

# FLORIDA DEPARTMENT OF REVENUE



## **Ad Hoc Training Session for the Appointed Special Magistrates of the 2020 Duval County Value Adjustment Board December 10, 2020**

After discussion at a public meeting held August 5, 2020, the 2020 Duval County VAB voted to request this Ad Hoc Training from the Department of Revenue (DOR). This training was requested to help further the settlement of pending litigation between the Property Appraiser and the VAB. However, DOR is not a party to the pending litigation and is not a party to any related settlement agreements. The terms under which DOR is providing this training are addressed in a DOR memo dated July 31, 2020, posted on the VAB's website. DOR is providing this Ad Hoc Training as advisory assistance. This training is not a rule.

This training is designed and intended for VAB special magistrates who are subject matter experts with a high degree of prior training, education, experience, and expertise. While this training session is open to the public for listening and observing, it is not designed for laypersons or others without the qualifications of the VAB special magistrates. This training is not exhaustive and does not include much relevant information about the VAB process. Persons who would like more information about the VAB process are advised to contact the Duval VAB Clerk. The content of these training materials is subject to change at any time and without notice.

## **Ad Hoc Training for Duval VAB Special Magistrates**

### **Taxpayer Rights in Value Adjustment Board (VAB) Proceedings**

Department of Revenue Rule [12D-9.001](#), Florida Administrative Code, contains a listing of taxpayer rights in the VAB process. Taxpayer rights are also contained in section [192.0105](#), Florida Statutes. Those involved in administering the VAB process should be aware of these rights to assure they are \_\_\_\_\_ in the VAB process.

### **Role of the Value Adjustment Board (VAB)**

The value adjustment board (VAB) is a five-person, quasi-judicial body that considers appeals filed by taxpayers or their authorized representatives regarding certain determinations of the property appraiser. The document that is filed to initiate the appeal is called a petition and the person who files a petition is called a petitioner.

The VAB exists for the benefit of \_\_\_\_\_ and provides a low-cost, informal, assessment review process which is intended to be independent of the property appraiser and tax collector. The law requires each Board to appoint a private attorney to advise the Board.

The Duval County VAB is required by statute to appoint special magistrates to conduct hearings, consider evidence, and produce written recommended decisions for the VAB to consider. The VAB must determine

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25 whether each recommended decision \_\_\_\_\_ with \_\_\_\_\_ and may rely  
26 on the VAB attorney for such determination.

27

28 If the VAB determines that a recommended decision complies with law,  
29 the VAB \_\_\_\_\_ such decision. If the VAB determines that a  
30 recommended decision does not comply with law, the VAB must request  
31 advice from the VAB attorney and take the steps necessary for producing a  
32 written final decision that complies with law as outlined in Rule 12D-9.031(4),  
33 Florida Administrative Code.

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35 Each VAB final decision must contain findings of fact, conclusions of law,  
36 and reasons for upholding or overturning the property appraiser's assessment  
37 determination. Each written final decision must contain sufficient factual and  
38 legal \_\_\_\_\_ and \_\_\_\_\_ to enable the parties to  
39 understand the basis for the decision, and must otherwise comply with law.

40

41 Conclusions of law must be based on findings of fact. For \_\_\_\_\_ of  
42 the statutory criteria for the issue under administrative review, findings of fact  
43 must identify the \_\_\_\_\_ admitted evidence or lack thereof.

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### **Role of the VAB Attorney**

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47 Each Board is required by law to appoint a private attorney each year.  
48 Regarding the VAB attorney's duties, DOR rules state in part:

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50        *"The primary role of the board legal counsel shall be to advise the*  
51        *board on all aspects of the value adjustment board review process*  
52        *to ensure that all actions taken by the board and its appointees*  
53        *meet the requirements of law."*

54  
55        The VAB attorney also \_\_\_\_\_ and \_\_\_\_\_ to complaints  
56        about the VAB process and advises the VAB on appropriate action.

57

### **Role of the VAB Clerk**

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59  
60        The VAB clerk's duties include: providing \_\_\_\_\_ to  
61        assist taxpayers, assisting the VAB attorney, preparing and publishing notices  
62        of public meetings, organizing agendas for VAB meetings, receiving and  
63        acknowledging taxpayer petitions, collecting and managing filing fees,  
64        scheduling hearings, sending notices of hearings, arranging for facilities for  
65        hearings, sending written decisions to the parties, maintaining all records  
66        relating to petitions and VAB activities, maintaining the VAB's web page,  
67        maintaining and making available the necessary electronic systems and  
68        equipment, assisting special magistrates, and managing the VAB's day-to-day  
69        operations in \_\_\_\_\_ with the VAB attorney.

70

71        The VAB clerk assists taxpayers with the VAB process and provides  
72        taxpayers with information such as: filing deadlines and fees, how to obtain  
73        and complete forms, how to file petitions, how to submit documentary  
74        evidence, and dates, times and locations of meetings and hearings.

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### **Role of the VAB Special Magistrates**

The Duval VAB is required to appoint special magistrates to conduct hearings, consider evidence, and produce written recommended decisions. These written recommended decisions must contain findings of fact, conclusions of law, and \_\_\_\_\_ for upholding or overturning the determinations of the property appraiser.

Each written recommended decision must contain sufficient factual and legal information and reasoning to \_\_\_\_\_ the parties to understand the basis for the decision, and must otherwise comply with law.

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 \_\_\_\_\_ thereof.

### **Promoting Public Trust in the VAB Process**

Below are rule excerpts emphasizing that VABs, VAB attorneys, VAB clerks, and VAB magistrates must remain unbiased and independent and avoid the appearance of \_\_\_\_\_ from a party. This promotes public trust in the VAB process.

Rule 12D-9.008(5), F.A.C., provides:

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100        *"(5) Legal counsel should avoid conflicts of interest or the*  
101        *appearance of a conflict of interest in their representation."*

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103 Rule 12D-9.009(1), F.A.C., provides in pertinent part:

104

105        *"(b) Board legal counsel shall advise the board in a manner that*  
106        *will promote and maintain a \_\_\_\_\_ of public trust*  
107        *and confidence in the administrative review process."*

108

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

112

113 Rule 12D-9.005(2)(c), F.A.C., provides in pertinent part:

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115        *"The board shall not provide notices or establish a local procedure*  
116        *instructing petitioners to contact the property appraiser's or tax*  
117        *collector's office or any other agency with questions about board*  
118        *hearings or procedures. The board, board legal counsel, board*  
119        *clerk, special magistrate or other board representative shall not*  
120        *otherwise \_\_\_\_\_ the property appraiser's or tax collector's*  
121        *office to perform administrative duties for the board. Personnel*  
122        *performing \_\_\_\_\_ of the board's duties shall be independent of*  
123        *the property appraiser's and tax collector's office."*

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125 Rule 12D-9.023(1), F.A.C., provides in pertinent part:

126

127 *"The board clerk shall perform his or her duties in a manner to*  
128 *avoid the appearance of a conflict of interest. The board clerk shall*  
129 *not use the resources of the property appraiser's or tax collector's*  
130 *office and shall \_\_\_\_\_ the property appraiser or tax*  
131 *collector to control or influence any part of the value adjustment*  
132 *board process."*

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134 Rule 12D-9.024(5), F.A.C., provides in pertinent part:

135

136 *"Before or at the start of the hearing, unless waived by the parties,*  
137 *the board or special magistrate shall make an opening statement*  
138 *or provide a brochure or taxpayer information sheet that:"*

139

140 *"(a) States the board or special magistrate is an \_\_\_\_\_,*  
141 *impartial, and unbiased hearing body or officer, as applicable;"*

142

143 *"(b) States the board or special magistrate does not work for the*  
144 *property appraiser or tax collector, is independent of the property*  
145 *appraiser or tax collector, and is not \_\_\_\_\_ by*  
146 *the property appraiser or tax collector;"*

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148 *"(c) States the hearing will be conducted in an \_\_\_\_\_*  
149 *fair, and unbiased manner;"*

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### **Chronological Overview of Some Key VAB-Related Events**

Below is an overview of some key events relevant to this ad hoc training.

