employment are exempt. A person who has taken the examination has the right to review his or her own completed examination.

**Section 119.071(1)(b), F.S.** – Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation, as defined in the exemption, are exempt until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

**Section 119.071(1)(c), F.S.** – Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt.

**Section 119.071(1)(d), F.S.** – A public record prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent litigation or proceedings, is exempt until the conclusion of the litigation or proceedings.

**Section 119.071(1)(e), F.S.** – Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt.

**Section 119.071(1)(f), F.S.** – Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced software that is sensitive are exempt.

**Section 119.071(1)(g), F.S.** – United States Census Bureau address information which is held by an agency pursuant to the Local Update of Census Addresses Program authorized under cited federal law, is confidential and exempt. Disclosure is authorized under the circumstances listed in the exemption.

**Section 119.071(2)(a), F.S.** – All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt.

**Section 119.071(2)(b), F.S.** – Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

**Section 119.071(2)(c), F.S.** – Active criminal intelligence information and active criminal investigative information are exempt. A request by made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to



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the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

**Section 119.071(2)(d), F.S.** – Any information revealing surveillance techniques or procedures or personnel is exempt. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to cited statute, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in cited statute, are exempt, and unavailable for inspection except by cited agencies.

**Section 119.071(2)(e), F.S.** – Any information revealing the substance of a confession of a person arrested is exempt, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

**Section 119.071(2)(f), F.S.** – Any information revealing the identity of a confidential informant or source is exempt.

**Section 119.071(2)(g)1., F.S.** – All complaints or other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with specified employment related activities are exempt until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or proceeding. The exemption does not affect any function or activity of the Florida Commission on Human Relations. Disclosure is authorized to governmental agencies as provided in the exemption.

**Section 119.071(2)(g)2., F.S.** – If an alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential all records relating to an allegation of employment discrimination are confidential and exempt.

**Section 119.071(2)(h), F.S.** – The following criminal intelligence information or criminal investigative information is confidential and exempt: any information that reveals the identity of the victim of the crime of child abuse as defined by ch. 827, or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 786.06(3)(a); any information which may reveal the identity of a victim of any sexual offense including a sexual offense proscribed in cited statutes; a photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under cited statutes, regardless of whether the photograph, videotape, or image identifies the victim. Disclosure is authorized under the circumstances cited in the exemption.

**Section 119.071(2)(i), F.S.** – Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt.

**Section 119.071(2)(j)1., F.S.** – Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by an agency that regularly receives information from or concerning the victims of crime, is exempt. Any information not other exempt which reveals the above information of a person who has been a victim of stated crimes is exempt upon written request of the victim which must include official verification that an applicable crime has occurred. The exemption ends 5 years after the receipt of the written request.

**Section 119.071(2)(j)2., F.S.** – Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct



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proscribed in cited statutes, which reveals specified information about that minor and identifies that minor as the victim of a crime described in cited statutes is confidential and exempt.

**Section 119.071(2)(k), F.S.** – A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential until the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint in the manner provided in the exemption.

**Section 119.071(2)(l), F.S.** – A body camera recording, or portion thereof, is confidential and exempt if the recording is taken within the locations specified in the exemption. Disclosure is authorized or required in specified circumstances.

**Section 119.071(2)(m), F.S.** – Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in cited statute, is confidential and exempt for 2 years after the date on which the murder is observed by the witness. Criminal justice agencies are authorized to disclose the information under the circumstances set forth in the exemption.

**Section 119.071(2)(n), F.S.** – Personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt. Such information may be disclosed to another governmental entity in the furtherance of its official duties.

**Section 119.071(2)(o), F.S.** – The address of a victim of an incident of mass violence is exempt. For purposes of the exemption, the term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator. The term "incident of mass violence" means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another.

**Section 119.071(2)(p), F.S.** – Except as provided in the exemption, photographs, videos, or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence as these terms are defined in the exemption, are confidential and exempt from public disclosure.

**Section 119.071(3)(a), F.S.** – A security or firesafety system plan, as defined in the exemption, or a portion thereof for an property owned by or leased to the state or any of its political subdivisions; or for any privately owned or leased property held by an agency is confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(3)(b), F.S.** – Building plans, blueprints, schematic drawings and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(3)(c), F.S.** – Building plans, blueprints, schematic drawings, and diagrams which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development, as these terms are defined in the exemption, which records are held by an agency, are exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(3)(d), F.S.** – Information relating to the National Public Safety Broadband Network established in cited federal law which is held by an agency is confidential and exempt if disclosure would reveal information cited in the exemption

**Section 119.071(3)(e), F.S.** – Building plans and other specified records that depict the



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structural elements of 911, E911, or public safety radio communication system infrastructure, structures, or facilities owned and operated by an agency, and geographical maps showing the actual or proposed locations of such communication system infrastructure, structures, or facilities are exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(4)(a), F.S.** – The social security number of all current and former agency employees which are held by the employing agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the section.

**Section 119.071(4)(b)1., F.S.** – Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt. However, the information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

**Section 119.071(4)(b)2., F.S.** – Personal identifying information of a dependent child, as defined in cited statute, of a current or former officer of employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt.

**Section 119.071(4)(c), F.S.** – Any information revealing undercover personnel of any criminal justice agency is exempt.

**Section 119.071(4)(d), F.S.** – Home addresses, telephone numbers, and other specified personal information of specified current and former public employees and officers and their families are exempt. For more information, please refer to the text of the Florida Statutes at www.leg.state.fl.us or you may review pages 139-148 of this Manual.

**Section 119.071(5)(a), F.S.** – Social security numbers held by an agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(5)(b), F.S.** – Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt.

**Section 119.071(5)(c), F.S.** – Information that would identify or locate a child, as that term is defined in the exemption, who participates in a government-sponsored recreation program, as that term is defined in the exemption, is exempt. Information that would identify or locate a parent or guardian of the child participant is exempt.

**Section 119.071(5)(d), F.S.** – All records supplied by a telecommunications company, as defined by cited statute, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt.

**Section 119.071(5)(e), F.S.** – Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identify of an individual who has provided his or her name for ridesharing, as defined in cited statute, is exempt.

**Section 119.071(5)(f)1.a., F.S.** – Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(5)(f)1.b., F.S.** – Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster that is held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a



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county, a municipality, or a local housing finance agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(5)(g), F.S.** – Biometric identification information, as defined in the exemption, held by an agency before, on, or after the effective date of this exemption is exempt.

**Section 119.071(5)(h), F.S.** – Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

**Section 119.071(5)(i), F.S.** – Identification location information, as defined in the exemption, of current or former federal prosecutors, judges, and magistrates and their spouses and children is exempt, provided that certain conditions are met.

**Section 119.071(5)(j), F.S.** – Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency is exempt.

**Section 119.071(5)(k), F.S.** – Identification location information, as defined in the exemption, of servicemembers, as defined in the exemption, and their spouses and children, is exempt, provided that certain conditions are met. Note: See discussion on page 141 re: repeal.

**Section 119.0711, F.S.** – When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of eminent domain, all appraisals, other reports relating to value, offers, and counter offers are exempt until execution of a valid option contract, as defined in the exemption, or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from disclosure requirements to the same extent as appraisals, other reports relating to value, offers, and counteroffers.

**Section 119.0712(1), F.S.** – All personal identifying information contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from disclosure requirements. Information made confidential and exempt by this subsection shall be disclosed with the express written consent of the individual or the individual's legal authorized representative; in a medical emergency, but only to the extent necessary to protect the health or life of the individual; by court order upon good cause; or to a health research agency under the conditions set forth in the subsection.

**Section 119.0712(2)(b), F.S.** – Personal information, including highly restricted personal information as defined in cited federal law, contained in a motor vehicle record, as defined in the exemption, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss 2721 et. seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

**Section 119.0712(2)(c), F.S.** – E-mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to cited statutes are exempt from disclosure requirements.

**Section 119.0712(2)(d), F.S.** – Emergency contact information contained in a motor vehicle record, is confidential and exempt. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in an emergency.



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**Section 119.0712(3), F.S.** – The following information held by the Office of Financial Regulation is confidential: Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law; any information received or developed by the Office as part of a joint or multiagency examination or investigation with such agencies.

**Section 119.0713(1), F.S.** – All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental housing, the provision of brokerage services, or the financing of housing are exempt until a finding is made relating to probable case, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision does not affect any function or activity of the Florida Commission on Human Relations. Access by specified agencies is authorized.

**Section 119.0713(2)** – The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government, as defined in the exemption, becomes a public record when the audit report or investigative report becomes final. An audit or investigation becomes final when it is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

**Section 119.0713(3), F.S.** – Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt. The exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond, and no longer applies when the conditions occur as set forth in the exemption.

**Section 119.0713(4), F.S.** – Proprietary confidential information, as defined in the exemption, which is held by an electric utility that is subject to Ch. 119 in conjunction with a due diligence review of an electric project, as defined in cited statute, or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt.

**Section 119.0713(5)(a), F.S.** – The following information held by a utility owned or operated by a unit of local government is exempt from public disclosure requirements: Specified security technology information and customer meter-derived data and billing information in increments less than one billing cycle.

**Section 121.031(5), F.S.** – The names and addresses of retirees are confidential and exempt from s. 119.07(1) to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except as authorized in the subsection.

**Section 121.4501(19), F.S.** – Personal identifying information of a member in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt from public disclosure requirements.

**Section 125.0104(3)(h), F.S.** – Department of Revenue records showing the amount of tourist development taxes collected, including the amount of taxes collected for and from each county in which the tourist development tax is applicable, are open for inspection except as provided in s. 213.053.



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**Section 125.0104(9)(d)1., F.S.** – Information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from disclosure.

**Section 125.0104(9)(d)2. and 3., F.S.** – When held by a county tourism promotion agency, the following are exempt from disclosure: booking business records, as defined in s. 255.047; trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), as amended; and a trade secret, as defined in s. 812.081, F.S.

**Section 125.012(26), F.S.** – Pursuant to authorization granted by this section concerning certain transportation-related projects defined in s. 125.011, a board of county commissioners is empowered to maintain the confidentiality of trade information and data to the extent that such information is protected under applicable federal and federally-enforced patent and copyright laws.

**Section 125.025, F.S.** – Pursuant to authorization granted by this section concerning operation of export trading companies, a board of county commissioners is empowered to maintain the confidentiality of trade information to the extent such information is protected under applicable federal export trading company law, and under federal and federally enforced patent and copyright laws.

**Section 125.355(1), F.S.** – Appraisals, offers, and counteroffers relating to a county's purchase of real property pursuant to this section are not available for public disclosure and are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board of county commissioners. If a contract or agreement for purchase is not submitted to the board for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end. A county that does not utilize the exemptions provided in this section may follow any procedure not in conflict with Ch. 119 for the purchase of real property which is authorized in its charter or established by ordinance.

**Section 125.585(2), F.S.** – A county employee's personal identifying information contained in records held by the employing county relating to that employee's participation in an employee assistance program is confidential and exempt.

**Section 125.901(11), F.S.** – Personal identifying information of a child or the parent or guardian of the child, held by a council on children's services, juvenile welfare board, or other similar entity created under this section or by special law, or held by a service provider or researcher under contract with such entity, is exempt from disclosure requirements.

**Section 163.01(15)(m), F.S.** – Material received by a public agency in connection with its joint ownership or right to the services, output, capacity, or energy of an electric project under the Florida Interlocal Cooperation Act, which is designated by the person supplying such material as proprietary confidential business information, as defined in the paragraph, or which a court of competent jurisdiction has designated as confidential or secret, shall be kept confidential and exempt from s. 119.07(1).

**Section 163.64, F.S.** – An agency that participates in the creation or administration of a collaborative client information system may share client information, including confidential client information, with other members of the collaborative system as long as the restrictions governing the confidential information are observed by any other agency granted access to the confidential information.



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**Section 166.0444, F.S.** – A municipal employee's personal identifying information contained in records held by the employing municipality relating to that employee's participation in an employee assistance program is confidential and exempt.

**Section 166.045(1), F.S.** – Appraisals, offers, and counteroffers relating to a municipality's purchase of real property pursuant to this section are not available for public disclosure and are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing body of the municipality. If a contract or agreement for purchase is not submitted to the governing body for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end. A municipality that does not utilize the exemptions from Ch. 119 provided in this section may follow any procedure not in conflict with Ch. 119 for the purchase of real property which is authorized in its charter or established by ordinance.

**Section 192.0105(4), F.S.** – Taxpayers have the right to have information kept confidential, including those records set forth in the exemption.

**Section 192.105, F.S.** – Federal tax information obtained pursuant to 26 U.S.C. s. 6103 is confidential and exempt from s. 119.07(1).

**Section 193.074, F.S.** – All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

**Section 193.114(5), F.S.** – For the purpose of furnishing copies of the tax roll under 119.07(1), the property appraiser is the custodian of the tax roll. The Department of Revenue or any state or local agency may use copies of the tax roll received by it for official purposes and shall permit inspection and examination thereof pursuant to s. 119.07(1), but is not required to furnish copies of the records. A social security number submitted under s. 196.011(1) (application for tax exemption) is confidential and exempt.

**Section 195.027(3), F.S.** – Financial records produced by a taxpayer under this section shall be confidential in the hands of the property appraiser, the Department of Revenue, the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such records are exempt from s. 119.07(1).

**Section 195.027(6), F.S.** – The information form disclosing unusual fees, costs and terms of financing of the sale or purchase of property shall be filed with the clerk of the circuit court at the time of recording and shall be confidential and exempt in the hands of all persons after delivery to the clerk, except as provided in the subsection.

**Section 195.084(1), F.S.** – This section (authorizing the exchange of information among the Department of Revenue, the property appraisers, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability) shall supersede statutes prohibiting disclosure only with respect to those entities, but the Department of Revenue may establish regulations setting reasonable conditions upon access to and custody of such information. The Auditor General, the Office of Program Policy Analysis and Government Accountability, the tax collectors and the property appraisers shall be bound by the same requirements of confidentiality as the department.

**Section 195.096(2)(e), F.S.** – All data and samples developed or obtained by the Department of Revenue in the conduct of assessment ratio studies are confidential and exempt



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until a presentation of the study findings is made to the property appraiser.

**Section 196.101(4)(c), F.S.** – Records of gross income produced by a taxpayer claiming exemption for totally and permanently disabled persons are exempt from s. 119.07(1) and are confidential in the hands of the property appraiser, the Department of Revenue, the tax collector, the Office of Program Policy Analysis and Government Accountability, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

**Section 197.3225, F.S.** – A taxpayer's e-mail address held by a tax collector for sending specified tax notices or for obtaining the taxpayer's consent to send notices is exempt from disclosure requirements.

**Section 202.195, F.S.** – Proprietary confidential business information, as defined in the exemption, which is obtained from a telecommunications company or franchised cable company for the purposes of imposing fees for occupying the public rights-of-way, assessing the local communications services tax, or regulating the public rights-of-way, held by a local government entity, is confidential and exempt from public disclosure requirements. Maps or other engineering data held by a local governmental entity that relate to the exact location and capacity of facilities for the provision of communications services shall be exempt from disclosure but only for 60 days after completion of construction of the facilities.

**Section 206.27(2), F.S.** – Any information concerning audits in progress or those records or files of the Department of Revenue described in this section which are currently the subject of pending investigation by the Department of Revenue or the Florida Department of Law Enforcement are exempt from s. 119.07(1) and are considered confidential; and may not be released except as authorized in the subsection.

**Section 211.125(10), F.S.** – All returns and information filed with the Department of Revenue under this part providing for a tax on production of oil and gas are confidential and exempt from s. 119.07(1), and such returns or information shall be protected from unauthorized disclosures as provided in s. 213.053.

**Section 211.33(5), F.S.** – The use of information contained in any tax return filed by a producer (i.e., a person severing solid minerals from the soils and waters of the state) or in any books, records or documents of a producer shall be as provided in s. 213.053, and shall be confidential and exempt from s. 119.07(1).

**Section 212.0305(3)(d), F.S.** – Records of the Department of Revenue showing the amount of taxes collected, including taxes collected from each county in which a resort tax is levied, are subject to the provisions of s. 213.053, and are confidential and exempt from s. 119.07(1).

**Section 213.015(9), F.S.** – Unless otherwise specified by law, Florida taxpayers have the right to have taxpayer tax information kept confidential.

**Section 213.053(2)(a), F.S.** – All information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from s. 119.07(1).

**Section 213.0532(8), F.S.** – Any financial records obtained pursuant to this section relating to information-sharing arrangements between the Department of Revenue and financial institutions may be disclosed only for the purpose of, and to the extent necessary for, administration and enforcement of the tax laws of this state.



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**Section 213.0535(5), F.S.** – A provision of law imposing confidentiality upon data shared under this section (providing for the Registration Information Sharing and Exchange Program within the Department of Revenue), including, but not limited to, a provision imposing penalties for disclosure, applies to recipients of this data and their employees. Data exchanged under this section may not be provided to a person or entity except as authorized in the exemption.

**Section 213.21(3)(a), F.S.** – The Department of Revenue shall maintain records of all compromises of a taxpayer's liability; the records of compromises shall not be subject to disclosure pursuant to s. 119.07(1) and shall be considered confidential information governed by s. 213.053.

**Section 213.22(2), F.S.** – The Department of Revenue may not disclose, pursuant to s. 119.07(1), a technical assistance advisement or request therefor to any person other than the person requesting the advisement or his or her representative, or for official departmental purposes without deleting identifying details of the person to whom the advisement was issued.

**Section 213.27(6), F.S.** – Confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from s. 119.07(1) and such debt collection or auditing agencies are bound by the same requirements of confidentiality as the department.

**Section 213.28(6), F.S.** – Certified public accountants entering into contracts with the Department of Revenue are bound by the same confidentiality requirements and subject to the same penalties as the department under s. 213.053. Any return, return information, or documentation obtained from the Internal Revenue Service under an information-sharing agreement is confidential and exempt from disclosure and shall not be divulged or disclosed in any manner by any department officer or employee to any certified public accountant under a contract authorized by this section unless the department and the Internal Revenue Service mutually agree to such disclosure.

**Section 215.4401(1), F.S.** – Records and information of the State Board of Administration relating to acquiring, hypothecating, or disposing of real property or specified related interests are confidential and exempt from s. 119.07(1) in order to achieve certain stated purposes. Records relating to value, offers, counteroffers, or negotiations are confidential and exempt until closing is complete and all funds have been disbursed. Records relating to tenants, leases, and other specified matters are confidential and exempt until the executive director determines that release would not be detrimental to the board's interest or conflict with its fiduciary responsibilities.

**Section 215.4401(2), F.S.** – Records and other information relating to investments made by the State Board of Administration are confidential and exempt from s. 119.07(1) until 30 days after completion of an investment transaction. However, if in the executive director's opinion, it would be detrimental to the board's financial interests or cause a conflict with its fiduciary responsibilities, information concerning service provider fees may be kept confidential until 6 months after negotiations relating to such fees have been terminated.

**Section 215.4401(3)(b), F.S.** – "Proprietary confidential business information", as defined in the exemption, that is held by the State Board of Administration regarding alternative investments is confidential and exempt for a period of 10 years after the termination of the alternative investment unless disclosure is permitted under the circumstances set forth in the exemption.

**Section 215.555(4)(f), F.S.** – Information described in 215.557 which is contained in an examination report conducted on an insurer pursuant to this subsection, is confidential and exempt, as provided in s. 215.557.

**Section 215.557, F.S.** – The reports of insured values under certain insurance policies by zip code submitted to the State Board of Administration pursuant to s. 215.555 are confidential and exempt.



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**Section 220.242, F.S.** – Estimated tax returns filed under the Florida Income Tax Code are confidential, and exempt from s. 119.07(1).

**Section 252.355(4), F.S.** – Records relating to the registration of persons with special needs for emergency management purposes pursuant to this section are confidential and exempt from s. 119.07(1), except such information is available to other emergency response agencies, as determined by the local emergency management director. Local law enforcement agencies shall be given complete shelter roster information upon request.

**Section 252.88(1), F.S.** – Trade secret information which applicable federal law authorizes an employer to exclude from materials submitted shall be furnished to the State Hazardous Materials Emergency Response Commission upon request. However, such information shall be confidential and exempt from s. 119.07(1) and shall not be disclosed by the Commission except as authorized in the subsection.

**Section 252.88(2) and (3), F.S.** – When applicable law authorizes the withholding of disclosure of the location of specific hazardous chemicals, such information is confidential and exempt from s. 119.07(1). All information, including, but not limited to, site plans and specific location information on hazardous chemicals furnished to a fire department pursuant to applicable law, shall be confidential and exempt while in the possession of the fire department.

**Section 252.905, F.S.** – Any information furnished by a person or a business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning is exempt.

**Section 252.943, F.S.** – In accordance with the federal Clean Air Act, trade secret information provided to the Division of Emergency Management by the owner or operator of a stationary source subject to the Accidental Release Prevention Program is confidential and exempt from disclosure, except as provided in the exemption.

**Section 253.025(8)(f), F.S.** – Except as provided in the exemption, appraisal reports prepared for the Board of Trustees of the Internal Improvement Trust Fund or an agency are confidential and exempt until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees.

**Section 253.025(9)(d), F.S.** – All offers or counteroffers shall be documented in writing and shall be confidential and exempt from s. 119.07(1) until an option contract is executed, or if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees of the Internal Improvement Trust Fund.

**Section 253.0341(8)(a), F.S.** – A written valuation of land determined to be surplus and related documents are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the disposition of the surplus land is first considered for approval by the Board of Trustees of the Internal Improvement Trust Fund. Prior to expiration of the exemption, disclosure of certain information is authorized under the circumstances described in the exemption.

**Section 255.047(2), F.S.** – The booking business records (as defined in the section) of a publicly owned or operated convention center, sports stadium, coliseum, or auditorium are exempt from disclosure. However, such facility shall furnish its booking business records and related information to the Department of Revenue upon the department's request if necessary for the department to administer its duties.

**Section 255.065(15), F.S.** – An unsolicited proposal received by a responding public entity is exempt until such time as the entity provides notice of an intended decision for a qualifying



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project, as defined in this section relating to public-private partnerships, or as otherwise provided in the exemption. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011, F.S. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording becomes public under the circumstances provided in the exemption.

**Section 257.261, F.S.** – Registration and circulation records of public libraries, except statistical reports of registration and circulation are confidential and exempt from s. 119.07(1). Except as authorized by court order, a person may not make known in any manner any information contained in such records, except as provided in this section. Violation of this section is a second degree misdemeanor.

**Section 257.38(2) and (3), F.S.** – Public records transferred to the Division of Library and Information Services of the Department of State are subject to s. 119.07(1), except that any record provided by law to be confidential shall not be made accessible until 50 years after creation of the record. Any nonpublic manuscript or other archival material which is placed in the keeping of the division under special terms and conditions, shall be made accessible only in accordance with such terms and conditions and shall be exempt from s. 119.07(1) to the extent necessary to meet the terms and conditions for a nonpublic manuscript or other archival material.

**Section 257.38(4), F.S.** – Any nonpublic manuscript or other archival material that is donated to and held by an official archive of a municipality or county contingent upon special terms and conditions that limit the right to inspect or copy such material is confidential and exempt from disclosure requirements except as otherwise authorized in the special conditions. Such nonpublic manuscript or archival material shall be made available for inspection and copying 50 years after the date of the creation of the nonpublic manuscript or material, at an earlier date specified in the special terms and conditions, or upon a showing of good cause before a court of competent jurisdiction.

**Section 265.605(2), F.S.** – Information which, if released, would identify donors and amounts contributed by donors to the Cultural Endowment Program Trust Fund, or to the local organization's matching fund, is, at the request of the donor, confidential and exempt from s. 119.07(1). Information which, if released, would identify prospective donors is confidential and exempt unless the name has been obtained from another organization or source.

**Section 265.7015, F.S.** – If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center, as defined in the exemption, desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt.

**Section 265.703(3), F.S.** – Information of the Museum of Florida History citizen support organization which is confidential and exempt pursuant to s. 267.17 shall retain its confidential and exempt status.

**Section 267.076, F.S.** – Information identifying a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark who desires to remain anonymous is confidential and exempt.

**Section 267.135, F.S.** – Information identifying the location of an archaeological site held by the Division of Historical Resources of the Department of State is exempt from public disclosure if the division finds that disclosure will create a substantial risk of harm, theft, or destruction at such site.

**Section 267.17(3), F.S.** – The identity of donors who desire to remain anonymous shall be confidential and exempt from s. 119.07(1), and that anonymity shall be maintained in the



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auditor's report of a citizen support organization to the Division of Historical Resources of the Department of State.

**Section 267.1732(8), F.S.** – The identity of a donor or prospective donor of property to a direct-support organization of the University of West Florida which is established to support the historic preservation efforts of the university, who desires to remain anonymous, is confidential and exempt from disclosure; and that anonymity must be maintained in the auditor's report.

**Section 267.1736(9), F.S.** – Any information identifying a donor or prospective donor to the direct-support organization, authorized by the University of Florida to assist it in the historic preservation of the City of St. Augustine, who desires to remain anonymous, is confidential and exempt, and that anonymity must be maintained in the auditor's report.

**Section 279.11(1), F.S.** – Records with regard to ownership of, or security interests in, registered public obligations are confidential and exempt from s. 119.07(1).