#### **1996:**

The Florida Legislature passed House Bill 557 that would have eliminated the "every-reasonable-hypothesis" standard of proof that was perceived as unfair for \_\_\_\_\_ in assessment appeals. However, this bill was vetoed and did not become law. On the same day as the veto, the Governor issued Executive Order 96-172, creating the Florida Ad Valorem Task Force charged with reviewing the property tax system including the VAB process.

#### **1997:**

The Florida Legislature passed and the Governor approved House Bill 445, creating the original version of section 194.301, Florida Statutes, and eliminating the "every-reasonable-hypothesis" \_\_\_\_\_ from property assessment appeals in Florida, stating in pertinent part:

*"In \_\_\_\_ shall the taxpayer have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment."*



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173 In the 1996 to 1998 period, multiple \_\_\_\_\_ articles addressed issues in  
174 the assessment appeal process and legislative efforts to improve fairness for  
175 property taxpayers.

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### 177 **2001:**

178 Despite the 1997 enactment of section 194.301, Florida Statutes, in Wal-  
179 Mart Stores v. Todora, the Second District Court of Appeal issued a decision  
180 that actually applied the "every-reasonable-hypothesis" standard, stating:

181

182 *"Because there are \_\_\_\_\_ well-recognized approaches for*  
183 *arriving at an appraisal, the appraiser's decision may be overturned*  
184 *only if there is no reasonable hypothesis to support it."*

185

### 186 **2002:**

187 Again, despite the 1997 enactment of section 194.301, in Mazourek v.  
188 Wal-Mart Stores, the \_\_\_\_\_ Court approved the Second  
189 District's 2001 decision in Wal-Mart v. Todora, and likewise stated:

190

191 *"Because there are so many well-recognized approaches for*  
192 *arriving at an appraisal, the appraiser's decision may be overturned*  
193 *only if there is no reasonable hypothesis to support it."*

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### 195 **2005:**

196 The Florida Legislature's Auditor General released [Report No. 2006-007](#)  
197 that contained findings and recommendations regarding several VAB-related

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198 issues including, but not limited to, undue influence in the VAB process,  
199 deficiencies in \_\_\_\_\_ written decisions, and the need for a uniform policies  
200 and procedures manual and training for VABs and their special magistrates.  
201

202 Note: The Auditor General is \_\_\_\_\_ to conduct audits of VABs  
203 and of DOR's role in the VAB process. The law does not specify the frequency  
204 of these audits, but the Auditor General conducts these audits periodically.  
205

### **2008:**

206 Legislative changes \_\_\_\_\_ Florida's VAB process. See  
207 [Chapter 2008-197](#), Laws of Florida. This legislation addressed some of the  
208 issues reported by the Legislature's Auditor General in [Report No. 2006-007](#).  
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210

211 Summarized below are key changes from this legislation:  
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213

214 • Requires the Department of Revenue to annually provide a Uniform  
215 Policies and \_\_\_\_\_ Manual for use by VABs, VAB  
216 special magistrates, and property taxpayers

217

218 • Requires DOR to annually provide training for VABs, VAB attorneys, and  
219 VAB special magistrates

220

221 • Requires the VAB in each county to have two citizen members, replacing  
222 two \_\_\_\_\_ members

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- 223
- Requires each VAB to appoint a private attorney (who must meet
- 224 specified criteria) to advise the VAB on its duties consistent with law
- 225
- Requires VABs, \_\_\_\_\_ appointing a special magistrate, to verify
- 226 the special magistrate's qualifications
- 227
- Requires VABs to ensure that the selection of special magistrates is
- 228 based solely on the experience and qualifications of the special
- 229 magistrate and is not influenced by the property appraiser
- 230
- Clarifies that the property appraiser, in developing just valuations, must
- 231 consider \_\_\_\_\_ constraints on the use of the property and must
- 232 consider legal changes needed to achieve the highest and best use of
- 233 the property
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- 235
- 236
- 237

### **2009:**

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239 New statutes overhauled the processes and standards for the

240 development and presentation of assessment evidence by property appraisers

241 and the \_\_\_\_\_ and use of such evidence by Courts and VABs in

242 assessment appeals. See [Chapter 2009-121](#), Laws of Florida. This legislation

243 completely amended section 194.301 and enacted section 194.3015, Florida

244 Statutes, and is discussed in more detail later in this training session.

245

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246        **2010:**

247            DOR adopted comprehensive administrative rules on the VAB process,  
248 completing the Uniform Policies and Procedures Manual \_\_\_\_ required by the  
249 2008 legislation in [Chapter 2008-197](#), Laws of Florida.

250

251        **2013:**

252            In its decision in CVS v. Todora,<sup>1</sup> the Second District Court admitted its  
253 error in the aforementioned 2001 case of Wal-Mart Stores v. Todora, and  
254 explained how this error was extended when the Florida Supreme Court  
255 approved and quoted the error in its 2002 decision in Mazourek v. Wal-Mart.

256            The Second District Court then \_\_\_\_\_ section 194.3015 in  
257 overturning a trial court judgment that had used the every-reasonable-  
258 hypothesis standard, stating on remand:

259

260            *“At no point during the trial court’s application of these standards*  
261 *should it consider whether the assessment is within the range of*  
262 *reasonable appraisals or whether it is \_\_\_\_\_ by any*  
263 *reasonable hypothesis of legality.”*

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<sup>1</sup> Note: the assessment years at issue (2006-2008) in CVS predate the 2009 amendments to section 194.301 and, thus, the 1997 version of section 194.301 was applied in CVS. The 1997 version of section 194.301 was completely amended in 2009 and the 1997 version must be avoided in judicial reviews of assessments for tax years 2009 and later.

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265        **2014:**

266            The Florida Legislature’s Auditor General released [Report No. 2014-194](#)  
267 that contained findings and recommendations regarding several VAB-related  
268 issues including, but not limited to, \_\_\_\_\_ in the  
269 VAB process, deficiencies in VAB written decisions, issues in VAB procedures,  
270 and taxpayer fairness.