**Section 280.16(3), F.S.** – Any information contained in a report of a qualified public depository required under this chapter or any rule adopted under this chapter, together with any information required of a financial institution that is not a qualified public depository, is, if made confidential by any law of the United States or of this state, confidential and exempt from s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer under this chapter.

**Section 281.301, F.S.** – The following are confidential and exempt from ss. 119.07(1) and 286.011: Information relating to the security or firesafety systems for any property owned by or leased to the state or any of its political subdivisions; information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2); and all meetings relating directly to or that would reveal such systems or information. Information may be disclosed as provided in the exemption.

**Section 282.318(4)(d)(e)(g), F.S.** – The following information is confidential and exempt and may not be disclosed except as provided in the subsection: risk assessment information to determine security threats to data, information, and information technology resources of the agency; internal policies and procedures to assure the security of the data and information technology resources that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources; and results of periodic internal audits and evaluations of the information technology security program for an agency's data and information technology resources.

**Section 282.318(5), F.S.** – Portions of records held by a state agency which contain network schematics, software configurations, and encryption or that identify detection, investigation, or response practices for suspected or confirmed information technology breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information technology resources, are confidential and exempt. Disclosure is authorized as provided in the exemption.

**Section 282.318(6), F.S.** – Portions of risk assessments and other reports of a state agency's information technology security system are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure or destruction of data or information as described in the exemption. Disclosure is authorized as provided in the exemption.

**Section 282.318(7), F.S.** – Those portions of a public meeting which would reveal records which are confidential under ss. (5) or (6) are exempt from s. 286.011. All exempt portions shall be recorded and transcribed. Disclosure is authorized as provided in the exemption.



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**Section 284.40(2), F.S.** – Claims files maintained by the Division of Risk Management of the Department of Financial Services are confidential, and shall be only for the use of the Department of Financial Services in fulfilling its duties and are exempt from s. 119.07(1).

**NOTE: DUE TO SPACE LIMITATIONS, THE EXEMPTIONS FROM DISCLOSURE FOUND IN CHAPTER 286 ARE NOT SUMMARIZED IN THIS APPENDIX. THE TEXT OF THESE EXEMPTIONS IS CONTAINED IN APPENDIX B (SUNSHINE LAW AND RELATED STATUTES).**

**Section 287.0595(3), F.S.** – Bids submitted to the Department of Environmental Protection for pollution response action contracts are confidential and exempt from s. 119.07(1), until selection of a bidder on such contract has been made and a contract signed or until the bids are no longer under active consideration.

**Section 288.047(5)(e), F.S.** – Information relating to wages and performance of participants which is submitted pursuant to a grant agreement prepared by CareerSource Florida, Inc., pursuant to the Quick-Response Training Program which, if released, would disclose the identity of the person to whom the information pertains or the person's employer is confidential and exempt from s. 119.07(1).

**Section 288.047(7), F.S.** – In providing instruction pursuant to the Quick-Response Training Program, materials relating to methods of manufacture or production, potential trade secrets, business transactions, or proprietary information received or discovered by employees of specified agencies are confidential and exempt from s. 119.07(1).

**Section 288.075, F.S.** – If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency (EDA) maintain the confidentiality of information concerning the plans, intentions, or interests of the private entity to locate, relocate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the EDA receives a request for confidentiality or the information is otherwise disclosed, whichever occurs first. An EDA may extend the period of confidentiality for up to an additional 12 months under certain conditions. If a final project order for a signed economic development agreement is issued, then the information remains confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such confidentiality may not extend beyond the period of confidentiality established in the exemption. Trade secrets and the federal employer identification number, reemployment assistance account number, or Florida sales tax registration number held by an EDA are confidential and exempt, as well as other records as described in the exemption. Specified information held by an EDA relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first.

**Section 288.1226(7), F.S.** – The identity of a donor or prospective donor to the Florida Tourism Industry Marketing Corporation who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report.

**Section 288.1226(9), F.S.** – The identity of any person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation pursuant to this section, and trade secrets, as defined by s. 812.081, obtained pursuant to such research, are exempt from disclosure.

**Section 288.776(3)(d), F.S.** – Personal financial records, trade secrets or proprietary information of applicants for loans extended by the Florida Export Finance Corporation are



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confidential and exempt from s. 119.07(1).

**Section 288.9520, F.S.** – Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, financial and proprietary information and agreements or proposals to receive funding that are received, generated, ascertained, or discovered by Enterprise Florida, Inc., including its affiliates and participants, are confidential and exempt from disclosure, except that a recipient of Enterprise Florida, Inc., research funds shall make available, upon request, the title and description of the project, the name of the researcher, and the amount and source of funding provided for the project.

**Section 288.9607(5), F.S.** – Personal financial records, trade secrets or proprietary information of applicants delivered to or obtained by the Florida Development Finance Corporation are confidential and exempt from s. 119.07(1).

**Section 288.9626(2) and (3), F.S.** – The following records held by the Florida Opportunity Fund are confidential and exempt: materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects and that are provided by a proprietor; information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Fund; as well as proprietary confidential business information regarding alternative investments for 7 years after the termination of the alternative investment. That portion of the meeting of the board of the Fund at which such confidential information is discussed is confidential and exempt; the exempt portion of the meeting shall be recorded and transcribed as provided therein. The transcript and minutes of the exempt meeting are confidential.

**Section 288.9627(2) and (3), F.S.** – The following records held by the Institute for Commercialization of Florida Technology are confidential and exempt: materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered through research by universities and other publicly supported organizations in this state and that are provided to the Institute by a proprietor; information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Institute for assistance; information received from a person in another state or the Federal Government which is otherwise confidential or exempt by law of that entity; and proprietary confidential business information for 7 years after the termination of the Institute's financial commitment to the company. That portion of the meeting of the board of the Institute at which such confidential information is discussed is confidential and exempt; the exempt portion of the meeting shall be recorded and transcribed as provided therein. The transcript and minutes of the exempt meeting are confidential.

**Section 288.985, F.S.** – Specified information held by the Florida Defense Support Task Force relating to selection criteria for the realignment and closure of military bases and missions is exempt and that portion of Task Force meetings where exempt records are presented and discussed is exempt as well as records generated during the closed meeting.

**Section 292.055(9), F.S.** – Any information identifying a donor or prospective donor to the Department of Veterans' Affairs direct-support organization who desires to remain anonymous is confidential and exempt; portions of meetings of the direct-support organization during which the identity of such donor or potential donor is discussed are exempt.

**Section 296.09(1), F.S.** – The health record and annual reevaluation of residents of the Veterans' Domiciliary Home of Florida are confidential and exempt from disclosure and must be preserved for a period of time as determined by the director.

**Section 310.102(3)(e) and (5)(a), F.S.** – Except as otherwise provided in the section, all



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information obtained by the probable cause panel of the Board of Pilot Commissioners from the consultant as part of an approved treatment program for impaired licensees is confidential and exempt. Except as otherwise provided in the section, all information obtained by the consultant and the Department of Business and Professional Regulation pursuant to this section is confidential and exempt.

**Section 311.13, F.S.** – Seaport security plans created pursuant to s. 311.12 are exempt from public disclosure. Materials that depict critical seaport operating facilities are also exempt if the seaport reasonably determines that such items contain information that is not generally known and that could jeopardize seaport security. The exemption does not apply to information relating to real estate leases, layout plans, blueprints, and information related thereto.

**Section 315.18, F.S.** – Any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1) and any nongovernmental entity, relating to the sale, use or lease of land or of port facilities, and any financial records submitted by any nongovernmental entity to such a deepwater port for the purpose of the sale, use or lease of land or of port facilities, are confidential and exempt from disclosure until 30 days before such proposal or counterproposal is considered for approval by the governing body of the deepwater port. If no proposal or counterproposal is submitted to the governing body, the proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations.

**Section 316.066(2)(a), F.S.** – Except as otherwise provided in the exemption, crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from public disclosure requirements for a period of 60 days after the date the report is filed.

**Section 316.0777(2)(3), F.S.** – Certain images and data obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images are confidential and exempt. Disclosure is authorized in specified circumstances.

**Section 320.025(3), F.S.** – All records relating to the registration application of a law enforcement agency, Attorney General's Medicaid Fraud Control Unit, or public defender's office for motor vehicle or vessel registration and license plates or decals issued under fictitious names, are exempt from s. 119.07(1) as long as the information is retained by the Department of Highway Safety and Motor Vehicles.

**Section 320.05(2), F.S.** – Information on motor vehicle or vessel registration records of the Department of Highway Safety and Motor Vehicles shall not be made available to a person unless the person requesting the information furnishes positive proof of identification.

**Section 322.125(3) and (4), F.S.** – When a member of the Medical Advisory Board acts directly as a consultant to the Department of Highway Safety and Motor Vehicles, a board member's individual review of the physical and mental qualifications of a licensed driver or applicant is exempt from s. 286.011. Reports received or made by the board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for confidential use of the board or department and may not be divulged to any person except to the driver or applicant or used as evidence in any trial except proceedings under s. 322.271 or s. 322.31.

**Section 322.126(3), F.S.** – Disability reports are confidential and exempt from s. 119.07(1) and may be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle.



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**Section 322.142(4), F.S.** – Reproductions of color photographic or digital imaged licenses may be made and issued only for the purposes set forth in the subsection and are exempt from s. 119.07(1).

**Section 322.20(3), F.S.** – The release by the Department of Highway Safety and Motor Vehicles of the driver history record, with respect to crashes involving a licensee, shall not include any notation or record of the occurrence of a motor vehicle crash unless the licensee received a traffic citation as a direct result of the crash, and to this extent such notation or record is exempt from s. 119.07(1).

**Section 322.20(9), F.S.** – The Department of Highway Safety and Motor Vehicles shall furnish without charge specified driver license information from its records to the courts for the purpose of jury selection or to any state agency, state attorney, sheriff or chief of police. Such court, state agency, state attorney, or law enforcement agency may not sell, give away, or allow the copying of such information.

**Section 324.242, F.S.** – Information as set forth in the exemption that pertains to personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles is confidential and exempt. Specified disclosures are authorized as set forth in the exemption.

**Section 328.40(3), F.S**. – All records kept or made by the Department of Highway Safety and Motor Vehicles under the vessel registration law are public records except for confidential reports.

**Section 331.22, F.S.** – Airport security plans of an aviation authority or aviation department of a county or municipality which operates an international airport are exempt from disclosure. In addition, except as otherwise provided in the section, specified materials that depict critical airport operating facilities are exempt to the extent that the authority or department which operates an airport determines that such information is not generally known and could jeopardize the security of the airport.

**Section 331.326, F.S.** – Information held by Space Florida which is a trade secret, as defined in s. 812.081, is confidential and exempt from disclosure and may not be disclosed. Any meeting or portion of a meeting of Space Florida's board is exempt from open meetings requirements when the board is discussing trade secrets. Any public record generated during the closed portions of the meetings, is confidential and exempt.

**Section 334.049(4), F.S.** – Information obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture which is a trade secret as defined by s. 688.002, is confidential and exempt from s. 119.07(1).

**Section 337.14(1), F.S.** – Financial information required by the Department of Transportation pursuant to this subsection shall be confidential and exempt.

**Section 337.162, F.S.** – Complaints submitted to the Department of Business and Professional Regulation and maintained by the Department of Transportation pursuant to this section relating to alleged violations of state professional licensing laws or rules shall be confidential and exempt. Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt.

**Section 337.168, F.S.** – The Department of Transportation's official project cost estimates and potential bidders' identities are confidential and exempt from s. 119.07(1) for a limited period of time as prescribed therein. The department's bid analysis and monitoring system is confidential and exempt from s. 119.07(1).



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**Section 338.155(6), F.S.** – Personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities is exempt from s. 119.07(1).

**Section 339.0805(1)(c), F.S.** – The application and financial information required for certification by the Department of Transportation as a socially and economically disadvantaged business enterprise are confidential and exempt from s. 119.07(1).

**Section 339.55(10)(a), F.S.** – Financial information, as defined in the exemption, of a private entity applicant required by the Department of Transportation as part of the application process for loans or credit enhancements from the state-funded infrastructure bank is exempt from s. 119.07(1). The exemption does not apply to records of an applicant who is in default of a loan issued under this section.

**Section 341.0521, F.S.** – Personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card or similar device is exempt from disclosure.

**Section 350.121, F.S.** – Any records obtained by the Public Service Commission pursuant to an inquiry are confidential and exempt from s. 119.07(1) while such inquiry is pending. If, at the conclusion of an inquiry the commission undertakes a formal proceeding, any matter determined by the commission or by a court or administrative agency to be trade secrets or confidential proprietary business information coming into its possession pursuant to such inquiry shall be confidential and exempt.

**Section 364.107, F.S.** – Personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10 held by the Public Service Commission is confidential and exempt except as provided therein.

**Section 364.183, F.S.** – Records provided by a telecommunications company to the Public Service Commission which are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 365.171(12)(a) and (b), F.S.** – Any record, recording, or information, or portions thereof, obtained by a public agency or public safety agency for the purpose of providing emergency services and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from public disclosure requirements except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number, or personal information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption.

**Section 365.174, F.S.** – Proprietary confidential business information, as defined in the exemption, that is submitted by a wireless service provider to the E911 Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue, is confidential and exempt from s. 119.07(1) and may not be disclosed except as provided in the exemption.

**Section 366.093, F.S.** – Records provided by a public utility company to the Public Service Commission which, upon the request of the public utility or any person, are found by the commission to constitute proprietary confidential business information as defined in the section



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shall be confidential and exempt from s. 119.07(1).

**Section 367.156, F.S.** – Records provided by a water or wastewater utility to the Public Service Commission which, upon the request of the utility or any person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 368.108, F.S.** – Records provided by a natural gas transmission company to the Public Service Commission which, upon the request of the company or any other person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 373.089(1)(b)(c), F.S.** – A written valuation of land determined to be surplus by the governing board of a water management district pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such land are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered by the district. Before expiration of the exemption, disclosure is authorized as provided in the exemption.

**Section 373.139(3)(a), F.S.** – Appraisal reports, offers, and counteroffers for the acquisition of real property by water management districts created under Ch. 373 are confidential and exempt from s. 119.07(1) until an option contract is executed, or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. However, disclosure is authorized under some circumstances as described in the subsection. If negotiations are terminated by the district, the appraisal report, offers and counteroffers shall become available pursuant to s. 119.07(1).

**Section 373.69ArticleXIII(a)(8) and (9), F.S.** – The mediator selected by parties to the Apalachicola-Chattahoochee-Flint River Basin Compact shall not divulge confidential information disclosed to the mediator by the parties or by witnesses in the course of the mediation. All records received by a mediator while serving as mediator shall be considered confidential and each party to the mediation shall maintain the confidentiality of the information.

**Section 377.075(4)(f), F.S.** – Company data collected by the State Geologist from specified agencies may be maintained as confidential subject to the same requirements as that required by the federal agency of jurisdiction or, if no specific language exists in federal law, the confidential period shall not exceed 10 years.

**Section 377.22(2)(h), F.S.** – Information required by this paragraph relating to oil and gas resources, at the request of the operator, shall be exempt from s. 119.07(1) and held confidential by the Division of Resource Management of the Department of Environmental Protection for a period of 1 year after the completion of a well.

**Section 377.2408(3), F.S.** – Any information relating to the location of the geophysical operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors shall be kept confidential by the Department of Environmental Protection for 10 years and exempt from s. 119.07(1), and shall not be released to the public without the consent of the person submitting the application to conduct geophysical operations.

**Section 377.2409, F.S.** – Information on geophysical activities conducted on state-owned mineral lands received by the Division of Resource Management of the Department of Environmental Protection pursuant to this section shall, upon the request of the person conducting the activities, be held confidential for 10 years and shall be exempt from disclosure.

**Section 377.2421(2), F.S.** – Geologic data which is maintained by the Division of



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Resource Management of the Department of Environmental Protection pursuant to this section shall be subject to the same confidentiality requirements that are required by the federal agency and are exempt from s. 119.07(1) to the extent necessary to meet federal requirements.

**Section 377.2424(3), F.S.** – The Department of Environmental Protection shall share geophysical permit information with a county or municipality upon request and may, on its own initiative, share such information with a county or municipality. However, the county or municipality shall maintain the confidential status of such information, as required by s. 377.2408(3) and such information is exempt from s. 119.07(1).

**Section 377.606, F.S.** – Proprietary information obtained by the Department of Agriculture and Consumer Services as the result of a required report, investigation, or verification relating to energy resources shall be confidential and exempt from s. 119.07(1) if disclosure would be likely to cause substantial harm to the competitive position of the person providing the information and the provider has requested confidentiality.

**Section 377.701(4), F.S.** – No state employee may divulge or make known in any manner any proprietary information under the Petroleum Allocation Act, if the disclosure of such information would be likely to cause substantial harm to the competitive position of the person providing such information and if the person requests that such information be held confidential, except in accordance with a court order, or in the publication of statistical information compiled by methods which would not disclose the identity of individual suppliers or companies. Such proprietary information is confidential and exempt from s. 119.07(1).

**Section 378.208(5), F.S.** – The Department of Environmental Protection may adopt rules to require mine operators to submit a copy of their most recent annual financial statements. The financial statement, except for a financial statement that is a public record in the custody of another governmental agency, shall be confidential and exempt from s. 119.07, and the department shall ensure the confidentiality of such statements.

**Section 378.406(1)(a), F.S.** – Any information relating to prospecting, rock grades, or secret processes or methods of operation which may be required, ascertained, or discovered by inspection or investigation shall be exempt from s. 119.07(1) if the applicant requests the Department of Environmental Protection to keep such information confidential and informs the department of the basis for such confidentiality. Should the secretary determine that such information shall not be confidential, the secretary shall provide notice of his or her intent to release the information.

**Section 379.1026, F.S.** – Site-specific location information held by an agency of animals listed by a federal agency as threatened or endangered is exempt from disclosure. The exemption does not apply to the site-specific location of animals held in captivity.

**Section 379.223(3), F.S.** – The identity and all information identifying a donor or prospective donor to a citizen support organization established by the Fish and Wildlife Conservation Commission who desires to remain anonymous is confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the citizen support organization.

**Section 379.362(6), F.S.** – Except as provided in the exemption, reports required of wholesale dealers regarding saltwater products are confidential and exempt from s. 119.07(1).

**Section 381.0031(6), F.S.** – Information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from s. 119.07(1), and shall be made public only when necessary to public health.

**Section 381.004(2), (3), (4), and (5), F.S.** – Except as otherwise provided, human



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immunodeficiency virus test results, and the identity of any person upon whom a test has been performed, are confidential and exempt from s. 119.07(1). No person to whom the results of a test have been disclosed pursuant to this section may disclose the results to another person except as authorized in the section. Such confidential information is exempt from s. 119.07(1).

**Section 381.0041(9), F.S.** – All blood banks shall be governed by the provisions of s. 381.004(2) relating to confidentiality of HIV test results and the identity of test subjects.

**Section 381.0055(1) and (2), F.S.** – Information which is confidential by operation of law and which is obtained by the Department of Health and the health agencies specified in this section relating to quality assurance activities shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or health care provider from the department or health agencies pursuant to this section shall retain its confidential status and be exempt from s. 119.07(1).

**Section 381.0055(3), F.S.** – Portions of meetings, proceedings, reports and records of the Department of Health and the health agencies set forth in this section, which relate solely to patient care quality assurance and where specific persons or incidents are discussed are confidential and exempt from s. 286.011, and are confidential and exempt from s. 119.07(1).

**Section 381.0056(4)(a)16., F.S.** – Provisions in the school health services plan developed pursuant to this section for maintenance of health records of individual students must be in accordance with s. 1002.22, relating to confidentiality of student records.

**Section 381.775, F.S.** – Except as provided in the exemption, all oral and written records, information, letters, and reports received, made, or maintained by the Department of Health relative to any applicant for or recipient of services under the brain and spinal cord injury program are privileged, confidential, and exempt from s. 119.07(1). The in camera proceeding before designated officials to determine whether records are relevant to an inquiry and should be released and all records relating thereto are confidential and exempt from s. 119.07(1).

**Section 381.82(3)(d), F.S.** – Research grant applications provided to the Alzheimer's Disease Research Grant Advisory Board and any records generated by the board relating to review of such applications, except final recommendations, are confidential. Those portions of a meeting during which applications are discussed are exempt, but the closed portions must be recorded.

**Section 381.83(1), F.S.** – Trade secrets as defined in s. 812.081 obtained by the Department of Health pursuant to Ch. 381 relating to public health are confidential and exempt from disclosure except as provided in the section. The person submitting such trade secret information must request that it be kept confidential and inform the department of the basis for the claim of trade secret. The department shall determine whether the information, or portions thereof, is a trade secret.

**Section 381.8531, F.S.** – The following information held by the Florida Center for Brain Tumor Research is confidential and exempt from disclosure requirements: Any information received from an individual from another state or nation or the federal government that is otherwise confidential or exempt. Personal identifying information of a donor to the central repository or the brain tumor registry is also confidential and exempt from disclosure.

**Section 381.92201(1), (2), and (3), F.S.** – Records relating to biomedical research grant applications presented to the peer review panel are confidential and exempt; that portion of a peer review panel in which grant applications under cited statutes are discussed is exempt from public meetings requirements; and records generated by the peer review panel relating to review of such applications, except final recommendations, are confidential and exempt. Also published at s. 215.56021, F.S.



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**Section 381.95(1), F.S.** – Information identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the state's plan of defense against terrorism is exempt from public disclosure requirements.

**Section 381.987(1)(2)(3), F.S.** – The following information held by the Department of Health is confidential and exempt: A patient's or caregiver's personal identifying information held by the Department of Health in the medical marijuana use registry established under s. 381.986, F.S., and all personal identifying information pertaining to the physician certification for marijuana and the dispensing thereof. Access is authorized under circumstances set forth in the exemption.

**Section 382.008(6), F.S.** – All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records are confidential and exempt from s. 119.07(1), except for health research purposes approved by the Department of Health, nor shall copies of same be provided except as provided in s. 382.025.

**Section 382.008(8), F.S.** – All information relating to the cause of death and parentage of a nonviable fetus, the marital status of such fetus' parent, and any medical information included in nonviable birth records held by a state agency is confidential and exempt, except for research purposes as approved by the Department of Health. Certified copies may be issued as provided in the exemption.

**Section 382.013(4), F.S.** – In the event that a child of undetermined parentage is later identified and a new certificate of birth is prepared, the original birth certificate shall be sealed and filed, shall be confidential and exempt, and shall not be opened to inspection except by, nor shall certified copies of the same be issued except by court order to, any person other than the registrant if of legal age.

**Section 382.013(5), F.S.** – The original birth certificate shall contain all information required by the Department of Health for legal, social, and health research purposes. However, information concerning parentage, marital status, and medical details shall be confidential and exempt, except for health research purposes as approved by the department, nor shall copies be issued except as provided by s. 382.025.

**Section 382.017(1), F.S.** – After registering a certificate of foreign birth in the new name of an adoptee, the Department of Health shall place the adoption report or decree under seal, not to be broken except pursuant to court order.

**Section 382.025(1), F.S.** – Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records of this state are confidential and exempt from s. 119.07(1). Certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from s. 119.07(1) and shall be issued only as authorized by the Department of Health to those individuals and entities listed in the subsection.

**Section 382.025(2), F.S.** – A certification of the death or fetal death certificate which includes the confidential portions, shall be issued by the Department of Health only to the individuals and entities specified in the subsection. All portions of a death certificate shall cease to be exempt 50 years after the death.

**Section 382.025(3), F.S.** – Records or data issued by the Department of Health to government and research entities as set forth in this subsection are exempt from s. 119.07(1) and copies of records or data issued pursuant to this subsection remain the property of the department.



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**Section 382.025(4), F.S.** – Except as provided in this section, preparing or issuing certificates of live birth, death, or fetal death is exempt from the provisions of s. 119.07(1), F.S.

**Section 383.14(3)(d), F.S.** – The confidential registry of cases maintained by the Department of Health pursuant to this section [relating to phenylketonuria and other metabolic, hereditary and congenital disorders] shall be exempt from s. 119.07(1).

**Section 383.32(3), F.S.** – Birth center clinical records are confidential and exempt from s. 119.07(1). A client's clinical records shall be open to inspection only if the client has signed a consent to release information or the review is made for a licensure survey or complaint investigation.

**Section 383.325, F.S.** – Inspection reports of birth centers which have been filed with or issued by any governmental agency are to be maintained as public information. However, any record which, by state or federal law or regulation, is deemed confidential shall be exempt from s. 119.07(1) and shall not be distributed or made available as public information unless or until such confidential status expires, except as provided in s. 383.32(2)(c) requiring records to be made available for audit by licensure personnel.

**Section 383.412, F.S.** – Information held by the State Child Abuse Death Review Committee or local committee which reveals the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential and exempt. Any information held by the Committee or a local committee which reveals the identity of a deceased child whose death is not the result of abuse or neglect, or the identity of the surviving siblings, family members, or others living in the deceased child's home, is confidential and exempt. Portions of committee meetings at which information made confidential and exempt pursuant to subsection (2) are discussed are exempt from open meetings requirements. The closed portion of the meeting must be recorded; the recording is exempt from disclosure.

**Section 383.51, F.S.** – The identity of parents who leave a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, is confidential and exempt from public disclosure requirements.