271

272        **2019:**

273            In its 2019 decision in Darden Restaurants, Inc. v. Singh, the Fifth  
274 District Court of Appeal applied the 2009 enactments in section 194.301  
275 Florida Statutes, in reversing a trial judgment that had relied upon an obsolete  
276 standard from the Florida Supreme Court’s 2002 decision in Mazourek v. Wal-  
277 Mart. More information on the \_\_\_\_\_ and \_\_\_\_\_ of the Darden  
278 decision is presented later in these training materials.

279

280        **2020:**

281            The Fifth District Court of Appeal released its decision in the case of  
282 Singh v. Disney. Below are key excerpts from this decision.

283

284            *At trial, the parties \_\_\_\_\_ that the income approach to*  
285 *value was a professionally accepted appraisal practice and*  
286 *provided the most reliable indicator of value, but they disputed the*  
287 *proper methodology for performing such an assessment.*

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289        *The trial court found that Appraiser improperly considered income*  
290        *from the \_\_\_\_\_ activities conducted on the Property in*  
291        *establishing the just value of the Property.*

292  
293        *Moreover, it ruled that \_\_\_\_\_ the Rushmore method was a*  
294        *professionally accepted appraisal practice, it could not be used in a*  
295        *manner that violated Florida law. The trial court concluded that by*  
296        *including value attributable to Disney business activities on the*  
297        *Property, Appraiser applied the Rushmore method in a way that*  
298        *violated Florida law.*

299  
300        *We \_\_\_\_\_ with the trial court that Appraiser, in the manner in*  
301        *which he applied the Rushmore method, impermissibly included*  
302        *the value of Disney's intangible business assets in its assessment.*

303  
304        Key Point: Relevant to the matter at hand, the Disney decision makes an  
305        important point that even if an appraisal practice is professionally accepted, it  
306        cannot be \_\_\_\_\_ in a manner that violates another part of Florida law.

307  
308        **The 2009 Legislation That Completely Amended Section 194.301 and**  
309        **Created Section 194.3015, Florida Statutes, Re-Engineered the**  
310        **Development, Reporting, and Review of Just Valuations in Florida.**  
311

312        Florida's Constitution requires the Legislature to enact general law to  
313        secure a just valuation of all property for ad valorem taxation. The Florida

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314 Supreme Court explained the Legislature’s responsibility for just valuation  
315 standards, as follows:

316  
317 *While the Florida Constitution requires that “[b]y general law*  
318 *regulations shall be prescribed which shall secure a just valuation*  
319 *of all property,” the framers of the constitution delegated to the*  
320 *Legislature the \_\_\_\_\_ for deciding the specifics of*  
321 *how that “just valuation” would be secured.*

322  
323 The Florida Supreme Court has held that the Legislature’s enactments  
324 for just valuations must be applied to all property. The orderly and uniform  
325 application of state law is an important \_\_\_\_\_. Section  
326 195.0012, Florida Statutes, emphasizes the importance of uniform just  
327 valuations for ad valorem tax purposes.

328  
329 Within the \_\_\_\_\_ and \_\_\_\_\_ of their respective duties,  
330 property appraisers, value adjustment boards, and courts must follow the  
331 same legal standards.

332  
333 Section 194.301(1) expressly provides that it preempts all case law  
334 inconsistent with it. Section 194.3015 was enacted in 2009 and expressly  
335 clarifies that all cases relying upon the “every-reasonable-hypothesis” standard  
336 were rejected with enactment of section 194.301 in 1997, and that all cases  
337 since 1997 citing the “every-reasonable-hypothesis” standard are superseded.

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339 Section 194.301(1), Florida Statutes, now provides:

340  
341 *(1) In any administrative or judicial action in which a taxpayer*  
342 *challenges an ad valorem tax assessment of value, the property*  
343 *appraiser's assessment is presumed correct if the appraiser proves*  
344 *by a preponderance of the evidence that the assessment was*  
345 *arrived at by \_\_\_\_\_ with s. 193.011, any other applicable*  
346 *statutory requirements relating to classified use values or*  
347 *assessment caps, and professionally accepted appraisal practices,*  
348 *including mass appraisal standards, if appropriate. However, a*  
349 *taxpayer who challenges an assessment is entitled to a*  
350 *determination by the value adjustment board or court of the*  
351 *appropriateness of the appraisal methodology used in making the*  
352 *assessment. The value of property must be determined by an*  
353 *appraisal methodology that complies with the criteria of s. 193.011*  
354 *and professionally accepted appraisal practices. The provisions of*  
355 *this subsection preempt any prior \_\_\_\_\_ that is*  
356 *inconsistent with this subsection.*

357  
358 Note: a copy of the entire text of sections 193.011, 194.301, and  
359 194.3015 is attached to these ad hoc training materials.

360  
361 Tips for Special Magistrates:

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363 Rule 12D-9.024(7) provides in pertinent part:



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365

*“Under subsection 194.301(1), F.S., in a hearing on just, classified*

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*use, or assessed value, the \_\_\_\_\_ issue to be considered is*

367

*whether the property appraiser establishes a presumption of*

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*correctness for the assessment. The property appraiser shall present*

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*evidence on this issue first.”*

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371

Rule 12D-9.027(6) provides in pertinent part:

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*“In determining whether the admitted evidence is sufficient for a*

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*particular issue under consideration, the board or special magistrate*

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*shall consider the relevance and credibility of the admitted evidence*

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*as a whole, regardless of which party presented the evidence...”*

376

377

Under the 2009 amendment to section 194.301, the presumption of

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correctness exists only upon sufficient proof by record evidence that the

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property appraiser made the value assessment by an appropriate methodology

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that complies with professionally accepted appraisal practices, each of the

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other criteria in sections 193.011 and 194.301, and any other applicable law.

382

Thus, a VAB is not \_\_\_\_\_ to grant a presumption of

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correctness unless the admitted evidence shows such proof.

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This 2009 legislation requires the VAB to determine whether the property

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appraiser used an appropriate methodology in making the assessment. To

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enable the VAB to make this determination, the property appraiser must now

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go forward and present sufficient evidence that \_\_\_\_\_ the

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389 appraisal methodology and explains how and why it was applied in valuing the  
390 subject property.

391

392 Since the property appraiser is the only person who makes original  
393 assessments, only the appraiser can provide the evidence the VAB needs to  
394 meet its duty of determining the appropriateness of the appraisal methodology  
395 used in making the assessment. Under section 194.301(1), the property  
396 appraiser has the duty of going forward and presenting testimonial and  
397 documentary evidence \_\_\_\_\_ how the appraiser satisfied  
398 each of the just valuation criteria.

399

400 Professionally accepted appraisal practices require communicating, or  
401 reporting, the mass appraisal results. Generally, a mass appraisal report is any  
402 communication, written or oral, about the mass appraisal as applied to any  
403 parcel or group of parcels. One mass appraisal standard requires the appraiser  
404 to disclose and "explain" the methodology used in making the assessment.<sup>2</sup>

405

406 Another mass appraisal \_\_\_\_\_ states that a mass  
407 appraisal report must:<sup>3</sup>

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<sup>2</sup> See International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* (Kansas City, MO: International Association of Assessment Officers, July 2017), pages 11 and 12.

<sup>3</sup> See Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 39.

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409        *"...provide sufficient information to enable the client and intended*  
410        *users to have \_\_\_\_\_ that the process and*  
411        *procedures used conform to accepted methods and result in*  
412        *credible value conclusions..."*

413  
414        Conclutory statements made by an appraiser reporting an appraisal  
415        process are not sufficient and are not credible. A Florida Appellate Court has  
416        held that such conclusory statements are not \_\_\_\_\_ and that the  
417        assessment was not entitled to a presumption of correctness because the  
418        valuation approaches were not properly used.

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420        In 2009, the Legislature also created section 194.3015, Florida Statutes,  
421        which provides:

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423        *(1) It is the express intent of the Legislature that a taxpayer shall*  
424        *never have the burden of proving that the property appraiser's*  
425        *assessment is not supported by any reasonable hypothesis of a*  
426        *legal assessment. All cases establishing the every-reasonable-*  
427        *hypothesis standard were expressly rejected by the Legislature on*  
428        *the adoption of chapter 97-85, Laws of Florida. It is the further*  
429        *intent of the Legislature that any cases published since 1997 citing*  
430        *the every-reasonable-hypothesis standard are expressly rejected to*  
431        *the extent that they are interpretive of legislative intent.*

432        *(2) This section is intended to clarify \_\_\_\_\_ law*  
433        *and apply retroactively.*

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435           The last sentence in section 194.301(1) and section 194.3015 are  
436 reminders that became necessary because, after the 1997 enactment of  
437 section 194.301, \_\_\_\_\_ practitioners and courts had difficulty with  
438 implementing this statute and accepting the abrogation of the “every-  
439 reasonable-hypothesis” standard and its obsolete concomitant standards. The  
440 potential for such difficulty was foreseen in the following sage statements from  
441 the last paragraph of a noted law review article.<sup>4</sup>

442

443           *More importantly, however, the new burdens of proof codified in*  
444 *section 194.301, Florida Statutes, were intended to address the*  
445 *perceived inequities in the current ad valorem tax challenge*  
446 *process that were brought to the forefront during the 1996 and*  
447 *1997 Regular Sessions. Whether this provision will, in fact, restore*  
448 *taxpayers’ \_\_\_\_\_ in the process depends upon how*  
449 *it is interpreted and applied by the VABs and the courts. If they fail*  
450 *to implement the new standards in an equitable manner, the*  
451 *legislative intent of section 194.301, Florida Statutes, will be*  
452 *frustrated, and the two years of work and study that went into the*  
453 *provisions will have been for naught.*

454

455           In its 2013 decision in *CVS v. Todora*, the Second District Court of  
456 Appeal provides an informative analysis of examples of this difficulty and

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<sup>4</sup> Kent Wetherell, *The New Burden of Proof in Ad Valorem Tax Valuation Cases*, 25 Fla. St. U. L. Rev. 185, 233 (Winter 1998).

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457 applied section \_\_\_\_\_ in overturning a trial judgment which had upheld  
458 an assessment based on incorrect legal standards. The Second District  
459 remanded the matter to the trial court with directions to “re-evaluate the  
460 record evidence using only the legal standards set forth in section 194.301.”<sup>5</sup>

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### **Preliminary and Tentative List of Impacts from 194.301 and 194.3015**

465 1. Changed \_\_\_\_\_ of proof (property appraiser must now present  
466 evidence first)

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468 2. Lowered \_\_\_\_\_ of proof for assessment challenges and,  
469 accordingly, superseded concomitant standards

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471 3. Introduced three new determinative statutory standards

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473 3.1 Appropriate appraisal methodology

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475 3.2 Professionally \_\_\_\_\_ appraisal practices

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<sup>5</sup> Note: the assessment years at issue (2006-2008) in CVS predate the 2009 amendments to section 194.301 and, thus, the 1997 version of section 194.301 was applied in CVS. The 1997 version of section 194.301 was completely amended in 2009 and the 1997 version must be avoided in judicial reviews of assessments for tax years 2009 and later.

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- 477            3.3 Avoid appraisal practices arbitrarily different from the appraisal  
478            practices generally \_\_\_\_\_ to comparable property within the  
479            same county  
480
- 481       4. Increased \_\_\_\_\_ of care for developing valuations (must  
482       comply with the three new standards noted above, and must comply  
483       with section 193.011 factors and other applicable law and avoid cursory  
484       consideration)  
485
- 486       5. Increased standard of \_\_\_\_\_ for reporting valuations (must use  
487       professionally accepted practices for appraisal reporting and avoid  
488       conclusory statements)  
489
- 490       6. Increased standard of care for administrative reviews; VABs now must:  
491
- 492            6.1 Avoid superseded \_\_\_\_\_ standards  
493
- 494            6.2 Weigh evidence using only the preponderance of the evidence  
495            standard  
496
- 497            6.3 Determine whether evidence shows assessment was developed  
498            using an \_\_\_\_\_ appraisal methodology  
499
- 500            6.4 Determine whether evidence shows \_\_\_\_\_ with  
501            professionally accepted appraisal practices

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502

503           6.5 Determine whether evidence shows the appraiser's practices were  
504 applied uniformly and avoided appraisal practices arbitrarily  
505 different from the appraisal practices applied to comparable  
506 property within the \_\_\_\_\_ county

507

508           6.6 When original value is deemed invalid, determine whether record  
509 contains competent substantial evidence that cumulatively meets  
510 applicable legal criteria

511

512           6.7 Establish a revised value when the original value is deemed invalid  
513 and record \_\_\_\_\_ competent substantial evidence of value

514

515           6.8 Remand value to property appraiser, with appropriate instructions,  
516 when: the original value is deemed invalid and record does not  
517 contain competent substantial evidence of value

518

### **Some Key Elements of the Standard of Care for Appraisal Development**

521

522           1. Identify legal, physical, and economic attributes of the subject property

523

524           2. Identify applicable \_\_\_\_\_ and regulations having force of law

525

526           3. Determine required scope of work (research, analysis, conclusions, etc.)