**Section 384.26(2), F.S.** – All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of sexually transmissible disease infection shall be considered confidential and exempt from s. 119.07(1), and subject to the provisions of s. 384.29.

**Section 384.282(3), F.S.** – Except as provided in this section, the name of any person subject to proceedings initiated by the Department of Health relating to a public health threat resulting from a sexually transmissible disease, shall be confidential and exempt from s. 119.07(1).

**Section 384.287(6), F.S.** – An authorized person who receives the results of a test for sexually transmissible disease pursuant to this section, which results disclose human immunodeficiency virus infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004.

**Section 384.29, F.S.** – All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of sexually transmissible diseases are confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as provided in the section. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

**Section 384.30(2), F.S.** – The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from s. 119.07(1) and shall not be



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divulged directly or indirectly, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29.

**Section 385.202(3), F.S.** – Information which discloses or could lead to the disclosure of the identity of any person whose condition or treatment has been reported and studied pursuant to this section relating to the statewide cancer registry shall be confidential and exempt from s. 119.07(1) except as provided in the subsection.

**Section 390.01114(6)(f), F.S.** – All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

**Section 390.01116, F.S.** – Any information that can be used to identify a minor petitioning a circuit court for a judicial waiver, as provided in s. 390.01114, of the notice requirements under the Parental Notice of Abortion Act is confidential and exempt if held by a circuit court, an appellate court, the office of criminal conflict and civil regional counsel, or the Justice Administrative Commission.

**Section 390.01118, F.S.** – Any information that can be used to identify a minor petitioning a circuit court for a judicial waiver, as provided in s 390.01114, of the consent requirements under the Parental Notice of and Consent for Abortion Act is confidential and exempt if held by a circuit court, an appellate court, the office of conflict and civil regional counsel, or the Justice Administrative Commission.

**Section 390.0112(4), F.S.** – Reports concerning pregnancy termination which are submitted to the Agency for Health Care Administration pursuant to this section shall be confidential and exempt and shall not be revealed except upon court order in a civil or criminal proceeding.

**Section 392.54(2), F.S.** – All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of tuberculosis exposure or infection shall be confidential, subject to the provisions of s. 392.65. Such information is exempt from s. 119.07(1).

**Section 392.545(3), F.S.** – The name of any person subject to proceedings initiated by the Department of Health relating to a public health threat from tuberculosis shall not be revealed by the department, its authorized representatives, the courts, and other parties to the lawsuit except as permitted in s. 392.65.

**Section 392.65, F.S.** – All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as authorized in the subsection. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

**Section 393.0674, F.S.** – It is a third degree felony for any person to willfully, knowingly, or intentionally release information from the juvenile records, and a first degree misdemeanor for any person to willfully, knowingly, or intentionally release information from the criminal records or central abuse registry, of a person obtained under s. 393.0655, s. 393.066, or s. 393.067 to any other person for any purpose other than screening for employment as specified in those sections.

**Section 393.13(4)(i)1., F.S.** – Central client records of persons with developmental disabilities are confidential and exempt from s. 119.07(1) and no part of such records shall be released except as authorized in this paragraph.

**Section 394.4615(1) and (7), F.S.** – Clinical records of persons subject to "The Baker



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Act" are confidential and exempt from s. 119.07(1). Such records may be released only under the circumstances specified in the statute. Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt.

**Section 394.464(1) and (3), F.S.** – All petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under "The Baker Act" are confidential and exempt. Pleadings and other documents made confidential and exempt may be disclosed by the court upon request to certain persons and entities. The clerk may not publish personal identifying information on a court docket or in a publicly accessible file.

**Section 394.467(6)(a)3., F.S.** – The independent expert's report which is submitted at a hearing on involuntary inpatient placement is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing.

**Section 394.907(7), F.S.** – Records of quality assurance programs of community mental health centers which relate solely to actions taken in carrying out the provisions of this section and records obtained by the Department of Children and Family Services to determine licensee compliance with this section are confidential and exempt from s. 119.07(1). Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

**Section 394.921(2), F.S.** – Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements that have been submitted to the court or admitted into evidence in Jimmy Ryce Act proceedings shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

**Section 395.0162(2), F.S.** – Any records, reports or documents which are confidential and exempt from s. 119.07(1), shall not be distributed or made available for purposes of compliance with this section (relating to inspection reports of licensed facilities) unless or until such confidential status expires.

**Section 395.0193(4), F.S.** – Reports of final disciplinary actions taken by the governing board of a licensed facility pursuant to s. 395.0193(3) which have been forwarded to the Division of Health Quality Assurance of the Agency for Health Care Administration pursuant to this subsection are not subject to inspection under the provisions of s. 119.07(1), even if the division's investigation results in a finding of probable cause.

**Section 395.0193(7), F.S.** – The proceedings and records of peer review panels, committees, or governing boards of licensed facilities (i.e., a hospital or surgical facility licensed in accordance with Ch. 395) which relate solely to actions taken in carrying out this section (i.e., disciplinary proceedings against staff) are not subject to inspection under s. 119.07(1) and meetings held to achieve the objectives of such panels, committees or governing boards are not open to the public under Ch. 286.

**Section 395.0197(6)(c), F.S.** – The annual report submitted by a facility licensed under Ch. 395 (hospitals and surgical facilities) to the Agency for Health Care Administration concerning information on incidents as provided in this section is confidential and is not available to the public pursuant to s. 119.07(1) or any other law providing access to public records.

**Section 395.0197(7), F.S.** – An adverse incident report submitted by a facility licensed under Ch. 395 to the Agency for Health Care Administration pursuant to this subsection shall not be available to the public pursuant to s. 119.07(1) or any other law providing access to public records, except as authorized therein.

**Section 395.0197(13), F.S.** – Records of licensed facilities which are obtained by the



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Agency for Health Care Administration under cited subsections in order to carry out the provisions of this section relating to incidents and injuries are not available to the public under s. 119.07(1), nor shall they be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agencies set forth in the subsection.

**Section 395.0197(14), F.S.** – The meetings of the committees and governing board of a facility licensed under this chapter (hospitals and surgical facilities) held solely for the purpose of achieving the objectives of risk management as provided by this section shall not be open to the public under Ch. 286. The records of such meetings are confidential and exempt from s. 119.07(1), except as provided in subsection (13).

**Section 395.1025, F.S.** – Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease shall be done in a manner to protect the confidentiality of such patient information and shall not include the patient's name.

**Section 395.1056, F.S.** – Those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism held by specified agencies are confidential and exempt from disclosure requirements but may be disclosed to another agency for anti-terrorism efforts as set forth in the exemption. That portion of a public meeting which would reveal information contained in a comprehensive emergency management plan that addresses the response of a hospital to an act of terrorism is exempt from open meetings requirements.

**Section 395.3025(4), F.S.** – Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative except that appropriate disclosure may be made as provided in the subsection.

**Section 395.3025(7)(a), F.S.** – If the content of any patient treatment record is provided under this section, the recipient, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not further disclose any information unless expressly permitted by written consent of the patient. The content of such patient records is confidential and exempt from disclosure.

**Section 395.3025(8), F.S.** – Patient records at hospitals and surgical facilities are exempt from disclosure under s. 119.07(1), except as provided in subsections (1) through (5) of this section.

**Section 395.3025(9), F.S.** – A facility licensed under Ch. 395 (hospitals and surgical facilities) may prescribe the content and custody of limited-access records which the facility may maintain on its employees. Such records are limited to information regarding evaluations of employee performance and shall be accessible only as provided in the subsection. Such limited-access employee records are exempt from s. 119.07(1) for a period of 5 years from the date such records are designated limited-access records.

**Section 395.3025(10) and (11), F.S.** – Except as provided in the exemption, the home addresses, telephone numbers, and photographs of employees of any licensed hospital or surgical facility who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family.

**Section 395.3035(2), F.S.** – Certain public hospital records and information, including



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contracts for managed care arrangements, strategic plans, trade secrets, as described in the subsection, are confidential and exempt from disclosure.

**Section 395.3035(3), F.S.** – Those portions of a meeting of a public hospital's governing board, relating to contract negotiations as described in the subsection are exempt from the public meeting requirements; however, all governing board meetings at which the board is scheduled to vote on contracts, except managed care contracts, are open to the public. All portions of a board meeting closed to the public shall be subject to procedural requirements as set forth in the subsection.

**Section 395.3035(4), F.S.** – Those portions of a meeting of a public hospital's governing board at which written strategic plans that are confidential pursuant to s. 395.3035(2), are discussed, reported on, modified, or approved by the governing board are exempt from open meetings requirements provided that certain procedural requirements as set forth in the subsection are complied with.

**Section 395.3035(5), F.S.** – Any public records such as tapes, minutes, and notes, generated at a public hospital governing board meeting which is closed to the public pursuant to this section are confidential and exempt from disclosure. All such records shall be retained and shall cease to be exempt at the same time as the transcript of the meeting becomes available to the public.

**Section 395.3036, F.S.** – The records of a private entity that leases a public hospital or other public health care facility are confidential and exempt from disclosure and the meetings of the governing board of a private entity are exempt from open meetings requirements when the public lessor complies with the public finance accountability provisions of s. 155.40(18) with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least 3 of 5 criteria set forth in the exemption.

**Section 395.4025(13), F.S.** – Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section (relating to trauma centers) or pursuant to other statutes cited in the subsection, must be held confidential by the Department of Health and are exempt from s. 119.07(1).

**Section 395.51(1) and (2), F.S.** – Information which is confidential by operation of law and which is obtained by a trauma agency or committee assembled pursuant to s. 395.50, shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or emergency medical services provider from a trauma agency or committee shall retain its confidential status and be exempt from s. 119.07(1).

**Section 395.51(3), F.S.** – Portions of meetings, proceedings, reports and records of a trauma agency or committee assembled pursuant to this chapter, which relate solely to patient care quality assurance are confidential and exempt from s. 286.011. Patient care quality assurance, for the purpose of this section, shall include consideration of specific persons, cases, incidents relevant to the performance of quality control and system evaluation.

**Section 397.334(10), F.S.** – Information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in specified records is confidential and exempt. Disclosure is permitted under specified conditions.

**Section 397.4075(3), F.S.** – It is a first degree misdemeanor to willfully, knowingly, or intentionally release any criminal or juvenile information obtained under Ch. 397, "Substance Abuse Services," for any purpose other than background checks of personnel for employment.

**Section 397.4103(5), F.S.** – Records of substance abuse service providers which relate solely to actions taken in carrying out this section relating to quality improvement and records



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obtained by the Department of Children and Families to determine a provider's compliance with this section are confidential and exempt. Meetings or portions of meetings of quality improvement program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

**Section 397.501(7), F.S.** – Records of substance abuse service providers pertaining to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with Ch. 397 and federal confidentiality regulations, and are exempt from disclosure. Such records may not be disclosed without the individual's written consent except under circumstances specified in the subsection.

**Section 397.6760(1), F.S.** – Petitions for involuntary assessment and stabilization, court orders, related records, and personal identifying information regarding substance abuse impaired persons which are filed with or by a court under Part V of ch. 397, are confidential. Disclosure is authorized upon request to persons and entities specified in the exemption.

**Section 397.752, F.S.** – An inmate's substance abuse service records are confidential in accordance with s. 397.501(7).

**Section 400.0077(1), F.S.** – Except as otherwise provided in the subsection, the following records relating to long-term care ombudsman councils are confidential and exempt from s. 119.07(1): resident records held by an ombudsman or by the state or a local ombudsman council; the names or identities of complainants or residents involved in a complaint; and any other information about a complaint.

**Section 400.0077(2), F.S.** – That portion of a long-term care ombudsman council meeting in which the council discusses information that is confidential and exempt from s. 119.07(1) is closed to the public and exempt from s. 286.011.

**Section 400.022(1)(m), F.S.** – Personal and medical records of nursing home residents are confidential and exempt from s. 119.07(1).

**Section 400.0255(14), F.S.** – Except as provided in this subsection, in any proceeding under this section (relating to hearings of facility decisions to transfer or discharge nursing home residents) the following information concerning the parties is confidential and exempt from disclosure: names and addresses, medical services provided, social and economic conditions, personal information evaluations, medical data, and information verifying income eligibility and amount of medical assistance payments.

**Section 400.119, F.S.** – Records of meetings of the risk management and quality assurance committee of a long-term care facility, as well as incident reports filed with the facility's risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse-incident reports from the facility are confidential and exempt. Meetings of an internal risk management and quality assurance committee are exempt from open meetings requirements and are not open to the public.

**Section 400.494(1), F.S.** – Information about patients received by persons employed by, or providing services to, a home health agency or received by the licensing agency through reports or inspection is confidential and exempt from s. 119.07(1) and shall be disclosed only as authorized in the exemption.

**Section 400.611, F.S.** – The interdisciplinary record of hospice patient care and billing records are confidential and may not be released except as provided in the exemption. Information obtained from patient records by a state agency pursuant to its statutory authority to compile statistical data is confidential and exempt from s. 119.07(1).



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**Section 400.945, F.S.** – Medical and personal identifying information about patients of a home medical equipment provider which is received by the licensing agency through reports or inspection is confidential and exempt.

**Section 401.30(3), F.S.** – Reports to the Department of Health from emergency medical services licensed pursuant to Part III, Ch. 401, which cover statistical data are public records except that the names of patients and other patient identifying information contained in such reports are confidential and exempt from s. 119.07(1).

**Section 401.30(4), F.S.** – Records of emergency calls which contain patient examination or treatment information are confidential and exempt from s. 119.07(1), and may not be disclosed except as provided in the subsection.

**Section 401.414(3), F.S.** – A complaint concerning an alleged violation of Part III of Ch. 401, relating to emergency medical services, and all information obtained in the investigation by the Department of Health shall be confidential and exempt from s. 119.07(1) until 10 days after probable cause is found or the subject of the investigation waives confidentiality, whichever occurs first. However, the department is not prohibited from providing such information to a law enforcement or regulatory agency.

**Section 401.425(5), F.S.** – The records obtained or produced by an emergency medical review committee providing quality assurance activities as described in subsections (1) through (4) of the section are exempt from disclosure and committee proceedings and meetings regarding quality assurance activities are exempt from open meetings requirements.

**Sections 402.165(8) and 402.166(8), F.S.** – All information obtained or produced by the Florida Statewide Advocacy Council or by a local advocacy council that is made confidential by law, that relates to the identity of a client subject to the protections of this section, or that relates to the identity of an individual providing information to the council about abuse or alleged violations of rights, is confidential and exempt from disclosure. Portions of meetings before such councils relating to the identity of such individuals or where testimony is provided relating to records otherwise made confidential by law are not subject to open meetings requirements. All records prepared by council members which reflect a mental impression, investigative strategy, or theory are exempt from s. 119.07(1) until completion of the investigation or the investigation ceases to be active as defined in the section.

**Section 402.22(3), F.S.** – Statutory confidentiality requirements apply to information used by interdisciplinary teams involved in decisions regarding the design and delivery of specified services to students residing in residential care facilities operated by the Department of Children and Families and the Agency for Persons with Disabilities, and such information is exempt from ss. 119.07(1) and 286.011.

**Section 402.308(3)(a), F.S.** – Disclosure of the social security number submitted by an applicant for a child care facility license issued by the Department of Children and Families shall be limited to child support enforcement purposes.

**Section 403.067(7)(c)6., F.S.** – Agricultural records relating to production methods, profits, or financial information held by the Department of Agriculture and Consumer Services in connection with its duties relating to water pollution reduction are confidential and exempt from disclosure requirements.

**Section 403.074(3), F.S.** – Proprietary information obtained by the Department of Environmental Protection during a visit to provide onsite technical assistance pursuant to the Pollution Prevention Act shall be treated in accordance with s. 403.111, unless such confidentiality is waived by the party who requested assistance.



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**Section 403.111, F.S.** – Except as otherwise provided in this section, upon a determination of confidentiality by the Department of Environmental Protection in accordance with the standard and procedures established in subsection (1), specified manufacturing or financial information which is obtained through inspection or investigation by the department shall be exempt from s. 119.07(1), shall not be disclosed in public hearings, and shall be kept confidential by the department.

**Section 403.7046(2) and (3)(b), F.S.** – Information reported to the Department of Environmental Protection or to a local government by a recovered materials dealer pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from disclosure.

**Section 403.73(1), F.S.** – Trade secrets as defined in s. 812.081 contained in records, reports, or information obtained from any person under the Florida Resource Recovery and Management Act which have been determined by the Department of Environmental Protection, in accordance with the procedures set forth in this section, to constitute trade secrets, are confidential and exempt from s. 119.07(1) except as provided in the subsection.

**Section 405.02, F.S.** – Research groups, governmental health agencies, medical societies and in-hospital medical staff committees may use or publish released information only for the purpose of advancing medical research or education.

**Section 405.03, F.S.** – The identity of any person treated or studied as provided in this chapter (relating to medical information available for research) shall be confidential and exempt from s. 119.07(1).

**Section 406.075(3)(b), F.S.** – All proceedings and findings of the probable cause panel investigating a medical examiner are exempt from s. 286.011 until probable cause has been found or the subject of the investigation waives confidentiality. The complaint, investigative findings, and recommendations of the probable cause panel are exempt from s. 119.07(1) until 10 days after probable cause has been found or until the subject has waived confidentiality. The commission may provide such information at any time to any law enforcement or regulatory agency.

**Section 406.135, F.S.** – Except as provided in the exemption, autopsy photographs and video and audio recordings of an autopsy held by the medical examiner are confidential and exempt from public disclosure.

**Section 408.061(1)(d), F.S.** – Specific provider contract reimbursement data which are obtained by the Agency for Health Care Administration from health care facilities, health care providers, or health insurers as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from disclosure.

**Section 408.061(7), F.S.** – Portions of patient records obtained or generated by the Agency for Health Care Administration which contain identifying information of any person or the spouse, relative, or guardian of such person or any other identifying information which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and exempt from disclosure.

**Section 408.061(8), F.S.** – The identity of any health care provider, health care facility, or health care insurer who submits proprietary business information, as defined in the section, to the Agency for Health Care Administration is confidential and exempt from disclosure except as provided in the subsection.

**Section 408.061(10), F.S.** – Confidential health care information may be released to other governmental entities or to parties contracting with the Agency for Health Care Administration; however, the receiving entity shall retain the confidentiality of such information as provided in



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this section.

**Section 408.185, F.S.** – Trade secrets and other confidential proprietary business information submitted by a member of the health care community to the Office of the Attorney General pursuant to a request for an antitrust no-action letter are confidential and exempt from disclosure for one year after the date of submission.

**Section 408.910(14), F.S.** – Personal identifying information of an enrollee or participant in the Florida Health Choices Program is confidential and exempt from public disclosure. In addition, certain proprietary confidential business information is confidential.

**Section 409.1678(6), F.S.** – Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in cited statute, which is held by an agency, is confidential and exempt; however, the information may be disclosed as provided in the exemption.

**Section 409.175(12), F.S.** – It is unlawful for any person, agency, family foster home, summer day camp, or summer 24-hour camp providing care for children to release information from the criminal or juvenile records obtained under this section to any other person for any purpose other than screening for employment as specified in this section.

**Section 409.175(16), F.S.** – Specified personal information about foster parent applicants, licensed foster parents, and the families of foster parent applicants and licensees, held by the Department of Children and Families is exempt from disclosure unless otherwise provided by a court or as provided in the exemption. The name, address, and telephone number of persons providing character or neighbor references are exempt.

**Section 409.176(12), F.S.** – It is unlawful for any person or facility to release information from the criminal or juvenile records obtained under Ch. 435, s. 409.175 or this section (relating to registration of residential child-caring agencies) for any purpose other than screening for employment as specified in those statutes.

**Section 409.25661, F.S.** – Information obtained by the Department of Revenue under an insurance claims data exchange system is confidential and exempt until such time as the department determines whether a match exists. If a match exists, such information becomes available for public disclosure. If a match does not exist, the nonmatch information shall be destroyed as provided in s. 409.25659, F.S.

**Section 409.2577, F.S.** – Information gathered or used by the parent locator service is confidential and exempt from s. 119.07(1) and such information may be made available only to the persons and agencies and for the purposes listed in the section.

**Section 409.2579, F.S.** – Information concerning applicants for or recipients of Title IV-D child support services is confidential and exempt from s. 119.07(1). The use or disclosure of such information by the IV-D program is limited to the purposes, and subject to the limitations, set forth in the section.

**Section 409.441(4), F.S.** – All information about clients which is part of a runaway youth center's intake and client records system is confidential and exempt from s. 119.07(1).

**Section 409.821, F.S.** – Information identifying a Florida Kidcare applicant or enrollee held by specified agencies is confidential and exempt, and may be disclosed only as authorized in the exemption.

**Section 409.910(17)(i), F.S.** – All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any



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other person relating to an allegation of recipient fraud or theft is confidential and exempt from s. 119.07(1): until such time as the Agency for Health Care Administration takes final agency action; until the case is referred for criminal prosecution; until an indictment or information is filed in a criminal case; or at all times if otherwise protected by law.

**Section 409.91196(1) and (2), F.S.** – The rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebate, and other trade secrets that the Agency for Health Care Administration has identified for use in negotiations, held by the agency under cited statute are confidential and exempt from public disclosure requirements. That portion of a meeting of the Medicaid Pharmaceutical and Therapeutics Committee at which this information is discussed is exempt from public meetings requirements. A record of an exempt portion of a meeting must be made and maintained.

**Section 409.913(12), F.S.** – The complaint and all information obtained pursuant to an investigation of a Medicaid provider, or the authorized representative of a provider, relating to an allegation of fraud, abuse, or neglect are confidential and exempt from s. 119.07(1) until such time as the Agency for Health Care Administration takes final agency action; until the Attorney General refers the case for criminal prosecution; until 10 days after the complaint is determined to be without merit; or at all times if otherwise protected by law.

**Section 409.920(9)(f), F.S.** – Pursuant to the conduct of the statewide program of Medicaid fraud control, the Attorney General shall safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records beyond the scope of a specific investigation of fraud or abuse without the patient's written consent.

**Section 410.037, F.S.** – Information about disabled adults receiving services under ss. 410.031-410.036 (relating to home care of disabled adults) which is received by the Department of Children and Families or its authorized employees, or by persons who provide services to disabled adults or elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner that identifies a disabled adult without the written consent of the person or his or her legal guardian.

**Section 410.605, F.S.** – Information about disabled adults receiving services under the Community Care for Disabled Adults Act which is received by the Department of Children and Families or its authorized employees, or by persons who provide services to disabled adults as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner which would identify a disabled adult without the written consent of such person or the disabled adult's legal guardian.

**Section 413.012(1), F.S.** – All records furnished to the Division of Blind Services in connection with state or local vocational rehabilitation programs and containing information as to personal facts about applicants or clients given to the state or local vocational rehabilitation agency, its representatives or its employees in the course of the administration of the program including lists of names, addresses and records of client evaluations are confidential and exempt from s. 119.07(1).

**Section 413.341, F.S.** – Oral and written records, information, letters and reports received, made, or maintained by the Division of Vocational Rehabilitation of the Department of Education relative to any applicant or eligible individual are privileged, confidential, and exempt from s. 119.07(1), and may not be released except as provided in the section. Records that come into the possession of the division and that are confidential by other provisions of law are confidential and exempt from the provisions of s. 119.07(1), and may not be released by the division, except as provided in this section.

**Section 413.405(11), F.S.** – Meetings, hearings, and forums of the Florida Rehabilitation



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Council established to assist the Division of Vocational Rehabilitation in the planning and development of statewide rehabilitation programs and services shall be open and accessible to the public unless there is a valid reason for an executive session.

**Section 413.615(7)(a) and (b), F.S.** – The identity of, and all information identifying, a donor or prospective donor to the Florida Endowment Foundation for Vocational Rehabilitation who desires to remain anonymous is confidential and exempt from disclosure. Portions of the meetings of the foundation during which the identity of donors or prospective donors is discussed are exempt from open meetings requirements. Records relating to clients or applicants to the Division of Vocational Rehabilitation that come into the possession of the foundation and that are confidential by other provisions of law are confidential and exempt from disclosure, and may not be released by the foundation. Portions of meetings of the foundation during which the identities of such clients or applicants are discussed are exempt from open meetings requirements.

**Section 413.615(11), F.S.** – The identities of donors and prospective donors to the Florida Endowment for Vocational Rehabilitation who desire to remain anonymous shall be protected and the anonymity shall be maintained in the auditor's report.

**Section 414.106, F.S.** – That portion of a meeting held by the Department of Children and Families, CareerSource Florida, Inc., or a local workforce development board or local committee created pursuant to s. 455.007 at which personal identifying information contained in records relating to temporary cash assistance is discussed is exempt from open meetings requirements, if the information identifies a participant, a participant's family or household member.

**Section 414.295(1), F.S.** – Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant, a participant's family or a participant's family or household member, except for information identifying a noncustodial parent, held by the agencies set forth in the exemption, is confidential and exempt from public disclosure requirements.

**Section 415.1045(1)(a), F.S.** – All photographs and videotapes taken during the course of a protective investigation of alleged abuse or neglect of a vulnerable adult are confidential and exempt from public disclosure as provided in s. 415.107.

**Section 415.107(1), F.S.** – All records concerning reports of abuse, neglect or exploitation of a vulnerable adult, including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and may not be disclosed except as authorized in ss. 415.101-415.113.