527

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- 528 4. Correctly \_\_\_\_\_ an appropriate appraisal methodology  
529
- 530 5. Comply with each of the 193.011 factors and professionally accepted  
531 appraisal practices (avoid cursory consideration of 193.011 factors)  
532
- 533 6. Avoid appraisal practices that are arbitrarily different from the appraisal  
534 practices applied to other comparable property in the same county  
535
- 536 7. Comply with each of the \_\_\_\_\_ applicable legal criteria  
537
- 538 8. Apply due \_\_\_\_\_ and due care  
539
- 540 9. Avoid significant errors of commission and omission  
541

### **Some Key Elements of the Standard of Care for Appraisal Reporting**

- 542
- 543
- 544
- 545 1. Meaningful disclosure of scope of work applied in the appraisal process  
546
- 547 2. Relevant to property \_\_\_\_\_, applicable legal criteria,  
548 and appraisal process  
549
- 550 3. Credible in the context of Florida ad valorem property tax appraisal  
551
- 552 4. Clear and \_\_\_\_\_ to enable intended users to understand  
553 the appraisal process



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- 554
- 555 5. Explanations and reasons, addressing each of the applicable legal
- 556 criteria, regarding what was actually done and not done in developing
- 557 the just value (such as not applying a \_\_\_\_\_ criterion or an
- 558 appraisal approach)
- 559
- 560 6. Sufficient for intended users to \_\_\_\_\_ how the just
- 561 value was developed
- 562
- 563 7. Avoid misleading statements
- 564
- 565 8. Avoid conclusory statements
- 566

567 **Sections 194.301(1) and 194.3015, Florida Statutes,**

568 **Expressly Provide That Case Law Standards Inconsistent with**

569 **1997 and 2009 Legislation in Sections 194.301 and 194.3015 are**

570 **Superseded by the Legislation**

571

572 The holdings in certain court opinions citing the superseded every-

573 reasonable-hypothesis standard show an interconnection between such

574 standard and obsolete concomitant standards that have travelled together with

575 the every-reasonable-hypothesis standard as part of \_\_\_\_\_ holdings.

576

577 Accordingly, logic dictates that sections 194.3015 and 194.301(1), in

578 addition to abrogating the every-reasonable-hypothesis standard, likewise

579 eliminated these concomitant standards that have long been part of judicial

580 holdings that \_\_\_\_\_ the every-reasonable-hypothesis standard.

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581

582 This reasoning is consistent with the analysis in the 2013 decision in CVS  
583 v. Todora, which recognized the interconnection between the concomitant  
584 standard of “within the range of reasonable appraisals” (at issue in that case)  
585 and the superseded every-reasonable-hypothesis standard. The CVS Court also  
586 held that this concomitant \_\_\_\_\_ was superseded by section  
587 194.301 as clarified in section 194.3015.

588

### **589 Eight of the Superseded Concomitant Standards 590 That Must be Avoided in VAB Reviews of Value Assessments**

591

592 Presented and analyzed below are eight (8) of the concomitant  
593 standards that were part of court holdings that relied upon the superseded  
594 every-reasonable-hypothesis standard of proof. These concomitant standards  
595 were statements attendant to the abrogated standard of proof and reflected  
596 the assessment \_\_\_\_\_ of \_\_\_\_\_ corresponding with the obsolete  
597 standard of proof.

598 When the statutory amendments lowered the standard of proof for  
599 challenging an original assessment to preponderance of the evidence, logic  
600 dictates that the amendments also increased the corresponding standard of  
601 care and \_\_\_\_\_ for developing and reporting the assessments.

602

603 This is confirmed by the section 194.301(1) requirement that, before the  
604 assessment can be presumed correct, the property appraiser must now go  
605 forward and present sufficient evidence showing the assessment was made  
606 using: (1) an appropriate appraisal methodology; (2) professionally accepted

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607 appraisal practices; and (3) all other \_\_\_\_\_ legal criteria  
608 including the factors in section 193.011.

609

610 None of these superseded standards are harmless because they reflect a  
611 lower standard of care and diligence for developing, reporting, and reviewing  
612 just values than the standards required by \_\_\_\_\_ law. Error can  
613 result when one or more of them is used to lure attention to holdings that  
614 reflect the every-reasonable-hypotheses standard superseded by sections  
615 194.301 and 194.3015, Florida Statutes.

616

### 617 **Superseded Concomitant Standard No. 1:**

618 "the core issue in any action challenging a tax assessment is the amount of  
619 the assessment, not the methodology utilized in arriving at the valuation".

620

621 In the 1986 case of *Bystrom v. Whitman*, the Florida Supreme Court stated:

622

623 *"We begin our analysis by noting the general proposition that the*  
624 *core issue in any action challenging a tax assessment is the*  
625 *amount of the assessment, not the methodology utilized in arriving*  
626 *at the valuation. An appraiser may reach a correct result for the*  
627 *wrong reason. Indeed, a taxpayer must carry a heavy burden in*  
628 *order to successfully challenge a property tax assessment. A tax*  
629 *assessment carries a strong presumption of validity and, in order*  
630 *to prevail, the \_\_\_\_\_ must present proof that*  
631 *excludes every hypothesis of a legal assessment."*

632

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633 This passage shows that this concomitant standard was part of the holding  
634 applying the legislatively rejected every-reasonable hypothesis standard and,  
635 thus, was rejected itself as well. Further, this obsolete concomitant standard  
636 has been superseded by section 194.301(1), which now requires that the  
637 original assessment be made using an appropriate methodology, and further  
638 requires the trial court to review the \_\_\_\_\_ used  
639 in making the assessment and determine whether the methodology is  
640 appropriate given the facts.

641  
642 This superseded concomitant standard is inconsistent with professionally  
643 accepted appraisal practices and is also contrary to subsequent controlling  
644 case law. For example, in *Scripps Howard Cable Co. v. Havill*, the Fifth District  
645 Court of Appeal held that the appraisal method employed was not appropriate  
646 under the circumstances and \_\_\_\_\_ to the Florida Supreme Court  
647 the following question:

648  
649 *“Is the Income/Unit Rule Method of Appraisal an*  
650 *Appropriate Method of Assessing the Tangible Personal*  
651 *Property of Television Cable Companies?”*

652  
653 Then, the Florida Supreme Court answered the certified question in the  
654 negative and approved the decision of the Fifth District Court.

655  
656 In addition, the \_\_\_\_\_ Supreme Court held that  
657 challenges to ad valorem tax values require review of the appraisal

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658 methodologies applied in producing the values stating: "*We do not see how a*  
659 *court can go about determining true market value if it may not look behind the*  
660 *State's choice of valuation methods*".<sup>6</sup>

661

662 **Superseded Concomitant Standard No. 2:**  
663 **"within the range of reasonable appraisals".**  
664

665 In the 1984 case of Blake v. Xerox, the Florida Supreme Court equated  
666 this concomitant standard with the now legislatively rejected every-  
667 reasonable-hypothesis standard stating:

668

669 *"Regardless of which method was theoretically superior, the trial*  
670 *court was bound to uphold the appraiser's determination if it was*  
671 *lawfully arrived at and within the range of reasonable appraisals,*  
672 *that is, if it was \_\_\_\_\_ by any reasonable hypothesis of*  
673 *legality."*

674

675 This obsolete concomitant standard was also applied in 2001 in the  
676 Second District case of Wal-mart Stores, Inc. v. Todora.

677

678 However, in 2013 in CVS v. Todora, the Second District Court itself held  
679 that \_\_\_\_\_ standards had been superseded by legislative enactments, along

---

<sup>6</sup> See *CSX Transportation, Inc. v. Georgia State Board of Equalization*, 552 U.S. 9 (2007)

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680 with the every-reasonable-hypothesis standard, and thereon overturned a trial  
681 court judgment, stating:

682  
683 *"At \_\_\_\_\_ during the trial court's application of these*  
684 *standards should it consider whether the assessment is within the*  
685 *range of reasonable appraisals or whether it is supported by any*  
686 *reasonable hypothesis of legality."*

687

### **Superseded Concomitant Standard No. 3:**

688 "[t]he property appraiser's determination of assessment value is an exercise of  
689 administrative discretion within the officer's field of expertise".

690

691  
692 Notably, electronic searches indicate the term "discretion" does not  
693 appear in the 2020-2021 edition of the Uniform Standards of Professional  
694 Appraisal Practice and, likewise, does not appear in the widely cited appraisal  
695 text, *The Appraisal of Real Estate, 15th Edition*, published by the Appraisal  
696 Institute. This indicates that "discretion " is not part of the appraisal  
697 development process under professionally accepted appraisal practices.

698

699 In *Blake v. Xerox* (1984), the Florida Supreme Court showed the link  
700 between this \_\_\_\_\_ standard and the legislatively rejected any reasonable  
701 hypothesis standard, stating:

702

703 *"The property appraiser's determination of assessment value was*  
704 *an exercise of administrative discretion within the officer's field of*  
705 *expertise. Therefore, if the appraiser proceeded lawfully, then that*

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706 *determination was clothed with a presumption of correctness when*  
707 *the taxpayer challenged it. The burden was on the taxpayer to*  
708 *show that the appraiser departed from the requirements of the law*  
709 *or that the appraisal made was not supported by any reasonable*  
710 *hypothesis of legality."*

711  
712 This concomitant standard was rendered obsolete by its interconnection  
713 with the rejected every-reasonable-hypothesis standard addressed in section  
714 194.3015 and by the provisions in section 194.301(1), Florida Statutes.

715  
716 In its 2019 decision in *Darden Restaurants, Inc. v. Singh*, the Fifth  
717 District Court \_\_\_\_\_ a trial judgment that erroneously relied upon  
718 this obsolete concomitant standard rather than apply the 2009 enactments in  
719 section 194.301, Florida Statutes, stating:

720  
721 *"In accepting the Property Appraiser's assessments, the trial court*  
722 *determined that the Property Appraiser was not required to*  
723 *present competent, substantial evidence that its appraisal*  
724 *methodology complied with professionally accepted appraisal*  
725 *practices. Rather, in setting forth the legal standards governing*  
726 *"fair market value determination" in its final judgment, the trial*  
727 *court cited to language from *Mazourek v. Wal-Mart Stores, Inc.*,*  
728 *831 So. 2d 85, 89 (Fla. 2002), that "[t]he property appraiser's*  
729 *determination of assessment value is an exercise of administrative*  
730 *discretion within the officer's field of expertise." The *Mazourek**

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731 *decision preceded the 2009 amendment to section 194.301, Florida*  
732 *Statutes, where the Legislature articulated that the value of*  
733 *property must be determined by an appraisal methodology that*  
734 *met the criteria of section 193.011 and professionally accepted*  
735 *appraisal practices. Because the trial court did not comply with*  
736 *section 194.301(2)(b)'s requirement that its assessment must be*  
737 *based on "competent, substantial evidence of value in the record*  
738 *which cumulatively meets the criteria of s. 193.011 and*  
739 *professionally accepted appraisal practices," we reverse."*

740

741 Thus, the Fifth District has also recognized that legislative enactments in  
742 sections 194.301 and 194.3015 have further limited assessment discretion to  
743 the point of superseding obsolete standards. The Darden Court further held  
744 that the property appraiser's professional judgment and discretion must be  
745 exercised "*in accordance with professionally accepted appraisal practices.*"

746

747 **Superseded Concomitant Standard No. 4:**

748 "the method of valuation and the weight to be given each factor is left to the  
749 appraiser's discretion".

750

751 Again, the term "discretion " is generally not part of the appraisal  
752 development process under professionally accepted appraisal practices. This  
753 superseded standard \_\_\_\_\_ in the 2001 Second District decision in  
754 Wal-mart Stores, Inc. v. Todora, as follows:

755



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756        *The method of valuation and the weight to be given each factor is*  
757        *left to the appraiser's discretion, and the decision will not be*  
758        *disturbed on review as long as each factor has been lawfully*  
759        *considered and the assessed value is within the range of*  
760        *reasonable appraisals. Because there are so many well-recognized*  
761        *approaches for arriving at an appraisal, the appraiser's decision*  
762        *may be \_\_\_\_\_ only if there is no reasonable*  
763        *hypothesis to support it.*

764  
765        The holding quoted above shows the interconnection between: (1) this  
766        concomitant standard, (2) the "within the range of reasonable appraisals"  
767        standard recognized as obsolete in *CVS v. Todora* (2013), and (3) the any-  
768        reasonable-hypothesis standard \_\_\_\_\_ by the Legislature in 1997  
769        as clarified in section 194.3015, Florida Statutes.

770  
771        The concomitant standard of "*the method of valuation and the weight*  
772        *given to each statutory factor is left to the assessor's discretion*" reflects a  
773        lower standard of care than that required by current legal standards, which  
774        require that each original value assessment be developed by an appropriate  
775        methodology that complies with professionally accepted appraisal practices  
776        and \_\_\_\_\_ of the other applicable legal criteria. See section 194.301(1),  
777        Florida Statutes.  
778

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779 Under professionally accepted appraisal practices, the appropriate  
780 appraisal methodology is determined by the legal, physical, and economic  
781 attributes of the property and by applicable \_\_\_\_\_.

782  
783 In *Walter v. Schuler* (1965), the Florida Supreme Court recognized that  
784 legal criteria for property assessments are limitations on assessment  
785 discretion, holding that property assessment discretion is not unbridled and  
786 that statutory assessment standards are limitations on such discretion.

787  
788 In *The Crossings at Fleming Island v. Echeverri* (2008), the Florida  
789 Supreme Court stated: "...*property appraisers must abide by all applicable*  
790 *Florida statutes when assessing property...*". Other \_\_\_\_\_ have also  
791 recognized statutory standards as limitations on assessment discretion.<sup>7</sup>

792  
793 Further, a plain language reading of the 2009 amendment of section  
794 194.301 and the enactment of section 194.3015 leaves no doubt that the  
795 Legislature intended to further limit assessment discretion and intended to  
796 bring the Florida assessment profession in line with Florida law and current  
797 industry standards including professionally accepted appraisal practices.

798

---

<sup>7</sup> See, e.g., *Keith Investments, Inc. v. James*, 220 So. 2d 695 (Fla. 4th DCA 1969); *Cassady v. McKinney*, 296 So. 2d 94 (Fla. 2nd DCA 1974); *Lee County Electric v. Lowe*, 344 So. 2d 308 (Fla. 2d DCA 1977); and *In re Steffen*, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

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### **Superseded Concomitant Standard No. 5:**

“The determination of just value inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers.”

799  
800  
801  
802  
803  
804       The 2005 decision in the case of Florida DOR v. Howard references the  
805 two preceding obsolete standards regarding “discretion,” along with this third  
806 variant of the “discretion” standard that has been recognized since 2009 as  
807 being \_\_\_\_\_ with the 2009 legislation amending section  
808 194.301 and creating section 194.3015. *See Darden Restaurants, Inc. v.*  
809 *Singh*, 266 So. 3d 228 (Fla. 5th DCA 2019).