**Section 415.107(3)(l), F.S.** – Access to records concerning reports of abuse, neglect or exploitation of a vulnerable adult shall be granted to any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

**Section 415.107(6), F.S.** – The identity of any person reporting adult abuse, neglect or exploitation may not be released without that person's written consent to any person except as authorized in the subsection. This subsection grants protection only for the person who reports adult abuse, neglect or exploitation and protects only the fact that the person is the reporter.

**Section 415.111(2), F.S.** – A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult except as provided in ss. 415.101-415.113 commits a second degree misdemeanor.



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**Section 427.705(6), F.S.** – The names, addresses, and telephone numbers provided to the Public Service Commission or administrator of the telecommunications access system established for the hearing impaired and speech impaired populations, by applicants for specialized telecommunications devices are confidential and exempt from s. 119.07(1). The information may be released to contractors only for the purposes set forth in the subsection.

**Section 430.105, F.S.** – Personal identifying information in a record held by the Department of Elderly Affairs that relates to an individual's health or eligibility for or receipt of health-related, elder care, or long-term care services is confidential and exempt from public disclosure requirements. Such information may be disclosed to another governmental entity for the purpose of administering the department's programs for the elderly or if the affected individual or his or her legal representative provides written consent.

**Section 430.207, F.S.** – Information about functionally impaired elderly persons receiving services under the Community Care for the Elderly Act which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to functionally impaired elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

**Section 430.504, F.S.** – Information about clients of programs created or funded under s. 430.501 or s. 430.503 (relating to Alzheimer's Disease) which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to clients of programs created or funded under these sections as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

**Section 430.608, F.S.** – Identifying information about elderly persons receiving services under ss. 430.601-430.606 which is collected and held by the Department of Elderly Affairs or its employees, by volunteers, or by persons who provide services to elderly persons under ss. 430.601-430.606 through contracts with the department, is confidential and exempt from disclosure.

**Section 435.09, F.S.** – No criminal or juvenile information obtained under this section may be used for any other purpose than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal and juvenile records obtained by the department or employer are exempt from s. 119.07(1).

**Section 440.102(8), F.S.** – Except as provided in this subsection, all information, interviews, reports, statements, memoranda, and drug test results received or produced as a result of a drug-testing program are confidential and exempt from disclosure, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings except in accordance with this section or in determining compensability under the workers' compensation law.

**Section 440.108, F.S.** – All investigatory records made or received pursuant to s. 440.107, [relating to enforcement of employer compliance with workers' compensation coverage requirements], and any records necessary to complete an investigation held by the Department of Financial Services are confidential and exempt until the investigation is completed or ceases to be "active" as defined in the exemption. After the investigation is completed or ceases to be active, information in the records remains confidential and exempt if it would jeopardize the integrity of another active investigation; reveal a trade secret, business or personal financial information or personal identifying information regarding the identity of a confidential informant; defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.

**Section 440.125, F.S.** – Medical records and reports of an injured employee and any information identifying an injured employee in medical bills provided to the Department



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of Financial Services pursuant to s. 440.13, are confidential and exempt, except as otherwise provided by this section and Ch. 440.

**Section 440.132, F.S.** – Investigatory records of the Agency for Health Care Administration made or received pursuant to s. 440.134, and any examination records necessary to complete an investigation are confidential and exempt, until the investigation is completed or ceases to be "active," as that term is defined in the subsection, except that medical records which specifically identify patients must remain confidential and exempt.

**Section 440.1851(1), F.S.** – Personal identifying information of an injured or deceased employee which is contained in records of the Department of Financial Services pursuant to the Workers' Compensation Law is confidential, except as otherwise provided in the exemption.

**Section 440.25(3), F.S.** – Information from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, relating to a mediation conference under the Workers' Compensation Law obtained by any person performing mediation duties is privileged and confidential and may not be disclosed without the written consent of all parties to the conference.

**Section 440.3851, F.S.** – Except as provided in the exemption, claims files of the Florida Self-Insurers Guaranty Association, Incorporated, and medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant, are confidential and exempt. Portions of meetings of the Association at which such confidential records are discussed are exempt from open meetings requirements.

**Section 440.39(7), F.S.** – Documents and inspection results produced pursuant to this subsection relating to investigation and prosecution of claims against third-party tortfeasors, are confidential and exempt from s. 119.07(1).

**Section 440.515, F.S.** – The Department of Financial Services shall maintain reports from self-insurers filed pursuant to former s. 440.51(6) as confidential and exempt from s. 119.07(1). The reports shall be released only as authorized in this section.

**Section 443.101(11)(c), F.S.** – Disclosure of drug tests and other information pertaining to drug testing of individuals who receive compensation under this chapter (Reemployment Assistance) shall be governed by s. 443.1715.

**Section 443.1316(2)(b), F.S.** – Provisions of cited statutes which relate to confidentiality of records apply to collection of reemployment assistance contributions and reimbursements by the Department of Revenue unless prohibited by federal law.

**Section 443.1715(1), F.S.** – Except as provided in the subsection, information revealing an employing unit's or individual's identity obtained from an employing unit or any individual under the administration of Ch. 443 (Reemployment Assistance), is confidential and exempt from s. 119.07(1) and may be disclosed only as authorized in the subsection.

**Section 443.1715(3)(b), F.S.** – Unless otherwise authorized by law, information described in the subsection and received by an employer through a drug-testing program, or obtained by a public employee under this chapter (Reemployment Assistance) is confidential and exempt until introduced into the public record under a hearing conducted under s. 443.151(4).

**Section 447.205(10), F.S.** – Deliberations of the Public Employees Relations Commission in any proceeding before it are exempt from s. 286.011 except any hearing held or oral argument heard by the commission pursuant to Ch. 120 or Ch. 447 shall be open to the public. All draft orders developed in preparation for or preliminary to the issuance of a final written order are confidential and exempt from s. 119.07(1).



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**Section 447.307(2), F.S.** – The petitions and dated statements signed by employees regarding whether employees desire to be represented in a proposed bargaining unit are confidential and exempt from s. 119.07(1), except that an employee, employer, or employee organization shall be given an opportunity to verify and challenge signatures as provided in the subsection.

**Section 447.605(1), F.S.** – All discussions between the chief executive officer of a public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from s. 286.011.

**Section 447.605(3), F.S.** – All work products developed by the public employer in preparation for and during collective bargaining negotiations shall be confidential and exempt from s. 119.07(1).

**Section 455.213(10), F.S.** – Disclosure of a license applicant's social security number obtained by the Department of Business and Professional Regulation pursuant to this section shall be limited to the purpose of administration of the child support enforcement program and use by the department, and as otherwise provided by law.

**Section 455.217(5), F.S.** – Meetings and records of meetings of any member of the Department of Business and Professional Regulation or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011.

**Section 455.2235(3), F.S.** – Information relating to the mediation of a case pursuant to this section shall be subject to the confidentiality provisions of s. 455.225.

**Section 455.225(2), F.S.** – For cases dismissed prior to a finding of probable cause, the report submitted by the Department of Business and Professional Regulation regarding dismissal of a complaint which the department has previously determined to be legally sufficient is confidential and exempt from s. 119.07(1).

**Section 455.225(4), F.S.** – All proceedings of a probable cause panel of a board within the Department of Business and Professional Regulation are exempt from s. 286.011 until 10 days after the panel finds probable cause or until the subject of the investigation waives confidentiality.

**Section 455.225(10), F.S.** – The complaint and all information obtained pursuant to an investigation by the Department of Business and Professional Regulation are confidential and exempt from s. 119.07(1), until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives confidentiality, whichever is first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act.

**Section 455.229(1) and (2), F.S.** – Information required by the Department of Business and Professional Regulation of an applicant is open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except as provided in the subsection. Information supplied to the department which is exempt or confidential remains exempt or confidential while in the custody of the department. Examination questions and answers may be considered only in camera in any Ch. 120 administrative proceeding. Examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1) unless invalidated by the administrative law judge.

**Section 455.232(1), F.S.** – No officer, employee or person under contract with the Department of Business and Professional Regulation or any board therein, or any subject of an



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investigation shall convey knowledge or information to any person not lawfully entitled to such information or knowledge about any meeting or public record, which at the time such knowledge or information is conveyed, is exempt from ss. 119.01, 119.07(1) or 286.011.

**Section 455.32(15), F.S.** – The exemptions set forth in cited provisions of Ch. 455, relating to records of the Department of Business and Professional Regulation, also apply to records held by the corporation with which the department contracts pursuant to the Management Privatization Act.

**Section 456.014(1) and (2), F.S.** – Information required by the Department of Health of an applicant is open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except as provided in the subsection. Examination questions and answers may be considered only in camera in any Ch. 120 administrative proceeding. Examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1) unless invalidated by the administrative law judge.

**Section 456.017(4), F.S.** – Meetings of any member of the Department of Health or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are exempt from open meetings requirements and any public records such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from disclosure.

**Section 456.046, F.S.** – A patient name or other information that identifies a patient which is in a record obtained by the Department of Health for the purpose of compiling a practitioner profile pursuant to s. 456.041 is confidential and exempt from disclosure.

**Section 456.051(1), F.S.** – The report of a claim or action for damages for personal injury which is required to be filed with the Department of Health under cited statutes is public information except for the name of the claimant or injured person, which remains confidential.

**Section 456.057(7)(a), F.S.** – Except as otherwise provided in the exemption, patient records generated by health care practitioners may not be furnished to any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care and treatment.

**Section 456.057(9), F.S.** – All patient records obtained by the Department of Health and any other documents maintained by the department which identify the patient by name are confidential and exempt and shall be used solely for the purpose of the department and the appropriate board in disciplinary proceedings.

**Section 456.073(2), F.S.** – For cases dismissed prior to a finding of probable cause, the report submitted by the Department of Health regarding dismissal of a complaint which the department has previously determined to be legally sufficient is confidential and exempt from s. 119.07(1).

**Section 456.073(4), F.S.** – All proceedings of a probable cause panel of a board within the Department of Health are exempt from s. 286.011 until 10 days after the panel finds probable cause or until the subject of the investigation waives confidentiality.

**Section 456.073(9)(c), F.S.** – The identity of the expert whose report supported the Department of Health's recommendation for closure of a complaint, which report is provided to the complainant in accordance with this paragraph, shall remain confidential.

**Section 456.073(10), F.S.** – Except as provided in this subsection, a complaint and all



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information obtained pursuant to an investigation by the Department of Health is confidential and exempt from s. 119.07(1), until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives confidentiality, whichever is first.

**Section 456.076(13), F.S.** – All information obtained by the consultant pursuant to the impaired practitioner program provided by this section is confidential and exempt from s. 119.07(1), F.S.

**Section 456.078(4), F.S.** – Information relating to the mediation of a case pursuant to this section shall be subject to the confidentiality provisions of s. 456.073.

**Section 456.082, F.S.** – No officer, employee or person under contract with the Department of Health, or any subject of an investigation shall convey knowledge or information to any person not lawfully entitled to such information or knowledge about any meeting or public record, which at the time such knowledge or information is conveyed, is exempt from ss. 119.01, 119.07(1) or 286.011.

**Section 458.3193, F.S.** – All personal identifying information contained in records provided by physicians licensed under chapter 458 or 459 in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt, and shall be disclosed only as provided in the subsection. NOTE: Also published in s. 459.0083, F.S.

**Section 458.331(1)(s), F.S.** – If the Department of Health files a petition for enforcement against a physician pursuant to this paragraph, the licensee shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. *See also* ss. 457.109(1)(o) (acupuncturist); 459.015(1)(w) (osteopathic physician); 464.018(1)(j) (nurse); 466.028(1)(s) (dentist), and 486.125(1)(a)1., F.S. (physical therapist).

**Section 458.337(3), F.S.** – Records of a medical organization or hospital taking disciplinary action against a physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

**Section 458.339(3), F.S.** – Medical reports pertaining to the mental and physical condition of physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

**Section 458.341, F.S.** – Patient medical records obtained during a search of a physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

**Section 459.016(3), F.S.** – Records of a medical organization taking disciplinary action against an osteopathic physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

**Section 459.017(3), F.S.** – Medical reports pertaining to the mental and physical condition of osteopathic physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint issued.

**Section 459.018, F.S.** – Patient medical records obtained during a search of an osteopathic physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

**Section 464.0096, F.S.,** – Specified records obtained from the coordinated licensure



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health information system established in s. 464.0095 are exempt as are portions of meetings of the Interstate Commission of Nurse Licensure Compact Administrators where exempt records are discussed.

**Section 464.208(2), F.S.** – Criminal records or juvenile records relating to vulnerable adults that are obtained by the Board of Nursing for purposes of determining whether a person meets the requirements of Part II of Ch. 464, relating to certified nursing assistants are confidential and exempt from s. 119.07(1).

**Section 465.017(3), F.S.** – Except as permitted in the enumerated chapters, records maintained in a pharmacy relating to the filling of prescriptions and the dispensing of medicinal drugs shall not be furnished to persons other than the patient or legal representative, or to the department or to the patient's spouse if the patient is incapacitated and has provided written authorization. Rules adopted by the Board of Pharmacy relative to disposal of records of prescription drugs shall be consistent with the duty to preserve the confidentiality of such records in accordance with applicable state and federal law.

**Section 466.022(3), F.S.** – Peer review information regarding dentists obtained by the Department of Health as background information shall remain confidential and exempt from ss. 119.07(1) and 286.011 regardless of whether probable cause is found.

**Section 466.0275(2), F.S.** – Medical reports pertaining to the mental and physical condition of dentists which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

**Section 466.041(3), F.S.** – Any report of hepatitis B carrier status filed by a licensee or applicant in compliance with the requirements established by the Board of Dentistry shall be confidential and exempt from s. 119.07(1), except for the purpose of investigation or prosecution of an alleged violation of this chapter by the Department of Health.

**Section 471.038(7), F.S.** – The exemptions set forth in ss. 455.217, 455.225, and 455.229, for records of the Department of Business and Professional Regulation apply to records created or maintained by the Florida Engineers Management Corporation, except as provided in the subsection.

**Section 472.0131(5), F.S.** – Meetings and records of meetings of any member of the Department of Agriculture and Consumer Services or of the Board of Professional Surveyors and Mappers held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt; however, the exemption does not affect the right of a person to review an examination as provided in subsection (3).

**Section 472.0201(1) and (2), F.S.** – All information required by the Department of Agriculture and Consumer Services of any applicant shall be a public record and open to public inspection except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt and shall not be discussed with or made accessible to anyone except as provided therein. Any information supplied to the department by any other agency which is exempt from Ch. 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department. Examination questions and answers provided by the department to an administrative law judge in an administrative hearing are confidential and exempt unless invalidated by the administrative law judge.

**Section 472.02011, F.S.** – An officer, employee, or person under contract with the Department of Agriculture and Consumer Services or the Board of Professional Surveyors and Mappers, or any subject of an investigation may not convey knowledge or information to any



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person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from disclosure.

**Section 472.033(2), (4), and (10), F.S.** – For cases involving a complaint to the Department of Agriculture and Consumer Services that are dismissed before a finding of probable cause, the report of the department is confidential and exempt from s. 119.07(1). All proceedings of the probable cause panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, the exemption does not apply to actions against unlicensed persons pursuant to s. 472.036.

**Section 474.214(1)(h), F.S.** – If the Department of Business and Professional Regulation files a petition for enforcement against a veterinarian pursuant to this paragraph, the licensee shall not be named or identified by initials in any other public court records and the enforcement proceedings shall be closed.

**Section 474.2167, F.S.** – Animal medical records held by a state college of veterinary medicine are confidential and exempt.

**Section 474.2185, F.S.** – Medical reports pertaining to the mental and physical condition of veterinarians which are maintained by the Department of Business and Professional Regulation pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

**Section 481.205(3)(a), F.S.** – Complaints and any information obtained pursuant to an investigation by the Board of Architecture and Interior Design are confidential and exempt from disclosure as provided in s. 455.225(2) and (10), F.S.

**Section 487.031(5), F.S.** – Information relative to formulas of products acquired by the Department of Agriculture and Consumer Services pursuant to the registration of pesticides is confidential and exempt from s. 119.07(1).

**Section 487.041(5), F.S.** – Confidential data received from the Department of Agriculture and Consumer Services by governmental agencies in providing review and comment to the department regarding pesticide registration shall be confidential and exempt from s. 119.07(1).

**Section 493.6121(5), F.S.** – Criminal justice information submitted to the Department of Agriculture and Consumer Services pursuant to the department's prescribed duties relating to licensure of private investigative, private security, and repossession services, is confidential and exempt from s. 119.07(1).

**Section 493.6121(7), F.S.** – An investigation conducted by the Department of Agriculture and Consumer Services pursuant to this chapter relating to private investigative, private security, and repossession services, is exempt from s. 119.07(1) until a probable cause determination has been made, the case is closed prior to a determination of probable cause, or the subject of the investigation waives confidentiality.

**Section 493.6122, F.S.** – The residence telephone number and residence address of certain licensees maintained by the Department of Agriculture and Consumer Services is confidential and exempt from s. 119.07(1), except that this information may be provided to law enforcement agencies. When the residence telephone number or address is or appears to be the business



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telephone number or address, this information is public record.

**Section 494.00125(1), F.S.** – Except as provided therein, information relating to an investigation by the Office of Financial Regulation pursuant to the Mortgage Brokerage and Mortgage Lending Act, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as defined in the subsection, unless disclosure would result in certain enumerated consequences. If the investigation could endanger the safety of employees or their families, specified information about such personnel and their families is confidential and exempt from s. 119.07(1).

**Section 494.00125(2), F.S.** – All audited statements submitted pursuant to this act (relating to mortgage brokerage and lending) are confidential and exempt from s. 119.07(1), except that employees of the Office of Financial Regulation shall have access to such information in the administration and enforcement of the act and prosecution of violations.

**Section 494.00125(3), F.S.** – Credit history information and credit scores held by the Office of Financial Regulation and related to licensing under ss. 494.001-494.0077 are confidential and exempt except as provided therein.

**Section 497.172(1), F.S.** – Portions of meetings of the Board of Funeral, Cemetery, and Consumer Services at which licensure examination questions or answers are discussed are exempt from open meetings requirements; however, the closed meetings must be recorded. Such recordings are exempt from disclosure. Except as provided in the exemption, financial examination and inspection records are confidential and exempt until the examination or inspection is completed or ceases to be active. Information relating to an investigation of a violation is confidential and exempt until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made. Trade secrets are confidential and exempt.

**Section 497.172(2), F.S.** – Meetings of the probable cause panel of the Board of Funeral, Cemetery, and Consumer Services, pursuant to s. 497.153 are exempt from open meeting requirements although such meetings must be recorded. Records of exempt meetings of the probable cause panel are exempt from disclosure requirements until 10 days after a determination regarding probable cause is made.

**Section 497.172(3) and (4), F.S.** – Except as provided therein, information held by the Department of Financial Services pursuant to a financial examination or inspection under Ch. 497 are confidential and exempt until the examination or inspection is completed or ceases to be active. Information held by the department relating to an investigation of a violation of Ch. 497 is confidential and exempt until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made. Trade secrets are confidential and exempt.

**Section 499.051(7)(a)(b), F.S.** – The complaint and all information obtained pursuant to an investigation by the Department of Health under the Florida Drug and Cosmetic Act are confidential and exempt from disclosure until the investigation and enforcement action are completed. Trade secret information as defined in s. 812.081 must remain confidential as long as the information is held by the department.

**Section 500.148(3), F.S.** – Information deemed confidential under cited federal enactments and which is provided to the Department of Agriculture and Consumer Services during a joint food safety or food illness investigation, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review, is confidential and exempt and may not be disclosed except as provided in the exemption.

**Section 501.171(11), F.S.** – Information received by the Department of Legal Affairs



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pursuant to a notice of a data breach or pursuant to certain investigations is confidential until the investigation is completed or ceases to be active. Disclosure is authorized under specified circumstances.

**Section 501.2065, F.S.** – Criminal or civil intelligence, investigative information, or any other information held by any state or federal agency that is obtained by the Department of Legal Affairs in the course of an investigation under Part II of Ch. 501 and that is confidential or exempt from s. 119.07(1) retains its status as confidential or exempt from s. 119.07(1).

**Section 502.222, F.S.** – Information in the records of the Department of Agriculture and Consumer Services which would reveal a trade secret of a dairy industry business is confidential and exempt from s. 119.07(1).

**Section 517.12(14), F.S.** – Currency transaction reports filed with the Office of Financial Regulation by dealers and investment advisers pursuant to this subsection are confidential and exempt from s. 119.07(1) except as provided in the subsection.

**Sections 517.2015 (securities) and 520.9965 (retail installment sales), F.S.** – Except as provided in the exemption, information relating to an investigation by the Office of Financial Regulation pursuant to the Florida Securities and Investor Protection Act, or pursuant to the retail installment sales laws, including a consumer complaint, is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as defined in the subsection, unless disclosure would result in any of the enumerated consequences. If the investigation could endanger the safety of employees or their families, specified information about such personnel and their families is confidential and exempt.

**Section 517.2016, F.S.** – Information that would reveal examination techniques or procedures used by the Office of Financial Regulation pursuant to the Florida Securities and Investor Protection Act is confidential and exempt.

**Section 526.311(2), F.S.** – Any records, documents, or other business material, regardless of form or characteristics, obtained by the Department of Agriculture and Consumer Services in an investigation of an alleged violation of the Motor Fuel Marketing Practices Act are confidential and exempt from disclosure, while the investigation is pending. At the conclusion of the investigation, any matter determined by the department or by a state or federal judicial or administrative body to be a trade secret or proprietary confidential business information held by the department pursuant to such investigation shall be confidential and exempt from disclosure.

**Section 527.0201(8), F.S.** – Liquefied petroleum gas competency examinations of the Department of Agriculture and Consumer Services are confidential and exempt.

**Section 527.062(1), F.S.** – Information compiled by the Department of Agriculture and Consumer Services pursuant to an investigation of an accident involving liquefied petroleum gas or equipment is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as defined in the subsection.

**Section 539.003, F.S.** – Except as provided in the subsection, records relating to pawnbroker transactions delivered to appropriate law enforcement officials are confidential and exempt.

**Section 542.28(9), F.S.** – Notwithstanding s. 119.07(1), it is the duty of the Attorney General or a state attorney to maintain the secrecy of all evidence, testimony, documents, work product, or other results of an investigative demand relevant to an antitrust investigation; however, the Attorney General or state attorney may disclose such investigative evidence to the agencies enumerated in the section.



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**Section 548.021(2), F.S.** – Disclosure of a license applicant's social security number which is obtained by the State Athletic Commission pursuant to the statute is limited to child support enforcement purposes.

**Section 548.062(2), F.S.** – Proprietary confidential business information, as defined in the exemption, provided by a promoter to the Florida State Boxing Commission or obtained by the commission through an audit of a promoter's books and records is confidential and exempt. Disclosure is authorized under specified circumstances.

**Section 550.0251(9), F.S.** – All information obtained by the Division of Parimutuel Wagering of the Department of Business and Professional Regulation pursuant to an investigation for an alleged violation of the chapter or rules of the division is exempt from disclosure until an administrative complaint is issued or the investigation is closed or ceases to be active, as defined therein. The division may, however, provide information to any law enforcement agency or other regulatory agency. With the exception of active criminal intelligence or criminal investigative information and any other information that, if disclosed, would jeopardize the safety of an individual, all other information, records and transcriptions become public when the investigation is closed or ceases to be active.

**Section 550.2415(1)(a), F.S.** – Test results and the identities of racing animals being tested and of their trainers and owners are confidential and exempt for 10 days after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the Division of Pari-mutuel Wagering or administrative action has been commenced.

**Section 556.113, F.S.** – Proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system is exempt.

**Section 559.5558(2), F.S.** – Information held by the Office of Financial Regulation pursuant to an investigation or examination of a violation of statutes relating to consumer collection practices is confidential and exempt until the investigation or examination is complete or no longer active. Disclosure is authorized to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities. However, specified information, including certain consumer information, remains confidential.

**Section 559.952(5)(h), F.S.** – Certain information provided to and held by the Office of Financial Regulation in a Financial Technology Sandbox application by specified providers of innovative financial products or services is confidential and exempt. Confidential information may be released as provided in the exemption.

**Section 560.129, F.S.** – Except as otherwise provided in the exemption, information concerning an investigation or examination by the Office of Financial Regulation pursuant to the Money Transmitter's Code, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from disclosure until the investigation or examination ceases to be "active" as that term is defined in the exemption. Confidentiality is also provided for other records such as trade secrets and personal financial records. Other records may also remain confidential if disclosure would result in any of the consequences listed in the exemption. Quarterly reports submitted by a money transmitter are confidential.

**Section 560.312(1)(2), F.S.** – Payment instrument transaction information held by the Office of Financial Regulation pursuant to s. 560.310, F.S. (check cashing and foreign currency exchangers) which identifies a licensee, payor, payee, or conductor is confidential and exempt, except as provided in the exemption.



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**Section 560.4041, F.S.** – Information that identifies a drawer or deferred presentment provider contained in the database authorized under s. 560.404, is confidential and exempt from public disclosure requirements and may not be released except as provided in the subsection.