810  
811       All three of these variants are rooted in case law decided at a time when  
812 the every-reasonable hypothesis standard held sway, many years before the  
813 2009 legislation that re-engineered the legal standards for developing,  
814 reporting, and reviewing just valuations. For the same reasons described  
815 under the previous two concomitant standards, this \_\_\_\_\_ variant of the  
816 “discretion” standard is obsolete and no longer valid.

817  
818       Regarding the issue of “appraisal judgment,” the following two  
819 professional excerpts describe the context and diligent application of sound  
820 appraisal \_\_\_\_\_ in the appraisal process.<sup>8</sup>

821  
822       *Appraisers must exercise sound judgment based on known*  
823       *pertinent facts and circumstances, and it is their responsibility to*

---

<sup>8</sup> *See Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), pages 204 and 203, respectively.

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824 *obtain knowledge of all pertinent facts and circumstances that can*  
825 *be acquired with diligent inquiry and search. They must then weigh*  
826 *and consider the relevant facts, exercise sound judgment, and*  
827 *develop an opinion that is completely unbiased by any*  
828 *consideration favoring either the landowner or the government.*

829  
830 *Serving this important function requires \_\_\_\_\_,*  
831 *diligence, sound judgment, and objectivity...*

832  
833 Thus, appraisal judgment \_\_\_\_ \_\_\_\_\_ a substitute for appraisal  
834 expertise, diligence, or objectivity. Sound appraisal judgment must be  
835 exercised in accordance with applicable legal criteria including an appropriate  
836 appraisal methodology and professionally accepted appraisal practices.

837  
838 See section 194.301(1), Florida Statutes, and the 2019 decision in  
839 Darden Restaurants, Inc. v. Singh, stating that the appraiser's discretion and  
840 professional judgment must be exercised in \_\_\_\_\_ with  
841 professionally accepted appraisal practices.

842  
843 **Superseded Concomitant Standard No. 6:**  
844 **"Appraisal is an art, not a science".**  
845

846 In the 1969 case of Powell v. Kelly, the Florida Supreme Court held that  
847 appraisal is an art, not a science, while applying the "*any reasonable*  
848 *hypothesis*" standard that \_\_\_\_ \_\_\_\_\_ expressly superseded by section  
849 194.301 as clarified by section 194.3015, Florida Statutes.

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850           However, the appraisal profession, like most professions, have changed  
851 a great deal in the over fifty years since the Powell case was decided in 1969.  
852 Such changes are due to \_\_\_\_\_ advancements in valuation technology,  
853 availability of appraisal data, valuation methods and techniques, and appraisal  
854 standards.

855  
856           Therefore, it is not surprising that in a 2007 decision on ad valorem  
857 appraisal methodology, the Supreme Court of the United States held that  
858 appraisal is an “\_\_\_\_\_,” which is consistent with  
859 current professionally accepted appraisal practices.<sup>9</sup>

860

861                                   **Superseded Concomitant Standard No. 7:**

862                                   “Because there are so many well-recognized  
863                                   approaches for arriving at an appraisal...”

864

865           The holding in Wal-Mart Stores, Inc. v. Todora (2001), applied this  
866 obsolete concomitant standard as follows:

867

868                   *Because there are \_\_\_\_\_ well-recognized approaches for*  
869                   *arriving at an appraisal, the appraiser’s decision may be overturned*  
870                   *only if there is no reasonable hypothesis to support it.*

871

---

<sup>9</sup> See *CSX Transportation, Inc. v. Georgia State Board of Equalization*, 552 U.S. 9 (2007)

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872 The holding above shows the interconnection between this superseded  
873 concomitant standard and the any-reasonable-hypothesis standard expressly  
874 rejected by the Legislature in 1997 as clarified in section 194.3015, *Florida*  
875 *Statutes*. Further, this obsolete concomitant standard is inconsistent with  
876 professionally accepted appraisal practices because it is grossly overbroad and  
877 has \_\_\_\_ applicability to any particular property type.

878

879 **Superseded Concomitant Standard No. 8:**  
880 "an appraiser may reach a correct result for the wrong reason".  
881

882 In the 1972 case of City National Bank v. Blake, the Third District Court  
883 equated this concomitant standard with the now legislatively rejected every-  
884 reasonable-hypothesis standard, stating:

885

886 *A tax assessment is presumed correct, and in order to successfully*  
887 *challenge it, the taxpayer must present proof which excludes every*  
888 *reasonable hypothesis of a legal assessment. That is, an assessor*  
889 *may reach a correct result for the \_\_\_\_\_ reason.*

890

891 This concomitant standard was also superseded by section 194.301(1)  
892 which now requires that the assessment be made using an appropriate  
893 appraisal methodology, and further requires the VAB to review the  
894 methodology used in making the assessment to determine whether the  
895 methodology is appropriate using the legal standards in section 194.301,  
896 which includes the "professionally accepted appraisal practices" standard.

897

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### 898 **The 2002 Case of Turner v. Bell Chevrolet**

899

900 Some may argue that this Second District decision means that a  
901 taxpayer cannot challenge a portion of an assessment or a valuation approach.  
902 As shown below, a plain language reading of this case suggests otherwise.

903

904 In this case, the Second District Court found that the trial court erred by  
905 precluding the property appraiser from presenting of the total value of the  
906 property while allowing the taxpayer to limit the challenge to land value only.

907 The Second District held that the taxpayer can indeed challenge a  
908 portion of the assessment, but that the property appraiser must be allowed to  
909 present \_\_\_\_\_ of the total assessment. Below are pertinent  
910 excerpts from Turner v. Bell Chevrolet.<sup>10</sup>

911

912 *"Because the trial court in this case improperly denied Turner the*  
913 *opportunity to establish that Bell's total tax assessment reflected*  
914 *just value, the trial court's final judgment is reversed and this case*  
915 *remanded for a new trial."*

916

917 *"At the new trial, Bell \_\_\_\_\_ present evidence challenging the land*  
918 *portion of its tax assessment."*

---

<sup>10</sup> As a cautionary note, Turner v. Bell Chevrolet was decided under legal standards now rendered obsolete by the 2009 complete amendment of section 194.301 and enactment of section 194.3015.

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919  
920 *"If Bell's evidence rebuts the presumption of correctness of the*  
921 *assessment, Turner may then put on evidence to establish that the*  
922 *total tax assessment reflects just value. If Turner's evidence is*  
923 *sufficient, the assessment will stand. If not, the total tax*  
924 *assessment should be adjusted accordingly."*

925  
926 *"Although Bell may again prevail at the new trial, Turner is entitled*  
927 *to have the trial court determine from the evidence the just value*  
928 *of all of Bell's real property."*

929  
930 Also, it is important to realize that under the order of proof provided in  
931 section 194.301(1), the property appraiser must now present evidence first.  
932 Thus, post 2009, it is \_\_\_\_\_ that a fact finder would try to preclude the  
933 property appraiser from presenting evidence on the total assessment. From  
934 that perspective, the Turner case could be considered meaningless.