**Section 561.19(2)(b), F.S.** – Any portion of the drawing results of a particular county to determine which applicants are to be considered for beverage licenses which reveals the rank order of persons not receiving notice of selection is confidential and exempt from s. 119.07(1), until such time as all of the licenses from that county's drawing have been issued.

**Section 569.215(1), F.S.** – Proprietary confidential business information received by specified state officials or outside counsel representing the state for the purpose of negotiation or verification of annual tobacco settlement payments is confidential and exempt from public disclosure requirements.

**Section 570.077, F.S.** – Information held by the Department of Agriculture and Consumer Services as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative or criminal justice agency which is confidential or exempt under the laws or regulations of that state or federal agency is confidential and exempt. Disclosure is authorized under specified circumstances. The exemption does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

**Section 570.48(3), F.S.** – Records of the Division of Fruit and Vegetables of the Department of Agriculture and Consumer Services are public records; except that trade secrets as defined in s. 812.081 are confidential and exempt from s. 119.07(1). The subsection shall not be construed to limit certain enumerated disclosures.

**Section 570.544(8), F.S.** – Records of the Division of Consumer Services of the Department of Agriculture and Consumer Services are public records; however, customer lists, customer names, and trade secrets are confidential and exempt from s. 119.07(1). Disclosure necessary to enforcement procedures does not violate this prohibition.

**Section 570.686, F.S.** – The identity of a donor to the Florida Agriculture Center and Horse Park Authority, if requested by the donor in writing, is confidential and exempt from disclosure.

**Section 570.691(6), F.S.** – The identity of a donor or prospective donor to a direct-support organization established to assist programs of the Department of Agriculture and Consumer Services who desires to remain anonymous and all information identifying such donor or prospective donor is confidential and exempt from disclosure.

**Section 570.715(5), F.S.** – Appraisal reports for conservation easement acquisition are confidential and exempt, for use by the Department of Agriculture and Consumer Services and the Board of Trustees of the Internal Improvement Trust Fund, until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. However, disclosure is authorized under some circumstances, as described in the paragraph. The department may release a report when the passage of time has rendered the conclusions of value invalid or when the department has terminated negotiations.

**Section 573.123(2), F.S.** – Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order issued by the Department of Agriculture and Consumer Services is confidential and exempt from s. 119.07(1) and must not be disclosed except as provided in the subsection. A person who receives such confidential information shall maintain its confidentiality.



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**Section 581.199, F.S.** – It is unlawful for any authorized representative who in an official capacity obtains under the provisions of this chapter (relating to plant industry) any information entitled to protection as a trade secret, as defined in s. 812.081, to reveal that information to any unauthorized person.

**Section 585.611(1), F.S.** – Personal identifying information of those persons employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research is exempt from disclosure when such information is contained in specified records relating to animal research.

**Section 595.409(1)(2), F.S.** – Personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Departments of Agriculture and Consumer Services, Children and Families, or Education is exempt. Such information shall be disclosed as provided in the exemption.

**Section 601.10(8)(b)(c), F.S.** – Information provided to the Department of Citrus which constitutes a trade secret as defined in s. 812.081 is confidential and exempt from s. 119.07(1). Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13, F.S., is confidential and exempt.

**Section 601.15(7)(d), F.S.** – Commercial information which constitutes a trade secret as defined in s. 812.081 and which is required by the Department of Citrus from participants in noncommodity advertising and promotional programs in order to determine eligibility for and performance in such programs, is confidential and exempt from s. 119.07(1).

**Section 601.152(8)(c), F.S.** – Information relating to marketing orders which is furnished to the Department of Citrus pursuant to this section and which, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1).

**Section 601.76, F.S.** – Citrus fruit coloring product formula information filed with the Department of Agriculture and Consumer Services under this section is a trade secret as defined in s. 812.081, is confidential and exempt from s. 119.07(1), and may be divulged only as provided in the section.

**Section 607.0505(6), F.S.** – Information provided to, and records and transcripts obtained by, the Department of Legal Affairs pursuant to this section relating to corporations or alien business organizations are confidential and exempt from s. 119.07(1) while the investigation is active. The department shall not disclose confidential information, records, or transcripts except as authorized by the Attorney General in the circumstances listed in the subsection. **Similar confidentiality provisions exist relating to information received by the department regarding nonprofit corporations (s. 617.0503[6]).**

**Section 624.23, F.S.** – Personal financial and health information as defined therein held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191 is confidential and exempt. The confidential and exempt information may be disclosed to the persons and entities described in the exemption.

**Section 624.231, F.S.** – If the Department of Financial Services or the Office of Insurance Regulation determines that any portion of a record requested by a person is exempt pursuant to Ch. 119, the insurance code, or Ch. 641, the department or office shall disclose to the person in writing that the requested record will be provided in a redacted format and that there will be additional fees charged for staff time associated with researching and redacting the exempt portion of the record. Before the department or office provides the record, the person must affirm his or her request to receive the record.



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**Section 624.310(3)(f), F.S.** – An emergency order entered by the Office of Insurance Regulation or the Department of Financial Services against a licensee or affiliated party under this subsection is confidential and exempt from s. 119.07(1) until made permanent, unless the department or office finds that the confidentiality will result in substantial risk of financial loss to the public. Emergency cease and desist orders that are not made permanent are available for public inspection 1 year from the date the emergency order expires; however, portions of such order shall remain confidential if disclosure would result in any of the consequences listed in the paragraph.

**Section 624.311(2), F.S.** – Records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

**Section 624.319(3), F.S.** – Examination reports of insurers prepared by the Office of Insurance Regulation or the Department of Financial Services or its examiner pursuant to this section are confidential and exempt from s. 119.07(1) until filed. Investigation reports are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the paragraph. After an investigation is completed or ceases to be active, portions of such records shall remain confidential and exempt if disclosure would result in any of the consequences listed in the paragraph. Work papers held by the Department of Financial Services or the Office of Insurance Regulation are confidential and exempt from disclosure until the examination report is filed or until the investigation is complete or no longer active; however, portions of work papers may remain confidential under the conditions specified therein. Information received from another governmental entity or the National Association of Insurance Commissioners, which is confidential or exempt when held by that entity, for the department's or office's use in the performance of its examination or investigation duties are confidential and exempt from disclosure requirements. Lists of insurers or regulated companies are confidential and exempt from s. 119.07(1), if the conditions set forth in the paragraph apply.

**Section 624.40851(1) and (2), F.S.** – Risk-based capital plans and reports as described in the exemption that are held by the Office of Insurance Regulation, as well as specified additional related materials, are confidential and exempt from disclosure. Hearings relating to the office's actions regarding such risk-based capital records, are exempt from open meetings requirements, subject to specified conditions.

**Section 624.4212(2)(3)(4), F.S.** – Certain proprietary confidential business information held by the Office of Insurance Regulation, specified reports submitted, and confidential information received from other jurisdictions which is held by the Office relating to insurer valuation and solvency, are confidential and exempt. Disclosure is authorized under specified circumstances.

**Section 624.82(1), F.S.** – Orders, records, and other information in the possession of the Office of Insurance Regulation relating to the supervision of any insurer are confidential and exempt from s. 119.07(1), except as otherwise provided in this section. Proceedings and hearings relating to the office's supervision of any insurer are exempt from s. 286.011, except as otherwise provided in this section.

**Section 624.86, F.S.** – During the period of administrative supervision, the Office of Insurance Regulation may meet with a supervisor appointed under this part or representatives of the supervisor, and such meetings are exempt from s. 286.011.

**Section 625.121(3)(a)9., F.S.** – Except as otherwise provided in this paragraph, a memorandum or other material in support of the actuarial opinion required to be furnished to the Office of Insurance Regulation under this subsection, is confidential and exempt from s. 119.07(1) and is not subject to subpoena or discovery directly from the Office.



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**Section 625.1214(1), F.S.** – Documents, reports, materials, and other information created, produced, or obtained pursuant to ss. 625.121 and 625.1214 (valuation of policies and contracts) are privileged, confidential, and exempt as provided in s. 624.4212, and are not subject to subpoena or discovery directly from the Office of Insurance Regulation.

**Section 626.511(3), F.S.** – Any information or record regarding the termination of an appointment which is furnished to the Office of Insurance Regulation or the Department of Financial Services under this section is confidential and exempt from s. 119.07(1).

**Section 626.601(6), F.S.** – The complaint and any information obtained pursuant to the investigation by the Office of Insurance Regulation or the Department of Financial Services are confidential and exempt from s. 119.07(1), unless the department or the Office takes specified action against the individual or entity.

**Section 626.631(2), F.S.** – Except as provided in the subsection, the records or evidence of the Department of Financial Services relative to a hearing on the suspension or revocation of a license or appointment are confidential and exempt from s. 119.07(1) until after the material has been published at the hearing.

**Section 626.84195(2), F.S.** – Proprietary business information, as defined in the exemption, provided to the Office of Insurance Regulation by a title insurance agency or insurer is confidential and exempt until such information is otherwise publicly available or Is no longer treated by the title insurance agency or insurer as proprietary business information.

**Section 626.842(3), F.S.** – Information contained in credit or character reports furnished to the Department of Financial Services under this section (relating to applications of title insurance agents) is confidential and exempt from s. 119.07(1).

**Section 626.8433(3), F.S.** – Any information or record furnished to the Department of Financial Services under this section regarding the reasons for termination of the appointment of a title insurance agent is confidential and exempt from s. 119.07(1).

**Section 626.884(2), F.S.** – Except as provided in the subsection, information contained in the books and records of an insurance administrator is confidential and exempt from s. 119.07(1) if the disclosure would reveal a trade secret as defined in s. 688.002.

**Section 626.921(8), F.S.** – Information furnished to the Department of Financial Services pursuant to pertinent statutes relating to policies and examinations of surplus lines agents is confidential and exempt if disclosure would reveal information specific to a particular policy or policy holder. Information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law is confidential and exempt if disclosure would reveal information specific to a particular policy or policy holder.

**Section 626.9651, F.S.** – The Department of Financial Services and the Financial Services Commission must adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information.

**Section 626.989(5), F.S.** – Records of the Department of Financial Services and the Office of Insurance Regulation relating to an investigation of insurance fraud under this section are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the subsection, unless disclosure would result in certain enumerated consequences.

**Section 626.9891(11)(a), F.S.** – Information relating to investigation and tracking of insurance fraud submitted by insurers to the Department of Financial Services is exempt from public disclosure.



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**Section 627.0628(3)(g), F.S.** – A trade secret as defined in s. 668.002 that is used in designing and constructing a hurricane or flood loss model and that is provided pursuant to this section, by a private company, to the Florida Commission on Hurricane Loss Projection Methodology, Office of Insurance Regulation, or the appointed consumer advocate, is confidential and exempt. That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential by this exemption is discussed is exempt from open meetings requirements. The closed meeting must be recorded; the recording is exempt from disclosure.

**Section 627.06292(1), F.S.** – Reports of hurricane loss data and associated exposure data that are specific to a particular insurance company, as reported by an insurer or a licensed rating organization to the Office of Insurance Regulation or to a state university center are exempt from disclosure requirements.

**Section 627.311(4)(a), F.S.** – Certain records of the Florida Automobile Joint Underwriting Association, as described in the exemption, are confidential and exempt from disclosure as set forth in the subsection.

**Section 627.311(4)(b), F.S.** – The Florida Automobile Joint Underwriting Association must keep portions of meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed exempt from open meetings requirements, subject to the conditions set forth in the exemption. A copy of the transcript, less any confidential and exempt information, of any closed meeting during which confidential and exempt claims files are discussed shall become public as to individual claims files after settlement of that claim.

**Section 627.3121, F.S.** – Certain records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., as described in the exemption, are confidential and exempt and may only be released as prescribed therein. That portion of a meeting of the association's board of governors, or any subcommittee of the association's board, at which records made confidential and exempt by the section are discussed is exempt from open meeting requirements; the transcript and minutes of exempt portions of meetings are confidential and exempt from disclosure. Those portions of the transcript or the minutes pertaining to a confidential and exempt claims file are no longer confidential and exempt upon termination of all litigation with regard to that claim.

**Section 627.351(4)(g), F.S.** – All records, relating to the Medical Malpractice Joint Underwriting Association or its operation are open for public inspection, except that a claim file in the possession of the Association is confidential and exempt from s. 119.07(1) during processing of that claim. Information in these files that identifies an injured person is confidential and exempt from s. 119.07(1).

**Section 627.351(6)(x)1., F.S.** – Certain records of the Citizens Property Insurance Corporation, as described in the exemption, are confidential and exempt from disclosure.

**Section 627.351(6)(x)4., F.S.** -- Portions of meetings of the Citizens Property Insurance Corporation are exempt from open meetings requirements where confidential underwriting files or confidential open claims files are discussed, subject to the conditions set forth in the exemption. A copy of the transcript, less any exempt matters, of any closed meeting where claims are discussed shall become public as to individual claims after settlement of the claim.

**Section 627.3518(11), F.S.** – Proprietary confidential business information, as defined in the exemption, that is provided to the Citizens Property Insurance Corporation clearinghouse is confidential and exempt.

**Section 627.352, F.S.** – Certain records of the Citizens Property Insurance Corporation as described in the exemption which identify detection, investigation or response practices for



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suspected or confirmed information technology security incidents as well as those portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program as specified in the exemption are confidential and exempt. Portions of meetings which would reveal such data and information are exempt from s. 286.011, F.S. All exempt portions must be recorded and transcribed and the recordings and transcripts must be kept confidential except as provided in the exemption.

**Section 627.6699(8)(c), F.S.** – Information relating to rating and renewal practices of small employer health insurance carriers which is submitted by the carriers to the Office of Insurance Regulation pursuant to this subsection constitutes proprietary and trade secret information and may not be disclosed except as agreed to by the carrier or pursuant to court order.

**Section 627.912(2)(e), F.S.** – The name and address of the injured person that is contained in reports to the Office of Insurance Regulation regarding professional liability claims is confidential and exempt from s. 119.07(1), and must not be disclosed without the person's consent, except for disclosure to the Department of Health.

**Section 627.9122(2)(e), F.S.** – The name of the injured person contained in a claim report filed by an insurer providing liability coverage for officers and directors is confidential and exempt from s. 119.07(1), and must not be disclosed by the Office of Insurance Regulation without the consent of the injured person.

**Section 627.9126(3)(a)6., F.S.** – The names of claimants identified in reports filed by liability insurers with the Office of Insurance Regulation are confidential and exempt from s. 119.07(1).

**Section 628.801(4), F.S.** – Filings and related documents filed by insurance holding companies as provided in this section are confidential and exempt as provided in s. 624.4212 and are not subject to subpoena or discovery directly from the Office of Insurance Regulation.

**Section 631.195, F.S.** – Specified records of an insurer which are made or received by the Department of Financial Services acting as a receiver are confidential and exempt, including personal and financial information of a consumer, consumer claim files, personnel and payroll records, underwriting files, specified risk information and corporate governance records submitted pursuant to cited statutes, and confidential information received from other governmental entities. Release is authorized under certain circumstances.

**Section 631.398(1), F.S.** – Reports and recommendations made by specified persons to the Office of Insurance Regulation or to the Department of Financial Services relative to the solvency, liquidation, rehabilitation, or conservation of a member insurer or germane to the solvency of a company seeking to do insurance business in this state, are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.582, F.S.** – Certain records of the Florida Insurance Guaranty Association such as specified claims, medical records that are part of a claims file, information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications of the association, are confidential and exempt.

**Section 631.62(2), F.S.** – A request from the board of directors of the Florida Insurance Guaranty Association that the Office of Insurance Regulation order an examination of any member insurer is confidential and exempt from s. 119.07(1) until the examination report is released to the public.

**Section 631.62(3), F.S.** – The reports and recommendations by the board of directors of the Florida Insurance Guaranty Association on any matter germane to the solvency, liquidation,



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rehabilitation, or conservation of any member insurer are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.723(1), F.S.** – The reports and recommendations by the board of directors of the Florida Life and Health Insurance Guaranty Association to the Department of Financial Services or to the Office of Insurance Regulation on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or a company seeking to do insurance business in Florida are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.723(3), F.S.** – A request by the board of directors of the Florida Life and Health Insurance Guaranty Association that the Office of Insurance Regulation order the examination of any member insurer is confidential and exempt from s. 119.07(1) until the examination report is released to the public.

**Section 631.724, F.S.** – Negotiations or meetings of the Florida Life and Health Insurance Guaranty Association involving discussions of the association's powers and duties under 631.717 are exempt from s. 286.011. Records of such negotiations or meetings are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.931, F.S.** – The reports and recommendations by the board of directors of the Florida Workers' Compensation Insurance Guaranty Association under s. 631.917 on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer are confidential and exempt until the termination of a delinquency proceeding.

**Section 631.932, F.S.** – Negotiations between a self-insurance fund and the Florida Workers' Compensation Insurance Guaranty Association are exempt from s. 286.011. Documents related to such negotiations that reveal identifiable payroll and loss and individual claim information are confidential and exempt.

**Section 633.112(7), F.S.** – Records obtained or prepared by the State Fire Marshal pursuant to his or her investigation of fires and explosions are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as that term is defined in the subsection.

**Section 633.126(5), F.S.** – Discussions involving officials of the Department of Financial Services and an insurance company in accordance with this section (relating to investigation of fraudulent insurance claims and crimes) are confidential and exempt from s. 286.011.

**Section 633.324(1), F.S.** – Test material relating to applicants for licensure, certification, or permitting by the State Fire Marshal is made confidential by s. 119.071(1)(a). An applicant may waive confidentiality in writing for purposes of discussion with the State Fire Marshal or his or her staff.

**Section 634.045(5), F.S.** – The filings made by a guarantee organization pursuant to this section relating to guarantee agreements provided by motor vehicle service agreement companies are confidential and exempt from s. 119.07(1).

**Section 634.201(3), F.S.** – The Department of Financial Service's records or evidence relative to a hearing for the suspension or revocation of the license or appointment of a salesman of automobile warranties are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be "active," as that term is defined in the subsection.

**Section 634.348, F.S.** – Active examination or investigatory records of the Department of Financial Services or the Office of Insurance Regulation made or received pursuant to Part II, Ch. 634 (Home Warranty Associations) are confidential and exempt from s. 119.07(1) until such



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investigation is completed or ceases to be "active," as that term is defined in the section.

**Section 634.4065(5), F.S.** – The filings made by a guarantee organization pursuant to this section relating to guarantee agreements provided by service warranty associations are confidential and exempt from s. 119.07(1).

**Section 634.444, F.S.** – Active examination or investigatory records of the Department of Financial Services or the Office of Insurance Regulation made or received pursuant to Part III, Ch. 634 (Service Warranty Associations) are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be "active," as that term is defined in the section.

**Section 636.064(1) and (2), F.S.** – Information pertaining to the diagnosis, treatment, or health of an enrollee of a prepaid limited health service organization is confidential and exempt from disclosure, and shall only be available pursuant to specific written consent of the enrollee or as otherwise provided by law. Any proprietary financial information contained in contracts entered into with providers by prepaid limited health service organizations is confidential and exempt from disclosure.

**Section 636.064(3), F.S.** – Information obtained or produced by the Department of Financial Services or the Office of Insurance Regulation pursuant to an investigation or examination of a prepaid limited health service organization is confidential and exempt from disclosure until the examination report has been filed pursuant to s. 624.319 or until the investigation is completed or ceases to be "active," as that term is defined in the subsection. Except for information specified in the subsection, all information obtained by the office pursuant to an examination or investigation shall be available after the examination report has been filed or the investigation is completed or ceases to be active.

**Section 641.515(2), F.S.** – Patient-identifying information contained in reports and records prepared or obtained under cited statutes (relating to investigation of health maintenance organizations) by the Agency for Health Care Administration or by an outside source, is confidential and exempt from s. 119.07(1).

**Section 641.55(5)(c), F.S.** – Except as otherwise provided in this subsection, any identifying information contained in the reports of a health maintenance organization filed with the Agency for Health Care Administration under this subsection is confidential and exempt from s. 119.07(1).

**Section 641.55(6), F.S.** – Incident reports filed with the Agency for Health Care Administration by a health maintenance organization pursuant to this subsection are confidential and exempt from s. 119.07(1).

**Section 641.55(8), F.S.** – Identifying information in records of a health maintenance organization which are obtained by the Agency for Health Care Administration pursuant to this section (internal risk management program) is confidential and exempt from s. 119.07(1). Identifying information contained in records obtained under s. 456.071 is exempt to the extent that it is part of the record of disciplinary proceedings made available to the public by the agency or appropriate board.

**Section 648.26(3), F.S.** – The Department of Financial Services' investigatory records pertaining to bail bond agents and runners are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the subsection.

**Section 648.34(3), F.S.** – Information in a character and credit report furnished to the Department of Financial Services as part of an application for licensure as a bail bond agent is confidential and exempt from s. 119.07(1).



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**Section 648.39(1), F.S.** – Information furnished to the Department of Financial Services pursuant to this subsection regarding the termination of appointment of a managing general agent, bail bond agent, or temporary bail bond agent is confidential and exempt from s. 119.07(1).

**Section 648.41, F.S.** – Information furnished to the Department of Financial Services pursuant to this subsection regarding the termination of appointment of temporary bail bond agents is confidential and exempt from s. 119.07(1).

**Section 648.46(3), F.S.** – The complaint and all information obtained pursuant to the investigation of a bail bond agent or runner licensee by the Department of Financial Services are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as defined in the subsection.

**Section 651.105(3), F.S.** – Reports of the results of such financial examinations or providers engaged in the execution of care contracts must be kept on file by the Office of Insurance Regulation. Any investigatory records, reports or documents held by the office are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the subsection.

**Section 651.111(2), F.S.** – Unless the complainant who has filed a complaint against a continuing care provider specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint or any record which is published, released, or otherwise made available to the provider shall disclose the name of any person mentioned in the complaint except the names of Office of Insurance Regulation personnel conducting the investigation or inspection pursuant to this chapter.

**Section 651.121(5)(c), F.S.** – Except for proceedings conducted under s. 651.018 (authorizing the Office of Insurance Regulation to place a facility in administrative supervision), the books and records of the Continuing Care Advisory Council to the Office of Insurance Regulation of the Financial Services Commission shall be open to inspection at all times.

**Section 651.134, F.S.** – Any active investigatory record of the Office of Insurance Regulation made or received under Ch. 651 (Continuing Care Contracts) and any active examination record necessary to complete an active investigation is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the section.

**Section 655.0321, F.S.** – The Office of Financial Regulation shall consider the public purposes specified in s. 119.14(4)(b) in determining whether the hearings and proceedings conducted pursuant to s. 655.033 (cease and desist orders) and s. 655.037 (suspension or removal orders) shall be closed and exempt from s. 286.011, and whether related documents shall be confidential and exempt from s. 119.07(1).

**Section 655.033(6), F.S.** – An emergency order entered by the Office of Financial Regulation pursuant to this subsection (relating to the issuance of cease and desist orders to financial institutions in certain circumstances) is confidential and exempt from s. 119.07(1) until the order is made permanent, unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.

**Section 655.057(1), F.S.** – Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the Office of Financial Regulation are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as that term is defined in the section. After the investigation is completed or ceases to be active, portions of the records shall be confidential and exempt from s. 119.07(1) to the extent that disclosure would cause any of the consequences listed in the subsection.



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**Section 655.057(2), F.S.** – Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, prepared by, or for the use of, the Office of Financial Regulation or other agency responsible for regulation of banking institutions in this state are confidential and exempt from s. 119.07(1). Examination, operation, or condition reports of a financial institution shall be released within 1 year after the appointment of a liquidator, receiver, or conservator to such financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from s. 119.07(1).

**Section 655.057(3), F.S.** – Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or cases to be active, informal enforcement actions are confidential and exempt to the extent that disclosure would cause any of the consequences listed in the subsection.

**Section 655.057(4), F.S.** – Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the Office of Financial Regulation in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt.

**Section 655.057(5), F.S.** – Any confidential information or records obtained from the Office of Financial Regulation pursuant to this subsection (authorizing specified disclosures of records or information) shall be maintained as confidential and exempt from s. 119.07(1).

**Section 655.057(6)(b), F.S.** – Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body which received the records or information except in a case involving an investigation of charges against a public official subject to impeachment in which case the legislative body shall determine the extent of disclosure.

**Section 655.057(7), F.S.** – Except as otherwise provided in this subsection, the list of members of a credit union or mutual association which is submitted to the Office of Financial Regulation is confidential and exempt from s. 119.07(1).

**Section 655.057(8), F.S.** – Except as otherwise provided in this subsection, any portion of the list of shareholders of a bank, trust company, and stock association which is submitted to the Office of Financial Regulation pursuant to this subsection and which reveals the identities of the shareholders is confidential and exempt from s. 119.07(1).

**Section 655.057(9), F.S.** – Confidential documents supplied to the Office of Financial Regulation or to employees of a financial institution by other governmental agencies shall be confidential and exempt from s. 119.07(1) and may be made public only with the consent of such agency or corporation.

**Section 655.50(7), F.S.** – Except as provided in the exemption, all reports and records filed with the Office of Financial Regulation pursuant to this section (Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act) are confidential and exempt from s. 119.07(1).

**Section 662.148(2), F.S.** – Certain information, including personal identifying information, held by the Office of Financial Regulation, which relates to a family trust company, is confidential and exempt.

**Section 663.416(2), F.S.** – Certain information, including personal identifying information of the customers or prospective customers of an affiliated international trust entity,



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held by the Office of Financial Regulation is confidential and exempt.

**Section 681.1097(4), F.S.** – A mediation conference conducted pursuant to the RV Mediation and Arbitration Program shall be confidential.

**Section 687.144(6), F.S.** – The material compiled by the Office of Financial Regulation in an investigation or examination under this act (relating to loan brokers) is confidential until the investigation or examination is complete.

**Section 688.006, F.S.** – In an action under the Uniform Trade Secrets Act, a court shall preserve the secrecy of an alleged trade secret by reasonable means as described in the section.

**Section 717.117(8), F.S.** – Social security numbers and property identifiers contained in reports to the Department of Financial Services concerning unclaimed property are confidential and exempt.

**Section 717.1301(5), F.S.** – Material compiled by the Department of Financial Services in an investigation under the Disposition of Unclaimed Property Act is confidential until the investigation is complete; provided that such material remains confidential if it is submitted to another agency for investigation or prosecution and such investigation has not been completed or become inactive.

**Section 721.071, F.S.** – If a developer or other person filing material with the Division of Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation pursuant to chapter 721 relating to time-share plans expects the division to keep the material confidential on grounds that the material constitutes a trade secret as defined in s. 812.081, that person shall file the material together with an affidavit of confidentiality as provided in the section. If the division is satisfied as to the facial validity of the claim of confidentiality, it shall keep the affidavit and supporting documentation confidential and shall not disclose such information except upon administrative or court order.

**Section 723.006(3), F.S.** – Except as otherwise provided in the subsection, mobile home park financial records, as defined in the subsection, which are acquired by the Division of Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation pursuant to an investigation under this section are confidential and exempt.

**Section 733.604(1)(b), F.S.** – Any inventory of an estate filed with the clerk of court in conjunction with the administration of an estate or of an elective estate filed with the clerk of the court in conjunction with an election made in accordance with Part II, Ch. 732, whether initial, amended, or supplementary, is confidential and exempt. Any accounting, whether interim, final, amended, or supplementary, filed with the clerk of court in an estate proceeding is confidential and exempt. Disclosure is authorized under specified circumstances.

**Section 741.29(2), F.S.** – A law enforcement agency shall, without charge, send a copy of the initial police report of domestic violence, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under Ch. 119 to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report.

**Section 741.30(3)(b), F.S.** – A petitioner seeking an injunction for protection against domestic violence may furnish his or her address to the court in a separate confidential filing for safety reasons if the petitioner requires the location of his or her current residence to be confidential.

**Section 741.313(7), F.S.** – Personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency



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employee seeking to take leave as provided therein as provided therein is confidential and exempt. A written request for leave submitted by an agency employee and any agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken.

**Section 741.3165, F.S.** – Information that is confidential or exempt and that is obtained by a domestic violence fatality review team conducting activities as described in s. 741.316 shall retain its confidential or exempt status when held by the team. Information contained in a record created by a team pursuant to s. 741.316 that reveals the identity of a victim of domestic violence or the identity of the victim's children is confidential and exempt. Portions of meetings of the team regarding domestic violence fatalities and their prevention, during which confidential or exempt information, the identity of the victim, or the identity of the victim's children are discussed, are exempt from s. 286.011, F.S.

**Section 741.406, F.S.** – The name, address, and telephone number of a participant in the Address Confidentiality Program for Victims of Domestic Violence may not be included in any list of registered voters available to the public.

**Section 741.465, F.S.** – The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims of Domestic Violence held by the Office of the Attorney General are exempt from disclosure, except that the information may be disclosed under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of a valid arrest warrant; if directed by court order, to a person identified in the order; or if the certification has been canceled. The names, addresses, and telephone numbers of participants contained in voter registration and voting records are exempt, except the information may be disclosed under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of an arrest warrant or, if directed by court order, to a person identified in the order.

**Section 741.4651, F.S.** – The names, addresses, and telephone numbers of victims of stalking or aggravated stalking are exempt in the same manner as participants in the Address Confidentiality Program for Victims of Domestic Violence under s. 741.465 are exempt from disclosure, provided the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with ss. 741.401-741.409.

**Section 742.091, F.S.** – Records of any proceeding under the determination of paternity statute which was subsequently dismissed when the mother of the illegitimate child and reputed father marry thereby making the child legitimate are sealed against public inspection.

**Section 742.16(9), F.S.** – All papers and records pertaining to the affirmation of parental status for gestational surrogacy, including the original birth certificate, are confidential and exempt and subject to inspection only upon court order.

**Section 744.1076, F.S.** – A court order appointing a court monitor is confidential and exempt from public disclosure requirements. Reports of a court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt. The reports may be subject to inspection as determined by the court or upon a showing of good cause. Court determinations relating to a finding of no probable cause and court orders finding no probable cause are confidential; however, such determinations and findings may be subject to inspection as determined by the court or upon a showing of good cause.

**Section 744.2103(2), F.S.** – No report or disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law.

**Section 744.21031, F.S.** – Home addresses, telephone numbers, and other specified personal information of current or former public guardians and employees with fiduciary responsibility, as defined in the exemption, as well as the names and specified information about



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the spouses and children of these individuals are exempt from disclosure. An agency that is the custodian of the information shall maintain the exempt status only if the specified individuals submit a written request for exempt status to the custodial agency.

**Section 744.2104(2) F.S.** – All records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness, are confidential and exempt from public disclosure requirements.

**Section 744.2105(6), F.S.** – Personal identifying information of a donor or prospective donor of funds or property to the direct-support organization of the Office of Public and Professional Guardians who wishes to remain anonymous is confidential and exempt.

**Section 744.2111(1)(2)(3), F.S.** – Certain identifying information of complainants and wards held by the Department of Elderly Affairs in connection with a complaint filed and any subsequent investigation conducted pursuant to part II of Ch. 744 (Public and Professional Guardians) is confidential unless disclosure is required by court order. Except as otherwise provided in the exemption, information held by the department is confidential and exempt until the investigation is completed or ceases to be active, unless disclosure is required by court order. The exemption does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of court pursuant to s. 744.368, F.S.

**Section 744.3701, F.S.** – Unless otherwise ordered by the court, upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or any record relating to the settlement of a claim is subject to inspection only by the individuals specified in the section. Court records relating to the settlement of a ward's or minor's claim are confidential and exempt and may not be disclosed except as specifically authorized.

**Section 760.11(12), F.S.** – Complaints filed with the Commission on Human Relations and all records in the commission's custody which relate to and identify a particular person, including, but not limited to, the entities specified in the subsection are confidential and may not be disclosed except to the parties or in the course of a hearing or proceeding under this section. This restriction does not apply to any record which is part of the record of a hearing or court proceeding.

**Section 760.34(1), F.S.** – Nothing said or done in the course of informal endeavors by the Commission on Human Relations to resolve complaints about discriminatory housing practices may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned.

**Section 760.36, F.S.** – A conciliation agreement arising out of a complaint filed under the Fair Housing Act shall be made public unless the complainant and the respondent otherwise agree and the Commission on Human Relations determines that disclosure is not required to further the purposes of the Act.

**Section 760.40(2)(a), F.S.** – Except as provided in the subsection, DNA analysis results information held by a public entity is exempt from s. 119.07(1).

**Section 760.50(5), F.S.** – Employers shall maintain the confidentiality of information relating to the medical condition or status of any person covered by health or life insurance benefits provided or administered by the employer. Such information in the possession of a public employer is exempt from s. 119.07(1).

**Section 765.51551, F.S.** – Donor-identifying information maintained in the anatomical gifts donor registry is confidential and exempt as provided in the exemption.



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**Section 766.101(7)(c), F.S.** – Proceedings of medical review committees are exempt from s. 286.011 and any advisory reports provided to the Department of Health are confidential and exempt from s. 119.07(1), regardless of whether probable cause is found.

**Section 766.105(3)(e)2., F.S.** – A claim file in the possession of the Patient's Compensation Fund is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

**Section 766.106(6)(b)3., F.S.** – An examination report on an injured claimant which is made pursuant to this section relating to medical malpractice claims is available only to the parties and their attorneys and may be used only for the purpose of presuit screening. Otherwise, such report is confidential and exempt from s. 119.07(1).

**Section 766.1115(4)(c), F.S.** – All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities contracting with health care providers under this paragraph, are confidential and exempt.

**Section 766.305(3), F.S.** – Information furnished by a person seeking compensation under the Florida Birth-Related Neurological Injury Compensation Plan pursuant to this subsection shall remain confidential and exempt under the provisions of s. 766.315(5)(b), F.S.

**Section 766.314(8), F.S.** – Information obtained by the Florida Birth-Related Neurological Injury Compensation Association to determine the actual cost of maintaining the fund on an actuarially sound basis shall be utilized solely for the purpose of assisting the association. Such information shall otherwise be confidential and exempt.

**Section 766.315(5)(b), F.S.** – A claim file in the possession of the Florida Birth-Related Neurological Injury Compensation Association or its representative is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

**Section 768.28(16)(b), F.S.** – Claims files maintained by any risk management program administered by the state, its agencies and subdivisions are confidential and exempt until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies as provided in the paragraph; such records held by the receiving agency remain confidential as provided in the paragraph.

**Section 768.28(16)(c), F.S.** – Portions of meetings and proceedings conducted pursuant to a risk management program administered by the state, its agencies or subdivisions relating solely to the evaluation of claims or relating solely to offers of compromise of claims filed with the program are exempt from s. 286.011.

**Section 768.28(16)(d), F.S.** – Minutes of the meetings and proceedings of a risk management program administered by the state, its agencies or its subdivisions relating solely to the evaluation of claims or relating solely to offers of compromise of claims filed with such risk management programs are exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

**Section 784.046(4)(b), F.S.** – A petitioner seeking an injunction for protection against repeat violence, sexual violence or dating violence and related court actions may furnish his or her address to the court in a separate confidential filing for safety reasons if the petitioner requires the location of his or her current residence to be confidential pursuant to s. 119.071(2)(j). *See also* s. 784.0485 (3) (b) (stalking)



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**Section 787.03(6)(c)1., F.S.** – The current address and telephone number of the person taking a child or incompetent person when fleeing from domestic violence or to preserve the minor or incompetent person from danger and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03(6)(b) by the person who takes such child or incompetent person; are confidential and exempt from public disclosure requirements.

**Section 787.06(10), F.S.** – Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity, which is held by an agency is confidential and exempt; however, the information may be disclosed as provided in the exemption.

**Section 790.0601, F.S.** – Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing of the Department of Agriculture and Consumer Services or by a tax collector appointed by the Department to receive applications and fees is confidential and exempt from disclosure requirements. Information made confidential and exempt shall be disclosed with express written consent of the applicant or licensee, by court order, or upon request by a law enforcement agency in connection with the performance of lawful duties.

**Section 790.0625(4), F.S.** – All personal identifying information that is provided pursuant to s. 790.06 and contained in the records of a tax collector appointed under this section is confidential and exempt except as provided in s. 790.0601.

**Section 790.065(2)(a)4.d., F.S.** – The hearing on the petition filed by a person who has been adjudicated mentally defective or committed to a mental institution for relief from the firearm disabilities imposed by such adjudication or commitment may be open or closed as the petitioner may choose.

**Section 790.065(4)(a), F.S.** – Any records containing information specified in this section relating to a buyer or transferee of a firearm who is not prohibited under state or federal law from receipt or transfer of a firearm shall be confidential and exempt from s. 119.07(1) and may not be disclosed by the Department of Law Enforcement to any other person or agency.

**Section 790.335(2), F.S.** – Subject to specified exceptions, no governmental agency or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

**Section 794.024, F.S.** – A public employee or officer having access to the photograph, name or address of a person alleged to be a victim of an offense described in this chapter (sexual battery), chapter 800 (lewdness, indecent exposure), s. 827.03 (aggravated child abuse), s. 827.04 (child abuse), or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), or to a rape crisis center or sexual assault counselor who will be offering services to the victim.

**Section 794.03, F.S.** – It is unlawful to print, publish, or broadcast or cause or allow to be printed, published or broadcast in any instrument of mass communication the name, address or other identifying fact or information of the victim of any sexual offense. Such identifying information is confidential and exempt.

**Section 815.04(3), F.S.** – Data, programs or supporting information that is a trade secret, that is held by an agency, and that resides or exists internal or external to a computer, computer



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system or electronic device is confidential and exempt.

**Section 815.045, F.S.** – It is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records.

**Section 828.30(5), F.S.** – An animal owner's name, street address, phone number, and animal tag number contained in a rabies vaccination certificate provided to the animal control authority is confidential and exempt from disclosure except as provided in the exemption.

**Section 877.19(3), F.S.** – Certain information on hate crimes which is reported to the Florida Department of Law Enforcement pursuant to this statute is confidential and exempt. Data required pursuant to this section shall be used only for research or statistical purposes and shall not include any information that may reveal the identity of a crime victim.

**Section 893.0551(2), F.S.** – Certain identification and location information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner; a pharmacist, or a pharmacy, that is contained in Department of Health records under the electronic prescription drug monitoring program for monitoring the prescribing and dispensing of controlled substances is confidential and exempt from disclosure.

**Section 895.06(2), F.S.** – A subpoena issued pursuant to this chapter is confidential for 120 days after the date of its issuance. The subpoenaed person or entity may not disclose the existence of the subpoena to any person or entity other than his or her attorney during the 120-day period.

**Section 895.06(7), F.S.** – Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt; however, the information may be disclosed as provided in the subsection. Information made confidential and exempt under this exemption is no longer confidential and exempt once all investigations to which the information pertains are completed, as defined in the exemption, unless the information is otherwise protected by law.

**Section 896.102(2), F.S.** – Information and documents filed with the Department of Revenue regarding certain currency transactions are confidential and exempt; however, the information may be released as provided in the subsection.

**Section 905.17(1), F.S.** – Stenographic records, notes and transcriptions made by a court reporter during a grand jury session are confidential and exempt from s. 119.07(1) and shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection.

**Section 905.24, F.S.** – Grand jury proceedings are secret and a grand juror or interpreter appointed pursuant to s. 90.6063(2) shall not disclose the nature or substance of the deliberations or vote of the grand jury.

**Section 905.26, F.S.** – Unless ordered by the court, a grand juror, reporter, stenographer, interpreter, or officer of the court may not disclose the finding of an indictment against a person not in custody or under recognizance, except by issuing or executing process on the indictment, until the person has been arrested.

**Section 905.27(1) and (2), F.S.** – A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury may not disclose evidence received by it except when required by a court. It is unlawful for any person knowingly to publish, disclose or cause to be published or disclosed any witness's testimony before a grand jury unless such testimony is or has been disclosed in a court proceeding.



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**Section 905.28(1), F.S.** – A report or presentment of a grand jury relating to an individual which is not accompanied by a true bill or indictment is confidential and exempt and shall not be made public until the individual concerned has been furnished a copy and given 15 days to file a motion to repress or expunge the report.

**Section 905.395, F.S.** – Unless pursuant to court order, it is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate or cause or permit such publication or communication to any person outside the statewide grand jury room, any of the proceedings or identity of persons referred to or being investigated by the statewide grand jury.

**Section 914.27, F.S.** – Information held by a law enforcement agency, prosecutorial agency, or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Identity and location of immediate family members of such victims or witnesses are also protected as are relocation sites, techniques or procedures utilized or developed as a result of the victim and witness protective services.

**Section 916.1065(1), F.S.** – A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, is confidential and exempt.

**Section 916.107(8), F.S.** – Except as provided in the subsection, a forensic client's clinical record is confidential and exempt from s. 119.07(1).

**Section 918.16(1), F.S.** – Except as provided in s. 918.16(2), in any civil or criminal trial, if any person under 16 or any person with an intellectual disability as defined in cited statute is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney's office.

**Section 918.16(2), F.S.** – If the victim of a sex offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

**Section 925.055(2), F.S.** – The names of confidential informants that may be revealed to auditors of law enforcement investigative funds are confidential and exempt.

**Section 934.08(1)(b), F.S.** – A state or federal law enforcement official who receives intelligence information as described in the paragraph is subject to any limitations on the unauthorized disclosure of such information.

**Section 934.09(8)(c), F.S.** – Applications made and orders granted authorizing interception of wire, oral or electronic communications pursuant to cited statutes shall be sealed by the judge and shall be disclosed only upon a showing of good cause before a judge.

**Section 934.33(7), F.S.** – The record maintained by an investigative or law enforcement agency which contains specified identifying information regarding the installation and use of a pen register or trap and trace device must be provided under seal to the court.

**Section 937.028(1), F.S.** – When fingerprints are taken for the purpose of identifying a child, should that child become missing, the state agency, public or private organization, or other person taking such fingerprints shall not release the fingerprints to any law enforcement agency or other person for any purpose other than the identification of a missing child. Such records and



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data are exempt from s. 119.07(1).

**Section 943.03(2), F.S.** – Records related to a Florida Department of Law Enforcement investigation requested by the Governor concerning official misconduct of public officials and employees, are confidential and exempt from s. 119.07(1) until the investigation is completed or is no longer "active" as defined in the subsection.

**Section 943.031(9)(c) and (d), F.S.** – The Florida Violent Crime and Drug Control Council may close portions of meetings during which the council will hear or discuss active criminal investigative information or active criminal intelligence information and such portions of meetings are exempt from open meetings requirements, provided that the conditions set forth in the subsection are met. A tape recording of, and any minutes and notes generated during, the closed portion of a meeting are confidential and exempt until the criminal investigative or intelligence information ceases to be active.

**Section 943.0314, F.S.** – That portion of a meeting of the Domestic Security Oversight Council at which the council will hear or discuss active criminal investigative information or active criminal intelligence information is exempt from open meetings requirements provided that the conditions set forth in the exemption are complied with. An audio or video recording of, and any minutes and notes generated during, a closed meeting are exempt from public disclosure requirements until such time as the criminal investigative information or criminal intelligence information heard or discussed therein ceases to be active.

**Section 943.0321(4), F.S**. – Information that is exempt from public disclosure under Ch. 119 when in the possession of the Florida Domestic Security and Counter-Terrorism Intelligence Center retains its exemption from public disclosure after such information is revealed to a law enforcement agency or prosecutor, except as otherwise provided by law. Exempt information obtained by the center from a law enforcement agency or prosecutor retains its exemption from public disclosure, except as otherwise provided by law.

**Section 943.053(3), F.S.** – Criminal history information relating to juvenile and compiled by the Criminal Justice Information Program from intrastate sources is confidential and exempt except as provided in the exemption.

**Section 943.053(5), (8), (9), and (10), F.S.** – Sealed records received by a court for the purpose of assisting judges in their case-related responsibilities, or by a private entity under contract to operate a juvenile offender facility, county detention facility or state correctional facility pursuant to cited laws remain confidential and exempt from disclosure.

**Section 943.057, F.S.** – This section (providing for access to criminal justice information in the Department of Law Enforcement for research or statistical purposes) does not require release of confidential information or require the department to accommodate requests that would disrupt ongoing operations beyond the extent required by s. 119.07.

**Section 943.0583(10)(a), F.S.** – A criminal history record of a human trafficking victim that is ordered expunged under this section that is retained by the Florida Department of Law Enforcement is confidential and exempt except that the record shall be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; or by court order.

**Section 943.0583(11)(a), F.S.** – Criminal intelligence information or criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged or has been expunged under s. 943.0583 is confidential and exempt. Disclosure is authorized under specified circumstances.



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**Section 943.0585(6), F.S.** – A criminal history record ordered expunged that is retained by the Department of Law Enforcement pursuant to this section is confidential and exempt and is not available to any person or entity except upon court order.

**Section 943.0585(6)(d), F.S.** – Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a), is confidential and exempt, except that the Florida Department of Law Enforcement shall disclose the existence of an expunged record to the agencies set forth in the paragraph for their respective licensing and employment purposes and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity identified in the paragraph to disclose such information except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions.

**Section 943.059(6), F.S.** – A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section is confidential and exempt and available only to the person and entities identified in the subsection.

**Section 943.059(6)(d), F.S.** – Information relating to the existence of such record that is provided in accordance with paragraph (a) is confidential and exempt, except that the Florida Department of Law Enforcement shall disclose a sealed record to the agencies set forth in the paragraph for their respective licensing and employment purposes. It is unlawful for any employee of an entity identified in the paragraph to disclose such information except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions.

**Section 943.082(6), F.S.** – The identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Department of Law Enforcement, law enforcement agencies, or school officials is confidential and exempt. Any other information received through the tool and held by such agencies is exempt.

**Section 943.1395(6)(b), F.S.** – The report of misconduct and all records or information provided to or developed by the Criminal Justice Standards and Training Commission during the course of an investigation conducted by the commission are exempt from s. 119.07(1) and, except as otherwise provided by law, such information shall be subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes inactive. However, the officer being investigated or the officer's attorney may review records as authorized in the exemption.

**Section 943.173(3), F.S.** – Examinations, assessments, and instruments and examination results, other than test scores on officer certification examinations, including developmental materials and workpapers, administered pursuant to s. 943.13(9) or (10) and s. 943.17 are exempt from s. 119.07(1).

**Section 943.325(14), F.S.** – The results of a DNA analysis and the comparison of analytic results submitted to the Department of Law Enforcement under this section shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Otherwise, such information is confidential and exempt.

**Section 943.687(8), F.S.** – Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential information is discussed is exempt from open meetings requirements.

**Section 944.606(3)(d), F.S.** – Sexual offender information received from the Department of Corrections by the Department of Law Enforcement, the sheriff, or the chief of police shall be provided to a person who requests it and such information may be released to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from



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disclosure.

**Section 945.10, F.S.** – Records of the Department of Corrections relating to inmates, as set forth in the exemption, are confidential and exempt and may not be released except as provided in the exemption.

**Section 945.602(7)(b), F.S.** – Neither the provisions of this section nor those of Ch. 119 or s. 154.207(7) shall apply to any health care provider under contract with the Department of Corrections except to the extent such provisions would apply to any similar entity not under contract with the department.

**Section 945.6032(3), F.S.** – The findings and recommendations of a medical review committee created by the Correctional Medical Authority or the Department of Corrections pursuant to s. 766.101 are confidential and exempt from s. 119.07(1) and any proceedings of the committee are exempt from s. 286.011.

**Section 946.517, F.S.** – Proprietary confidential business information, as defined in the statute, of the corporation created to operate correctional work programs is confidential and exempt.

**Section 951.27(2), F.S.** – Except as otherwise provided in this subsection, serologic blood test results for infectious disease which are obtained pursuant to s. 951.27(1) on inmates in county and municipal detention facilities are confidential and exempt.

**Section 960.001(1)(g)2., F.S.** – Any person who views a presentence investigation report pursuant to this paragraph must maintain the confidentiality of the report and may not disclose its contents to any person except statements made to the state attorney or the court.

**Section 960.001(8), F.S.** – Information gained by a crime victim pursuant to this chapter (providing guidelines for fair treatment of victims in the criminal and juvenile justice systems), regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

**Section 960.003(3), F.S.** – Results of human immunodeficiency virus and hepatitis tests performed pursuant to this section on persons charged with or alleged by delinquency petition with certain offenses are confidential and exempt and may not be disclosed to any person other than the individuals and entities identified in the subsection.

**Section 960.15, F.S.** – Any record or report obtained by the Department of Legal Affairs or a hearing officer, pursuant to a claim for crime victim compensation, that is confidential or exempt from s. 119.07(1) shall retain that status and shall not be subject to public disclosure.

**Section 960.28(4), F.S.** – Information received or maintained by the Department of Legal Affairs identifying an alleged victim who seeks payment of medical expenses under this section is confidential and exempt from s. 119.07(1).

**Section 984.06(3) and (4), F.S.** – All information obtained pursuant to Ch. 984 (families in need of services and children in need of services) in the discharge of official duty by the officials specified in the subsection shall not be disclosed to anyone other than persons and agencies entitled under the chapter to receive this information or upon court order. Court records required by Ch. 984 are not open to public inspection.

**Section 985.036, F.S.** – Nothing in this chapter prohibits the victim of the offense or a minor victim's parent or guardian from the right to be informed of, and to be present during, all crucial stages of the proceedings involving the juvenile offender. However, such person may not reveal to any outside party any confidential information obtained under this subsection



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regarding the case, except as is reasonably necessary to pursue legal remedies. A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense; however, information gained by the victim under this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

**Section 985.04(1) F.S.** – Except as otherwise provided in this section, all information obtained under this chapter (relating to juvenile justice) in the discharge of official duty by any of the entities set forth in the subsection is confidential and exempt and may be disclosed only to the entities specified in the subsection or upon court order. Agencies entering into an agreement to share information about juvenile offenders as authorized by this subsection must comply with s. 943.0525 and must maintain the confidentiality of information otherwise exempt from s. 119.07(1), as provided by law.

**Section 985.04(6), F.S.** – Records maintained by the Department of Juvenile Justice pertaining to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in cited statutes may not be destroyed for a period of 25 years after the youth's final referral to the department, except in cases of the child's death. However, such record shall be sealed by the court and may be released only to meet screening requirements for personnel in s. 402.3055 and the other mentioned statutes or department rules although sexual offender and predator registration information is a public record.

**Section 985.04(7)(a), F.S.** – Records in the custody of the Department of Juvenile Justice regarding children are not open to public inspection and may be inspected only upon order of the Secretary of the department or the secretary's authorized agent as provided therein.

**Section 985.045(2), F.S.** – The clerk of court shall keep all official records required by this section (delinquency) separate from other records of the circuit court, except those records pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in ss. 943.053 and 985.04(6)(b) and (7), official records required by this chapter are not open to inspection by the public, but may be inspected only by persons and entities specified in the subsection or deemed by the court to have a proper interest therein. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt proceedings any violation of those conditions.

**Section 985.047(2)(a), F.S.** – Notwithstanding any provision of law to the contrary, confidentiality of records information does not apply to juveniles who have been arrested for an offense that would be a crime if committed by an adult, regarding the sharing of information on such juveniles with the law enforcement agency or county as well as other specified agencies and individuals. Neither these records provided to the law enforcement agency or county nor the records developed from these records for serious habitual juvenile offenders nor the records provided or developed from records provided to the law enforcement agency or county on juveniles at risk of becoming serious habitual juveniles offenders shall be available for public disclosure under s. 119.07.

**Section 985.11, F.S.** – Except as provided in cited statutes, fingerprints and photographs of juveniles are not available for public disclosure and inspection under s. 119.07(1),except as provided in ss. 943.053 and 985.04(2), but are available to specified entities or to any other person authorized by the court to have access to such records. The records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause.

**Section 985.534(4) and (5), F.S.** – The original order of the appellate court in a case affecting a party to a case involving a child under this chapter (delinquency) and all papers filed in the case on appeal shall remain in the office of the clerk of the court, sealed and not open to



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inspection except by order of the appellate court. The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled with the initials but not the name of the child.

**Section 1001.24(4), F.S.** – The identity of donors to a Department of Education direct-support organization, and all information identifying donors and prospective donors, is confidential and exempt from s. 119.07(1) and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Auditor General and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt.

**Section 1001.453(4), F.S.** – The identity of donors and all information identifying donors and prospective donors are confidential and exempt from s. 119.07(1) and that anonymity shall be maintained in the auditor's report of a district school board direct-support organization.

**Section 1002.221, F.S.** – Education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations, are confidential and exempt. An agency or institution, as defined in s. 1002.22, may not release a student's education records without the written consent of the student or parent except as provided in the exemption and as permitted by FERPA.

**Section 1002.225, F.S.** – All public postsecondary educational institutions shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, with respect to the education records of students.

**Section 1002.36(7)(d), F.S.** – The criminal records, private investigator findings, and information from reference checks obtained by the Florida School for the Deaf and the Blind for determining the moral character of employees of the school are confidential and exempt from disclosure.

**Section 1002.395(6)(q), F.S.** – Information and documentation provided to the Department of Education and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section (Florida Tax Credit Scholarship Program) shall remain confidential at all times in accordance with s. 213.053.

**Section 1002.72, F.S.** – Except as provided in the exemption, the records of children enrolled in the Voluntary Prekindergarten Education Program are confidential.

**Section 1002.97, F.S.** – Except as provided in the exemption, individual records of children enrolled in school readiness programs, held by an early learning coalition or the Office of Early Learning of the Department of Education are confidential and exempt.

**Section 1003.25(1), F.S.** – The cumulative record of a public school pupil that is required by this section is confidential and exempt from s. 119.07(1) and is open to inspection only as provided in Ch. 1002.

**Section 1003.53(6), F.S.** – School districts and other agencies receiving information contained in student records and juvenile justice records shall use such information only for official purposes connected with the certification of students for admission to and for the administration of the dropout prevention and academic intervention program, and such agencies shall maintain the confidentiality of such information unless otherwise provided by law or rule. Such information is confidential and exempt from s. 119.07(1).

**Section 1003.57(1)(c), F.S.** – Hearings on exceptional student identification, evaluation, and eligibility determination, or lack thereof, are exempt from s. 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures, and any records created as a result of such hearings are confidential and exempt.



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**Section 1004.055, F.S.** – Certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed security incidents are confidential and exempt. Those portions of a public meeting which would reveal such data and information are exempt from s. 286.011, F.S.

**Section 1004.0962(2) and (5), F.S.** – A campus emergency response, as defined in the exemption, held by a public postsecondary institution or specified agencies is exempt from disclosure requirements. That portion of a public meeting which would reveal a campus emergency response is exempt from s. 286.011, F.S.

**Section 1004.22(2), F.S.** – Materials relating to methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or proprietary information received, generated, ascertained or discovered during the course of research conducted within state universities are confidential and exempt from s. 119.07(1), except that a division of sponsored research shall make available, upon request, title and description of a research project, name of the researcher, and amount and source of funding for the project.

**Section 1004.24(4), F.S.** – The claims files of a self-insurance program adopted by the Board of Governors, or the board's designee, pursuant to this section are confidential and exempt from s. 119.07(1), and are only for the use of the program in fulfilling its duties.

**Section 1004.28(5), F.S.** – Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel, all records of a university direct-support organization and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from s. 119.07(1). The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S.

**Section 1004.30, F.S.** – Certain records of university health services support organizations are made confidential; however, some records become public records at a specified time in the future. Any portion of a governing board or peer review panel or committee meeting during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed is exempt from s. 286.011, as well as any records generated during the closed portion of a governing board or peer review panel or committee meeting which contain information relating to contracts, documents, records, marketing plans, or trade secrets which are made confidential and exempt by this section. A person may petition a court for release of certain documents upon a finding of compelling public interest for release. The organization may petition a court for continued confidentiality upon a showing of good cause.

**Section 1004.43(8), F.S.** – Proprietary confidential business information, as defined in the subsection, of the not-for-profit corporation organized pursuant to this section for the purpose of operating the H. Lee Moffitt Cancer Center and Research Institute, and the corporation's subsidiaries, is confidential and exempt from disclosure, except that the Auditor General, Office of Program Policy Analysis and Government Accountability, and the Board of Governors must be given access and must maintain the confidentiality of the information so received.

**Section 1004.43(9), F.S.** – Meetings of the governing body of the not-for-profit corporation operating the H. Lee Moffitt Cancer Center and Research Institute, or its subsidiaries are exempt from open meeting requirements except that meetings at which expenditures of dollars appropriated to the corporation by the state are discussed must remain open to the public.



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**Section 1004.4472, F.S.** – Specified materials held by the Florida Institute for Human and Machine Cognition, Inc., or its subsidiary, including certain donor information, as well as trade secrets, patentable material, proprietary information received or generated from research, and exempt information received from other states or the federal government, are confidential and exempt from disclosure requirements. Portions of meetings where confidential information is discussed are exempt from open meetings requirements.

**Section 1004.45(2)(h), F.S.** – Information that, if released, would identify donors who desire to remain anonymous, is confidential and exempt. Information which, if released, would identify prospective donors to the museum is confidential and exempt unless the direct-support organization has obtained the name from another source. Identities of such donors and prospective donors shall not be revealed in the auditor's report.

**Section 1004.55(6), F.S.** – Records that relate to the client of a regional autism center are confidential and exempt from public disclosure. Personal identifying information of a donor or prospective donor who desires to remain anonymous is also confidential.

**Section 1004.70(6), F.S.** – Records of a Florida College System institution direct-support organization other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are confidential and exempt from s. 119.07(1). The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

**Section 1004.71(6), F.S.** – The identity of a donor or prospective donor to a statewide Florida College System direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor are confidential and exempt from disclosure. Such anonymity shall be maintained in the auditor's report.

**Section 1004.78(2), F.S.** – Materials relating to methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or proprietary information received, generated, ascertained or discovered during the course of activities conducted within a Florida College System institution are confidential and exempt from s. 119.07(1) provided that an institution shall make available, upon request, the title and description of a project, the name of the investigator and the amount and source of the funding provided for the project.

**Section 1005.36(3), F.S.** – Confidentiality of student records of closed nonpublic postsecondary institutions which are furnished to the Commission for Independent Education in accordance with this section shall be maintained, to the extent required by law.

**Section 1005.38(6), F.S.** – Investigatory records held by the Commission for Independent Education are exempt from public disclosure requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. Those portions of meetings of the probable cause panel at which exempt records are discussed are exempt from open meetings requirements but must be recorded. The recording of a closed portion of a meeting and the minutes and findings of such meeting are exempt from disclosure for a period not to exceed 10 days after the panel makes a determination regarding probable cause.

**Section 1006.07(1)(a), F.S.** – Student expulsion hearings are exempt from s. 286.011. However, the student's parent must be given notice of the Sunshine Law and may elect to have the hearing held in compliance with that section.

**Section 1006.12(6), F.S.** – Any information held by listed agencies that would identify whether an individual has been appointed as a safe-school officer is exempt.



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**Section 1006.52(1), F.S.** – Each public postsecondary educational institution may prescribe the content and custody of records which the university may maintain on its students. A student's education records, as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and the federal regulations, and applicant records as defined by this section are confidential and exempt.

**Section 1008.23, F.S.** – All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed or administered pursuant to cited statutes, shall be confidential and exempt.

**Section 1008.24(4)(b), F.S.** – The identity of a school or postsecondary educational institution, personal identifying information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconduct obtained or reported pursuant to an investigation conducted by the Department of Education of a testing impropriety are confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active.

**Section 1008.39(3), F.S.** – The Florida Education and Training Placement Information Program must not make public any information that could identify an individual or the individual's employer.

**Section 1008.41(1)(b), F.S.** – Uniform management information systems for workforce education coordinated by the Commissioner of Education pursuant to this section must provide for compliance with state and federal confidentiality requirements except that the department shall have access to certain reemployment assistance wage reports to collect and report placement data about former students. Such placement reports must not disclose the individual identities of former students.

**Section 1009.98(6), F.S.** – Information that identifies the purchasers or beneficiaries of a prepaid college plan and their advance payment account activities is exempt from s. 119.07(1). Information which is authorized to be released to postsecondary institutions shall be maintained as exempt from s. 119.07(1).

**Section 1009.981(6), F.S.** – Information that identifies the benefactors or the designated beneficiary of any account initiated pursuant to the Florida College Savings Program is confidential and exempt from public disclosure requirements. However, the board is authorized to release such information to a community college, college, or university in which a designated beneficiary may enroll or is enrolled. The receiving institution shall maintain the confidentiality of such information.

**Section 1009.983(4), F.S.** – The identity of donors who desire to remain anonymous shall be confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the direct-support organization of the Florida Prepaid College Program. Information received by the direct-support organization that is otherwise confidential or exempt shall retain such status and any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from disclosure.

**Section 1009.987, F.S.** – The personal financial and health information of a consumer (defined as a party to a participation agreement) held by the Florida Prepaid College Board, Florida ABLE Inc., or the Florida ABLE program relating to an ABLE account or participation agreement or any information that would identify a consumer is confidential and exempt. Disclosure is authorized in specified circumstances.

**Section 1012.31(3), F.S.** – Public school system employee personnel files are subject to the provisions of s. 119.07(1) except that any complaint and material relating to the investigation of a complaint against an employee is confidential and exempt until the conclusion of the preliminary



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investigation or until the preliminary investigation ceases to be active; employee evaluations are confidential until the end of the school year immediately following the school year during which the evaluation was made, but no evaluations made prior to July 1, 1983, shall be made public; payroll deduction records of the employee and medical records are confidential and exempt. However, an employee's personnel file shall be open at all times to the officials designated in the subsection.

**Section 1012.56(9)(e), F.S.** – For any examination developed by this state, the Department of Education and the State Board of Education shall maintain confidentiality of the examination, developmental materials, and workpapers, which are exempt from s. 119.07(1).

**Section 1012.56(9)(g), F.S.** – Examination instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to this section (educator certification) are confidential and exempt from s. 119.07(1) and from s. 1001.52. Provisions governing access to, maintenance of, and destruction of such instruments and related materials shall be prescribed by rules of the State Board of Education.

**Section 1012.796(4), F.S.** – The complaint against a teacher or administrator and all information obtained pursuant to the investigation by the Department of Education shall be confidential and exempt from s. 119.07(1) until the conclusion of the preliminary investigation, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6). However, the complaint and all material assembled during the investigation may be inspected and copied by the certificate holder or the certificate holder's designee, after the investigation is concluded, but prior to the determination of probable cause.

**Section 1012.798(9), F.S.** – Information obtained by the recovery network program (established within the Department of Education to assist impaired educators) from a treatment provider which relates to a person's impairment and participation in the program is confidential and exempt from disclosure.

**Section 1012.798(11), F.S.** – Medical records released pursuant to paragraph (8)(e) of this section relating to the impaired educators recovery network program may be disclosed only to the entities specified only as required for purposes of this section, or as otherwise authorized by law. The medical records are confidential and exempt from disclosure.

**Section 1012.81, F.S.** – Rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a Florida College System institution on its employees. Such limited-access records may include only the records described in the section. Limited access records are confidential and exempt and may not be released except as authorized in the section.

**Section 1012.91, F.S.** – Each university board of trustees shall adopt rules prescribing the content and custody of limited-access records maintained on its employees. Such limited-access records are limited to the records described in the section. Limited access records are confidential and exempt and may not be released except as authorized in the section.

**Section 1013.14(1)(a), F.S.** – In any case where a board, pursuant to the provisions of Ch. 1013, seeks to purchase real property for educational purposes, all appraisals, offers, or counteroffers are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board. If a contract or agreement for purchase is not submitted to the board for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end.

## E. SECTION 11.0431, FLORIDA STATUTES - LEGISLATIVE RECORDS; EXEMPTIONS FROM PUBLIC DISCLOSURE.



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**11.0431 Legislative records; intent of legislation; exemption from public disclosure.–**

(1) It is the policy of the Legislature that every person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state. To that end, public records shall be open to personal inspection and copying at reasonable times except when specific public necessity justifies that public records be exempt from such inspection and copying.

(2) The following public records are exempt from inspection and copying:

(a) Records, or information contained therein, held by the legislative branch of government which, if held by an agency as defined in s. 119.011, or any other unit of government, would be confidential or exempt from the provisions of s. 119.07(1), or otherwise exempt from public disclosure, and records or information of the same type held by the Legislature.

(b) A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.

(c) A legislatively produced draft, and a legislative request for a draft, of a bill, resolution, memorial, or legislative rule, and an amendment thereto, which is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a member of the Legislature who is a supervisor of the legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(d) A draft of a bill analysis or fiscal note until the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(e) A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.

(f) Records prepared for or used in executive sessions of the Senate until 10 years after the date on which the executive session was held.

(g) Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.

(h) Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics, unless the member requesting the opinion authorizes in writing the release of such information. All advisory opinions shall be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.

(i) Portions of correspondence held by the legislative branch which, if disclosed, would reveal: information otherwise exempt from disclosure by law; an individual's medical treatment, history, or condition; the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.



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(3) Any record created prior to July 1, 1993, which was not available to the public from the house, commission, committee, or office of the legislative branch that created the record, is exempt from inspection and copying until July 1, 1993. Prior to July 1, 1993, the presiding officer of each house shall determine which records held by that house should remain exempt from inspection and copying. The presiding officers of both houses shall jointly determine which records held by joint committees should remain exempt from inspection and copying. No later than July 1, 1993, the presiding officers shall publish a list of records that remain exempt from inspection and copying.

(4) For purposes of this section, "public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.

(5) Nothing herein shall be construed to limit the authority of each house of the Legislature to adopt rules pursuant to s. 24, Art. I of the State Constitution.

**F. TABLE OF APPELLATE CASES (GOVERNMENT- IN-THE-SUNSHINE LAW AND THE PUBLIC RECORDS ACT) NOTE:** This listing includes federal cases and Florida appellate (i.e., District Court of Appeal or Supreme Court) cases cited in the Sunshine Manual; the complete text of cited Florida county court and circuit court cases is available online at the Office of the Attorney General website: www.myfloridalegal.com.

**(s) Denotes case cited in Part I, Sunshine Law**

**(pr) denotes case cited in Part II, Public Records Act**

*Agrosource, Inc. v. Florida Department of Citrus,* 148 So. 3d 138 (Fla. 2d DCA 2014) (pr)

*Alice P. v. Miami Daily News, Inc.,* 440 So. 2d 1300 (Fla. 3d DCA1983), *review denied,* 467 So. 2d 697 (Fla. 1985) (pr)

*Allen v. United Faculty of Miami-Dade College,* 197 So. 3d 604 (Fla. 3d DCA 2016) (s)

*Allstate Floridian Ins. Co. v. Office of Ins. Regulation,* 981 So. 2d 617 (Fla. 1st DCA 2008), *review denied,* 987 So. 2d 79 (Fla. 2008) (pr)

*Alston v. City of Riviera Beach,* 882 So. 2d 436 (Fla. 4th DCA 2004) (pr)

*Alterra Healthcare Corporation v. Estate of Shelley,* 827 So. 2d 936 (Fla. 2002) (pr)

*Althouse v. Palm Beach County Sheriff's Office,* 89 So. 3d 288 (Fla. 4th DCA 2012) (pr)

*Althouse v. Palm Beach County Sheriff's Office,* 92 So. 3d 899 (Fla. 4th DCA 2012) (pr)

*Alvarez v. Reno,* 587 So. 2d 664 (Fla. 3d DCA 1991) (pr)

*Anderson v. City of St. Pete Beach,* 161 So. 3d 548 (Fla. 2d DCA 2014) (s)

*Arbelaez v. State,* 775 So. 2d 909 (Fla. 2000) (pr)

*Areizaga v. Board of County Commissioners of Hillsborough County,* 935 So. 2d 640 (Fla. 2d DCA 2006), *review denied,* 958 So. 2d 918 (Fla. 2007) (pr)

*Askew v. City of Ocala,* 348 So. 2d 308 (Fla. 1977) (s)

*Atkins v. State,* 663 So. 2d 624 (Fla. 1995) (pr)



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*Atwell v. Sacred Heart Hospital of Pensacola,* 520 So. 2d 30 (Fla. 1988) (pr)

*B & L Service, Inc. v. Broward County,* 300 So. 3d 1205 (Fla. 4th DCA 2020) (pr)

*B & S Utilities, Inc. v. Baskerville-Donovan, Inc.* 988 So. 2d 17 (Fla. 1st DCA 2008), *review denied,* 4 So. 3d 1220 (Fla. 2009) (pr)

*B.B. v. Department of Children and Family Services,* 731 So. 2d 30 (Fla. 4th DCA 1999) (pr)

*Baker v. Florida Department of Agriculture and Consumer Services,* 937 So. 2d 1161 (Fla. 4th DCA 2006), *review denied,* 954 So. 2d 27 (Fla. 2007) (s)

*Baker County Press, Inc. v. Baker County Medical Services, Inc.,* 870 So. 2d 189 (Fla. 1st DCA 2004) (s), (pr)

*B.M.Z. Corporation v. City of Oakland Park,* 415 So. 2d 735 (Fla. 4th DCA 1982) (s)

*Barfield v. City of Fort Lauderdale Police Department,* 639 So. 2d 1012 (Fla. 4th DCA), *review denied,* 649 So. 2d 869 (Fla. 1994) (pr)

*Barfield v. City of Tallahassee,* 171 So. 3d 239 (Fla. 1st DCA 2015) (pr)

*Barfield v. School Board of Manatee County,* 135 So. 3d 560 (Fla. 2d DCA 2014) (pr)

*Barfield v. Town of Eatonville,* 675 So. 2d 223 (Fla. 5th DCA 1996) (pr)

*Barron v. Florida Freedom Newspapers,* 531 So. 2d 113 (Fla. 1988) (s), (pr)

*Bay County School Board v. Public Employees Relations Commission,* 382 So. 2d 747 (Fla. 1st DCA 1980) (pr)

*Bennett v. Clerk of Circuit Court Citrus County,* 150 So. 3d 277 (Fla. 5th DCA 2014) (pr)

*Bennett v. Warden,* 333 So. 2d 97 (Fla. 2d DCA 1976) (s)

*Bent v. State,* 46 So. 3d 1047 (Fla. 4th DCA 2010) (pr)

*Bevan v. Wanicka,* 505 So. 2d 1116 (Fla. 2d DCA 1987) (pr)

*Bigelow v. Howze,* 291 So. 2d 645 (Fla. 2d DCA 1974) (s)

*Blackford v. School Board of Orange County,* 375 So. 2d 578 (Fla. 5th DCA 1979) (s)

*Blackshear v. State,* 115 So. 3d 1093 (Fla. 1st DCA 2013) (pr)

*Bland v. Jackson County,* 514 So. 2d 1115 (Fla. 1st DCA 1987) (s)

*Bludworth v. Palm Beach Newspapers,* Inc., 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied,* 488 So. 2d 67 (Fla. 1986) (pr)

*Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31 (Fla. 2d DCA 2008) (pr)

*Board of County Commissioners of Palm Beach County v. D.B.,* 784 So. 2d 585 (Fla. 4th DCA 2001) (pr)

*Board of County Commissioners of Sarasota County v. Webber,* 658 So. 2d 1069 (Fla. 2d DCA



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1995) (s)

*Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969) (s)

*Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) (pr)

*Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.,* 718 So. 2d 227 (Fla. 3d DCA 1998), *review denied,* 729 So. 2d 389 (Fla. 1999) (pr)

*Borreca v. Fasi,* 369 F. Supp. 906 (D. Hawaii 1974) (s)

*Boyles v. Mid-Florida Television Corp.,* 431 So. 2d 627 (Fla. 5th DCA 1983), *approved*, 467 So. 2d 282 (Fla. 1985) (pr)

*Braddy v. State,* 219 So. 3d 803 (Fla. 2017) (pr)

*Brayshaw v. City of Tallahassee,* Fla., 709 F. Supp. 2d 1244 (N.D. Fla. 2010) (pr)

*Broward County v. Conner,* 660 So. 2d 288 (Fla. 4th DCA 1995), *review denied,* 669 So. 2d 250 (Fla. 1996) (s)

*Brown v. City of Lauderhill,* 654 So. 2d 302 (Fla. 4th DCA 1995) (s)

*Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014), *review denied,* No. SC14-2490 (Fla. February 24, 2016) (s)

*Brown v. State,* 152 So. 3d 739 (Fla. 4th DCA 2014) (pr)

*Browning v. Walton,* 351 So. 2d 380 (Fla. 4th DCA 1977) (pr)

*Bruckner v. City of Dania Beach,* 823 So. 2d 167 (Fla. 4th DCA 2002) (s)

*Bryan v. State,* 753 So. 2d 1244 (Fla. 2000) (pr)

*Buchanan v. Miami Herald Publishing Company,* 206 So. 2d 465 (Fla. 3d DCA 1968), *modified*, 230 So. 2d 9 (Fla. 1969) (pr)

*Bundy v. State,* 455 So. 2d 330 (Fla. 1984), *cert. denied,* 106 S. Ct. 1958 (1986) (s)

*Butler v. City of Hallandale Beach,* 68 So. 3d 278 (Fla. 4th DCA 2011) (pr)

*Butterworth v. Smith,* 110 S.Ct. 1376 (1990) (s), (pr)

*Buxton v. City of Plant City, Florida,* 871 F.2d 1037 (11th Cir. 1989) (pr)

*Campus Communications, Inc. v. Earnhardt,* 821 So. 2d 388 (Fla. 5th DCA 2002), *review denied,* 848 So. 2d 1153 (Fla. 2003) (pr)

*Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973) (s), (pr)

*Cannon v. City of West Palm Beach,* 250 F. 3d 1299 (11th Cir. 2001) (pr)

*Cantanese v. Ceros-Livingston,* 599 So. 2d 1021 (Fla. 4th DCA 1992), *review denied,* 613 So. 2d 2 (Fla. 1992) (pr)

*Cape Coral Medical Center, Inc. v. News-Press Publishing Company, Inc.,* 390 So. 2d 1216 (Fla. 2d DCA 1980) (s)



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*Cape Publications, Inc. v. City of Palm Bay,* 473 So. 2d 222 (Fla. 5th DCA 1985) (s)

*Cape Publications, Inc. v. Hitchner,* 549 So. 2d 1374 (Fla. 1989), *appeal dismissed*, 110 S.Ct. 296 (1989) (pr)

*Carden v. Chief of Police,* 696 So. 2d 772 (Fla. 2d DCA 1996) (pr)

*Carlson v. Florida Department of Revenue,* 227 So. 3d 1261 (Fla. 1st DCA 2017) (s)

*Caswell v. Manhattan Fire & Marine Insurance Company,* 399 F.2d 417 (5th Cir. 1968) (pr)

*Central Florida Regional Transportation Authority d/b/a Lynx v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401 (Fla. 5th DCA 2015) (pr)

*Chandler v. City of Greenacres,* 140 So. 3d 1080 (Fla. 4th DCA 2014) (pr)

*Chandler v. City of Sanford,* 121 So. 3d 657 (Fla. 5th DCA 2013) (pr)

*C.H.-C., v. Miami Herald Publishing Co.,* 262 So. 3d 226 (Fla. 3d DCA 2018) (pr)

*Chmielewski v. City of St. Pete Beach,* 161 So. 3d 521 (Fla. 2d DCA 2014) (s)

*Christy v. Palm Beach County Sheriff's Office,* 698 So. 2d 1365 (Fla. 4th DCA 1997) (pr)

*Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.,* 195 So. 3d 396 (Fla. 4th DCA 2016) (pr)

*Citizens for Sunshine, Inc. v. School Board of Martin County,* 125 So. 3d 184 (Fla. 4th DCA 2013) (s)

*City of Avon Park v. State,* 117 So. 3d 470 (Fla. 2d DCA 2013) (pr)

*City of Delray Beach v. Barfield,* 579 So. 2d 315 (Fla. 4th DCA 1991) (pr)

*City of Dunnellon v. Aran,* 662 So. 2d 1026 (Fla. 5th DCA 1995) (s)

*City of Fort Myers v. News-Press Publishing Company, Inc.,* 514 So. 2d 408 (Fla. 2d DCA 1987) (s)

*City of Gainesville v. State ex rel. International Association of Fire Fighters Local No. 2157,* 298 So. 2d 478 (Fla. 1st DCA 1974) (pr)

*City of Hallandale v. Rayel Corporation, 313 So. 2d 113 (Fla. 4th DCA 1975), cause dismissed sua sponte*, 322 So. 2d 915 (Fla. 1975) (s)

*City of Hollywood v. Hakanson,* 866 So. 2d 106 (Fla. 4th DCA 2004) (s)

*City of Homestead v. McDonough*, 232 So. 3d 1069 (Fla. 3d DCA 2017) (pr)

*City of Miami v. Airbnb, Inc.*, 260 So. 3d 478 (Fla. 3d DCA 2018) (s)

*City of Miami v. Post-Newsweek Stations Florida, Inc.,* 837 So. 2d 1002 (Fla. 3d DCA 2002), *review dismissed*, 863 So. 2d 1190 (Fla. 2003) (pr)

*City of Miami v. Metropolitan Dade County,* 745 F. Supp. 683 (S.D. Fla. 1990) (pr)

*City of Miami Beach v. Berns,* 245 So. 2d 38 (Fla. 1971) (s)



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*City of Miami Beach v. DeLapp*, 472 So. 2d 543 (Fla. 3d DCA 1985) (pr)

*City of Miami Beach v. Miami New Times,* 45 F.L.W. D2805 (Fla. 3d DCA December 16, 2020) (pr)

*City of Miami Beach v. Public Employees Relations Commission,* 937 So. 2d 226 (Fla. 3d DCA 2006) (pr)

*City of North Miami v. Miami Herald Publishing Company,* 468 So. 2d 218 (Fla. 1985) (pr)

*City of Orlando v. Desjardins,* 493 So. 2d 1027 (Fla. 1986) (pr)

*City of Riviera Beach v. Barfield,* 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied,* 651 So. 2d 1192 (Fla. 1995) (pr)

*City of St. Petersburg v. Romine ex rel. Dillinger,* 719 So. 2d 19 (Fla. 2d DCA 1998) (pr)

*City of St. Petersburg v. Wright*, 241 So. 3d 903 (Fla. 2d DCA 2018) (s)

*City of Sunrise v. News and Sun-Sentinel Company,* 542 So. 2d 1354 (Fla. 4th DCA 1989) (s)

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Packet P

# PROPERTY TAX OVERSIGHT

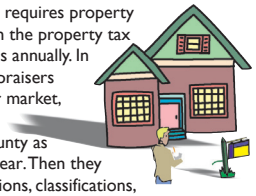
***Florida's property taxes are administered by locally elected officials and supervised by the Florida Department of Revenue. Florida does not have a state-level property tax.***

PROPERTY TAX OVERSIGHT

## 1 Property Tax Base

### Property Appraisers

Florida's Constitution requires property appraisers to establish the property tax base for their counties annually. In doing so, property appraisers determine the just, or market, value of each parcel of property in the county as of January 1 of each year. Then they apply all valid exemptions, classifications, and assessment limitations to determine each property's taxable value, or relative tax burden. The property appraiser does not determine the property tax rate or the amount of property taxes levied.



### Department of Revenue

The department reviews each county's property tax rolls in July and August of every year. These reviews ensure that the just value that the property appraiser established is equitable, uniform, and in compliance with Florida law. The department also reviews and approves each property appraiser's annual budget.

## 2 Property Tax Rates

### Locally Elected Officials



Florida has more than 640 local governments that levy a property tax. These include cities, counties, school boards, and special districts.

Each year, usually in September, locally elected officials in each jurisdiction set a millage, or tax, rate for the upcoming fiscal year, usually beginning on October 1. Millage rates for each jurisdiction are uniform across all property types.

### Department of Revenue

The department ensures that local government millage rates do not exceed state-mandated caps. In addition, the department confirms that local governments send notices and advertise public hearings to adopt millage rates and annual budgets properly and on time.

## 3 Annual Truth-in-Millage (TRIM) Notice



### Property Appraisers and Locally Elected Officials

In August, the property appraiser sends each property owner a Notice of Proposed Property Taxes, or TRIM notice. This notice contains the property's value on January 1, the millage rates proposed by each local government, and an estimate of the amount of property taxes the property owner owes based on the proposed millage rates. The date, time, and location of each local government's budget hearing are also on the notice. This provides property owners the opportunity to attend the hearings and comment on the millage rates before approval.

### Department of Revenue

The department verifies that the information from each local government is accurate and in compliance with Florida Truth-in-Millage requirements.

## 4 Appeals Process

### Value Adjustment Boards



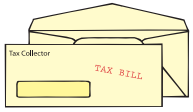

Each county has a five-member value adjustment board, which hears and rules on challenges to a property's assessment, classification, or exemptions. The value adjustment board is independent of the property appraiser and tax collector. Value adjustment boards cannot change the millage, or property tax, rates local governments adopt.

### Department of Revenue

The department provides annual training to value adjustment boards. The department also issues mandatory procedures and forms to promote fair, impartial, and uniform hearings for all taxpayers.

## 5 Billing and Payment

### Tax Collectors




After local governments adopt millage rates, county tax collectors send annual property tax bills, usually in late October or early November. Full payment is due by the following March 31. Taxpayers receive discounts of up to 4 percent for early payment.

### Department of Revenue

The department provides training and certification to tax collectors and their staff to promote uniform and cost-effective tax collection practices. The department also reviews and approves most tax collectors' annual budgets.

## 6 Collections and Refunds

### Tax Collectors



If a taxpayer does not pay a property tax bill by the following March 31, the tax collector sells a tax certificate on that property to collect the unpaid taxes. A tax deed may be sold if the property owner has not paid all back taxes, interest, and fees within two years. Tax collectors also process and issue refunds for overpayment of property taxes.

### Department of Revenue

The department assists those who have questions about the local property tax process. The department also reviews property tax refunds of $2,500 or more to verify they were issued in accordance with Florida law.

## 7 Funding of Public Education and Local Services

### Tax Collectors

The tax collector distributes property taxes to the local governments and taxing authorities. Roughly 50 percent of Florida's public education funding and 30 percent of its local government revenues come from property taxes.



### Department of Revenue

The department provides statistics to the Department of Education to ensure adequate funding for public education.

FLORIDA DEPARTMENT OF REVENUE

***Additional information is available at*** **http://floridarevenue.com/property/Pages/Home.aspx.**

PT-902012 R. 03/17

Attachment: PropertyTaxOversightInfographic (15118 : Informational: Value Adjustment Board Rules and

**VAB RESOLUTION NO. 2021-001**

A RESOLUTION OF THE CITRUS COUNTY VALUE ADJUSTMENT BOARD IMPOSING A FILING FEE OF $15.00 UPON CERTAIN PETITIONS

**WHEREAS**, Chapter 194, Florida Statutes, establishes the Citrus County Value Adjustment Board to hear petitions relating to assessments, hear complaints relating to homestead exemptions, hear appeals from exemptions denied or disputes arising from exemptions granted, and hear appeals concerning ad valorem tax deferrals and classifications, and

**WHEREAS**, the Citrus County Value Adjustment Board recognizes the substantial costs involved in the conduct of its affairs, pursuant to State law, and

**WHEREAS**, Section 194.013, Florida Statues, authorizes the Citrus County Value Adjustment Board to impose a filing fee upon certain petitions filed pursuant to Section 194.011, Florida Statutes;

**NOW, THEREFORE, BE IT RESOLVED** by the Citrus County Value Adjustment Board in a regular meeting held this 18th day of May, 2021, as follows:

1. Effective upon the date of this resolution as shown above, all petitions filed pursuant to Section 194.011, Florida Statutes, except as provided herein below, shall be accompanied by a filing fee to be paid to the Clerk of the Value Adjustment Board in the sum of fifteen dollars and no/cents ($15.00). Payment can be made in the form of cash, check, or credit card (the current vendor charges a service fee per transaction of 3.5% for over the counter payments; 5% for web payments; or 7% for telephone payments).
2. No such filing fee shall be required with respect to an appeal from the disapproval of a timely filed homestead exemption, pursuant to Section 196.151, Florida Statutes, or from the denial of a tax deferral under Section 197.2425, Florida Statutes.
3. Other than fees required for late filed applications under Sections 193.155(8)(i) and 196.011(8), F.S., only a single filing fee shall be charged to any particular parcel of property, despite the existence of multiple issues or hearings pertaining to such parcels.
4. For joint petitions filed pursuant to Section 194.011(3)(e) or (f), Florida Statutes, a single filing fee shall be charged. Such fee shall be calculated as the cost of the special magistrate for the time involved in hearing the joint petition and shall not exceed $5.00 per parcel of real property. Such fee is to be proportionately paid by affected parcel owners.
5. For joint petitions filed pursuant to Section 194.011(3)(g), Florida Statutes, a single filing fee shall be charged. Such fee shall be calculated as the cost of the special magistrate for the time involved in hearing the joint petition and shall not exceed $5.00 per parcel of tangible property account. Such fee is to be proportionately paid by affected parcel owners.
6. The Citrus County Value Adjustment Board shall waive the filing fee with respect to a petition filed by a taxpayer who demonstrates at the time of filing by submitting with the petition documentation issued by the Department of Children and Family Services that the petitioner is then an eligible recipient of temporary assistance under Chapter 414, Florida Statutes.
7. All filing fees imposed under this Section shall be paid to the Clerk of the Value Adjustment Board at the time of filing. If such fees are not paid at that time, the petition shall be deemed incomplete and invalid and shall be rejected.
8. All filing fees collected by the Clerk shall be allocated and utilized to defray, to the extent possible, the costs incurred in connection with the administration and operation of the Value Adjustment Board.
9. All filing fees are nonrefundable.
10. This resolution shall become effective upon adoption.

Attachment: VAB Resolution_5.15.21 (15133 : Value Adjustment Board Resolution)

ATTEST:

Georgette Tozer DC.

ANGELA VICK, CLERK May 18th, 2021

CITRUS COUNTY VALUE ADJUSTMENT BOARD

5/18/2021

CHAIR May 18th, 2021

APPROVED AS TO FORM
AND CORRECTNESS:

VALUE ADJUSTMENT BOARD COUNSEL
May 18th, 2021

Attachment: VAB Resolution_5.15.21 (15133 : Value Adjustment Board Resolution)

E16

# AGENDA MEMORANDUM

| | |
|---|---|
| **FROM:** | Janice A. Warren, Citrus County Tax Collector |
| **SUBJECT:** | Extension of the Tax Roll |
| **AGENDA DATE:** | May 25th, 2021 |

**BRIEF OVERVIEW:**

**BUDGET IMPACT/FUNDING SOURCE:**

| Account No. | Account Title | Current Budget | YTD Expenditures | Encumbrances | Available Balance |
|---|---|---|---|---|---|
| | | | | | $0 |

**RECOMMENDED ACTION:**

Approve a request from Janice A. Warren, Citrus County Tax Collector, to extend the tax roll pursuant to section 197.323, Florida Statutes.

Attachment: ExtensionofTaxRoll_2021 (15134 : Initial Certifications of the Value Adjustment Board)

210 N. Apopka Ave., Suite 100
Inverness, Fl. 34450
(352) 341-6500

**Janice A. Warren, C.F.C**
**CITRUS COUNTY TAX COLLECTOR**

# MEMO

To: Board of County Commissioners

From Janice A. Warren, Citrus County Tax Collector

Date: 5/5/2021

Re: 2021 Tax Roll

Due to the schedule of the 2021 Citrus County Value Adjustment Board, I respectfully request that the Board of County Commissioners pursuant to Florida Statute 197.323, order the 2021 tax roll be extended, and that the Property Appraiser undertake all actions required so that the tax bills may be mailed by November 1st, 2021.

This request is made pursuant to the aforementioned statute, and at the request of and in cooperation with the Property Appraiser and the County Attorney's office.

Attachment: ExtensionofTaxRoll_2021 (15134 : Initial Certifications of the Value Adjustment Board)

FLORIDA DEPARTMENT OF REVENUE

# INITIAL CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

DR-488P
N. 12/09

Rule 12D-16.002
Florida Administrative Code

Section 193.122(1), Florida Statutes

Tax Roll Year 2021

The Value Adjustment Board of Citrus County has not completed its hearings and certifies on order of the Board of County Commissioners according to sections 197.323 and 193.122(1), F.S., that the

Check one. ☑ Real Property ☐ Tangible Personal Property

assessment roll for our county has been presented by the property appraiser to include all property and information required by the statutes of the State of Florida and the requirements and regulations of the Department of Revenue.

On behalf of the entire board, I certify that we have ordered this certification to be attached as part of the assessment roll. We will issue a Certification of the Value Adjustment Board (Form DR-488) under section 193.122(1) and (3), F.S., when the hearings are completed. The property appraiser will make all extensions to show the tax attributable to all taxable property under the law.

_____

Signature, Chair of the Value Adjustment Board

Date

Attachment: ExtensionofTaxRoll_2021 (15134 : Initial Certifications of the Value Adjustment Board)

FLORIDA DEPARTMENT OF REVENUE

# INITIAL CERTIFICATION OF THE VALUE ADJUSTMENT BOARD

Section 193.122(1), Florida Statutes

DR-488P
N. 12/09

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Tax Roll Year 2021

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On behalf of the entire board, I certify that we have ordered this certification to be attached as part of the assessment roll. We will issue a Certification of the Value Adjustment Board (Form DR-488) under section 193.122(1) and (3), F.S., when the hearings are completed. The property appraiser will make all extensions to show the tax attributable to all taxable property under the law.

Signature, Chair of the Value Adjustment Board

Date

Attachment: ExtensionofTaxRoll_2021 (15134 : Initial Certifications of the Value Adjustment Board)

# *Richard R. Kosan, Attorney at Law*

Richard R. Kosan, P.A.
1626 Grand Heritage Blvd.
Valrico, FL 33594

Ph:(813) 689-1577 Fax:(813) 654-5262


Citrus County Value Adjustment Board July 20, 2021

Citrus County Clerk of the Circuit Court and Comptroller
110 N. Apopka Avenue
Iverness, FL
34450

File #: CitVAB-001

**Attention:** Inv #: 2585

**RE:** Special Counsel - Citrus County VAB

| DATE | DESCRIPTION | HOURS | AMOUNT | LAWYER |
|---|---|---|---|---|
| May-06-21 | Review Petitions 123 and 124. Email to Clerk Georgette Tozer confirming that corrections are required to te After Board Action value. Review emails from Clerk Georgette Tozer regarding changes to invoice of Special Magistrate Robert Sutte. Correspondence with Clerk Georgette Tozer regarding placing this matter on the next Agenda of the Board. Review emails from Clerk Georgette Tozer regarding petitioner 242 appearing at May 18, 2021, VAB Meeting. Review of Late-filed Petition 242. Email correspondence with Clerk Georgette Tozer regarding same. | 0.80 | 180.00 | RRK |
| May-11-21 | Review agenda for 05-18-21 VAB Meeting. | 0.50 | 112.50 | RRK |
| May-17-21 | Review email from Clerk Georgette Tozer confirming attendance of members required for a quorum. | 0.10 | 22.50 | RRK |
| May-18-21 | VAB Meeting. | 3.00 | 675.00 | RRK |
| May-25-21 | Review email from Clerk Georgette Tozer to Special Magistrate Robert Sutte regarding the Board's partial approval of his invoice. Review email from Clerk Georgette Tozer to Board members regarding completion of minutes of 05-18-21 VAB Meeting. Review minutes. Email from Clerk Georgette Tozer regarding | 0.40 | 90.00 | RRK |

Attachment: InvoiceKosan_7.20.21 (15137 : Payment of Services to Value Adjustment Board Legal Counsel)

| | | | | |
|---|---|---|---|---|
| | postcard notification received from Property Appraiser. Review same. | | | |
| Jun-14-21 | Review correspondence between VAB Boardmember Patrick Crippen and Clerk Georgette Tozer regarding determination of good cause for late-filed applications and how the determination is made in other jurisdictions. | 0.30 | 67.50 | RRK |
| Jul-08-21 | Email correspondence with Clerk Georgette Tozer regarding scheduling of final VAB Meeting of the tax year. | 0.10 | 22.50 | RRK |
| Jul-19-21 | Review credentials of Special Magistrate applicants to confirm applicants' compliance with §194.035, Fla. Stat., and Rule 12D-9.010, F.A.C.: Attorney SM applicants Joseph Haynes Davis, Todd M. Hoepker, Andrea M. Johnson, Thomas Tukdarian and Laura L. Walker. Real Property SM applicants Richard L. Steeves, Stephen Jamir, Robert C. Hicks, John Robinson, Lawrence (Larry) J. Golicz and Robert Sutte. Tangible Personal Property SM applicants Edward Weinert, Lawrence (Larry) J. Golicz, John Robinson and Robert Sutte. Review final changes to SM best practices. | 2.40 | 540.00 | RRK |
| Totals | | 7.60 | $1,710.00 | |

| | |
|---|---|
| **Total Fee & Disbursements** | **$1,710.00** |
| Previous Balance | 4,050.00 |
| Previous Payments | 4,050.00 |
| **Balance Now Due** | **$1,710.00** |

TAX ID Number 47-3068561

**PAYMENT DETAILS**

| | | |
|---|---|---|
| Jun-03-21 | Citrus VAB | 4,050.00 |
| | **Total Payments** | **$4,050.00** |

Attachment: InvoiceKosan_7.20.21 (15137 : Payment of Services to Value Adjustment Board Legal Counsel)

# CITRUS COUNTY VALUE ADJUSTMENT BOARD (VAB)
# INTERNAL OPERATING PROCEDURES

**Adopted August 5, 2020** [1]

Value Adjustment Boards (VAB) may have additional internal procedures, not rules, which do not conflict with, change, suspend, or negate the rules adopted in the Department of Revenue's Uniform Rules of Procedure for Hearings, the Florida Statues, or case law. FAC12D-9.005(2)(a) and (b).

## Petition Requirements to File

A Petitioner appealing determinations of the Property Appraiser may file a petition with the Clerk to the VAB. The Petitioner must ensure that the petition is fully completed before filing it, and the petition must be accompanied by the appropriate, non-refundable filing fee. Incomplete petitions shall not be accepted.

The statutory deadline for accepting petitions for assessed value is twenty-five (25) days after the mailing of TRIM (Truth in Millage) notices in mid-August by the Property Appraiser's office. The VAB Clerk must receive the petition by the 25th day; having the petition postmarked by the 25th day is not sufficient. Petitions must be received by 4:59 PM (EST) of the statutory deadline.

All petitions must be filed by mail, email, or in person at the Clerk Annex located at 120 Montgomery Ave, Inverness, Florida or the Crystal River office (opening on Monday, August 17, 2020) located at 1540 N. Meadowcrest Blvd., Crystal River, Florida. The VAB Clerk will not accept petitions via fax.

All filing fees shall be in compliance with the VAB Resolution (adopted each year at the VAB final meeting) and shall be paid to the Clerk of the VAB at the time of filing. Any petition not accompanied by the required filing fee will be deemed incomplete. The Clerk shall notify the Petitioner of any incomplete petition received by the Clerk and give the Petitioner an opportunity to complete the petition within 10 calendar days.

## Late-Filed Petitions

Petitioners who file their petitions after the statutory deadline*, in compliance with 12D-9.015(14), shall submit a written explanation of good cause and supporting documentation, which will be reviewed by the VAB Designee for the VAB. Late-filed petitions will be accepted based on his determination:

1) good cause justifying a hearing of the petition, including substantial proof in support of any good cause statement, and

2) that the delay in filing the petition will not, in fact, be prejudicial to the performance of the VAB's functions in the taxing process.

If the VAB Designee finds that the Petitioner shows good cause for filing the petition late, the petition will be scheduled for a hearing.

If the VAB Designee finds that the reasons for filing the petition late do not demonstrate good cause, the Petitioner will be notified that their petition will not be scheduled for hearing.

*Deadline meaning - Petitions not received in the Clerk's Office by 4:59 P.M. on the deadline date of September 8, 2020 will be considered late. The postmarked date will not be considered.

Attachment: InternalOperatingProcedures (15138 : Internal Operating Procedures)

**Right to Reschedule**

Petitioner and Property Appraiser may each reschedule the hearing one time for 'good cause' which means circumstances beyond the control of the person seeking to reschedule the hearing which would reasonably prevent the party from having adequate representation at the hearing. The party with the scheduling conflict submits a written request to the VAB Clerk no fewer than 5 calendar days prior to their original hearing date. The VAB Clerk shall notify the parties at least 15 calendar days prior to the rescheduled hearing date, unless the notice is waived by both parties.

Reschedule requests will be reviewed by the VAB Designee for the VAB and will be rescheduled based on the VAB Designee's written decision.

Dates and times for the rescheduling are limited and might be inconvenient. The VAB Clerk cannot guarantee specific requests but will do best to accommodate the requests.

**Withdrawn Petitions**

Petitioners may withdraw their petitions at any time. Petitions that are withdrawn are required to be reported to the VAB Clerk by using form DR-485WI. A copy of the withdrawal form can be obtained from the Clerk's website or https://floridarevenue.com/property/Documents/dr485wi.pdf. They will also be available at hearings. You may mail or email the withdrawal to the VAB Clerk. For all withdrawn or settled petitions, the Special Magistrate shall not produce a recommended decision and the VAB shall not produce a final decision.

**Telephonic Hearings**

The Citrus VAB permits Petitioners to appear for VAB hearings telephonically. Any Petitioner, who wants to appear telephonically, must notify the VAB Clerk PRIOR to the scheduled hearing date. The request must be submitted in writing to VAB@citrusclerk.org or by mail. The VAB Clerk shall notify the Special Magistrate and the Property Appraiser's Office of the request.

If a Petitioner requests a telephonic hearing, the Petitioner is still required to follow the sections of the Florida Statutes and the Florida Administrative Code which apply to the exchange of evidence.

**Will Not Attend Hearing**

A Petitioner may indicate on the petition, or forward a written notification to the VAB Clerk, that he or she does not wish to appear at the hearing but would like for the Special Magistrate to consider evidence. Evidence must be provided to the VAB Clerk prior to the scheduled hearing date via US mail or hand delivery. The VAB Clerk shall keep the Petitioner's evidence as part of the petition file and notify the Special Magistrate before or at the hearing that the Petitioner has indicated he or she will not appear at the hearing.

**Evidence Exchange**

Petitioners have the right to request to exchange evidence with the Property Appraiser. If the Petitioner desires to enter into an evidence exchange with the Property Appraiser, evidence must be submitted no later than fifteen (15) calendar days before the scheduled hearing day, and the Petitioner must specifically request, in writing, that the Property Appraiser supply their evidence to the Petitioner. Specific information regarding the exchange of evidence requirements is available online at: http://floridarevenue.com/property/pages/vab.aspx in the Florida Administrative Code (F.A.C.) 12-9.020. The Property Appraiser is also entitled to request

Attachment: InternalOperatingProcedures (15138 : Internal Operating Procedures)

evidence from the Petitioner even if the Petitioner does not request to exchange evidence with the Property Appraiser.

If the Petitioner does not attend the hearing but would like their evidence heard, the Petitioner must provide the VAB Clerk with one copy of evidence for the Special Magistrate at least one day prior the hearing.

**Note:** the VAB Clerk is not responsible for preparing any evidence or information but will only provide to the Special Magistrate the evidence submitted to the Clerk by Petitioner. Any physical documentation and testimonial evidence (the statements that you make under oath at the hearing concerning your petition) that the Petitioner wishes to present to the Special Magistrate must be presented during your scheduled hearing before the Special Magistrate.

**Accommodation for Special Needs**

In accordance with the Americans with Disabilities Act, a Petitioner in need of special accommodation to view or participate in any hearing or meeting of the VAB, shall contact the VAB Clerk at (352) 341-7095 either at the time of filing the petition or no later than ten (10) business days prior to the scheduled hearing requiring such accommodation.
If an interpreter is needed, the person needing an interpreter will be responsible for securing an interpreter and all costs associated with hiring an interpreter**.**

**Ex-Parte Communication Prohibited**

Pursuant to Rule 12D-9.017, ex-parte communication between VAB members, Special Magistrates, and the Property Appraiser's office, outside of scheduled hearings or VAB meetings, is prohibited. Should either party or the Special Magistrate recognize that they are the recipient of an ex-parte communication of issues in the petition, either verbal or written, they shall immediately terminate their oral communication or review of written material. In the event of a written ex-parte communication, either party or the Special Magistrate shall forward the ex parte document to the VAB Clerk at VAB@citrusclerk.org who will forward it to the VAB Attorney. In the event of an ex parte verbal communication, either party or the Special Magistrate shall provide a detailed, written statement memorializing the conversation to the VAB Clerk as above which will then be forwarded to the VAB Attorney. The VAB Clerk shall maintain a copy of the document or written statement of the conversation and provide a copy to the opposing party or both parties if the communication is from a third party.

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