935  
936 In the 2006 case of Holly Ridge v. Pritchett, the Fifth District held that a  
937 total value assessment was \_\_\_\_\_ because the property appraiser "*did*  
938 *not use a market capitalization rate.*" The Court went on to state:

939  
940 *"The result of using an unreasonably low capitalization rate was*  
941 *that the appraised value was significantly higher than the fair*  
942 *market value."*

943



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944 The Holly Court had no problem with determining that the total value  
945 was wrong because a component of the income capitalization approach was  
946 wrong. Thus, an erroneous \_\_\_\_\_ can mean the total value is  
947 invalid, which is consistent with professionally accepted appraisal practices.

948

### **The 1991 Case of Schulz v. TM Florida-Ohio Realty**

949

950  
951 This Florida Supreme Court decision is a good \_\_\_\_\_ of a  
952 case that contains both: 1) at least one case law point that is superseded by  
953 the 2009 enactments in sections 194.301 and 194.3015, and 2) at least one  
954 case law point that is not superseded by those sections.

955 In this case, the superseded point of law is the “any reasonable  
956 hypothesis” standard of proof described previously, and the point of law that is  
957 not superseded is the property interest to be appraised for ad valorem tax  
958 purposes in Florida, the fee simple estate.

959

### **Just Valuations Based on Ownership are 961 Not Valid Under Florida Ad Valorem Tax Appraisal Law**

962

963 Just valuation methodologies based on \_\_\_\_\_,  
964 resulting in the de facto creation of a separate class of property based on  
965 ownership, are not valid for ad valorem tax purposes in Florida.

966

967 In the 1974 case of Interlachen Lakes Estates v. Snyder, the Florida  
968 Supreme Court held that ownership in one party or another is not a valid

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969 criterion for just valuation and further held that valuing property based on  
970 ownership is discriminatory, fundamentally unfair, and unconstitutional.

971 This point of law was unaffected by the 2009 complete amendment and  
972 the enactment of 194.3015, Florida Statutes, and remains \_\_\_\_\_ law.

973

### **Pending Litigation Between the 974 Duval County Property Appraiser and the Duval County VAB**

975

976  
977 When a property appraiser disagrees with decisions of the VAB, the  
978 property appraiser has three avenues for filing lawsuits to challenge the  
979 decisions. One of these options involves the property appraiser filing a legal  
980 document called an Assertion with DOR, which then produces a legal  
981 document called a Probable Cause Review.

982

983 The Duval County property appraiser exercised this option in both 2017  
984 and 2018 regarding certain VAB decisions for the 2016 and 2017 tax years,  
985 respectively. DOR produced its Probable Cause Reviews authorizing the  
986 property appraiser to file suit in circuit court which the property appraiser did  
987 in both cases. These two lawsuits have not been actively litigated and  
988 apparently are still pending.

989

990 After discussion at a public meeting held August 5, 2020, the 2020 Duval  
991 County VAB voted to request this Ad Hoc Training from DOR. This training was  
992 requested to help further the settlement of the two pending lawsuits between  
993 the Property Appraiser and the VAB.

994

## **Ad Hoc Training for Duval VAB Special Magistrates**

995           However, DOR is not a party to the pending litigation and is not a party  
996 to any related settlement agreements. The terms under which DOR is  
997 providing this training are addressed in a DOR memo dated July 31, 2020,  
998 posted on the VAB's website. DOR is providing this Ad Hoc Training as  
999 advisory assistance.

1000

1 **193.011 Factors to consider in deriving just valuation.**—In arriving at just  
2 valuation as required under s. 4, Art. VII of the State Constitution, the property  
3 appraiser shall take into consideration the following factors:

4  
5 (1) The present cash value of the property, which is the amount a willing  
6 purchaser would pay a willing seller, exclusive of reasonable fees and costs of  
7 purchase, in cash or the immediate equivalent thereof in a transaction at arm's  
8 length;

9  
10 (2) The highest and best use to which the property can be expected to be put in  
11 the immediate future and the present use of the property, taking into consideration  
12 the legally permissible use of the property, including any applicable judicial  
13 limitation, local or state land use regulation, or historic preservation ordinance, and  
14 any zoning changes, concurrency requirements, and permits necessary to achieve  
15 the highest and best use, and considering any moratorium imposed by executive  
16 order, law, ordinance, regulation, resolution, or proclamation adopted by any  
17 governmental body or agency or the Governor when the moratorium or judicial  
18 limitation prohibits or restricts the development or improvement of property as  
19 otherwise authorized by applicable law. The applicable governmental body or  
20 agency or the Governor shall notify the property appraiser in writing of any  
21 executive order, ordinance, regulation, resolution, or proclamation it adopts  
22 imposing any such limitation, regulation, or moratorium;

23  
24 (3) The location of said property;

25  
26 (4) The quantity or size of said property;

27  
28 (5) The cost of said property and the present replacement value of any  
29 improvements thereon;

30  
31 (6) The condition of said property;

32  
33 (7) The income from said property; and

34  
35 (8) The net proceeds of the sale of the property, as received by the seller, after  
36 deduction of all of the usual and reasonable fees and costs of the sale, including the  
37 costs and expenses of financing, and allowance for unconventional or atypical terms  
38 of financing arrangements. When the net proceeds of the sale of any property are  
39 utilized, directly or indirectly, in the determination of just valuation of realty of the  
40 sold parcel or any other parcel under the provisions of this section, the property  
41 appraiser, for the purposes of such determination, shall exclude any portion of such  
42 net proceeds attributable to payments for household furnishings or other items of  
43 personal property.

44 **Section 194.301, Florida Statutes**

45  
46 (1) In any administrative or judicial action in which a taxpayer challenges an ad  
47 valorem tax assessment of value, the property appraiser's assessment is presumed  
48 correct if the appraiser proves by a preponderance of the evidence that the  
49 assessment was arrived at by complying with s. 193.011, any other applicable  
50 statutory requirements relating to classified use values or assessment caps, and  
51 professionally accepted appraisal practices, including mass appraisal standards, if  
52 appropriate. However, a taxpayer who challenges an assessment is entitled to a  
53 determination by the value adjustment board or court of the appropriateness of the  
54 appraisal methodology used in making the assessment. The value of property must  
55 be determined by an appraisal methodology that complies with the criteria of s.  
56 193.011 and professionally accepted appraisal practices. The provisions of this  
57 subsection preempt any prior case law that is inconsistent with this subsection.  
58

59 (2) In an administrative or judicial action in which an ad valorem tax assessment is  
60 challenged, the burden of proof is on the party initiating the challenge.  
61

62 (a) If the challenge is to the assessed value of the property, the party initiating the  
63 challenge has the burden of proving by a preponderance of the evidence that the  
64 assessed value:

65  
66 1. Does not represent the just value of the property after taking into account any  
67 applicable limits on annual increases in the value of the property;

68  
69 2. Does not represent the classified use value or fractional value of the property if  
70 the property is required to be assessed based on its character or use; or

71  
72 3. Is arbitrarily based on appraisal practices that are different from the appraisal  
73 practices generally applied by the property appraiser to comparable property within  
74 the same county.  
75

76 (b) If the party challenging the assessment satisfies the requirements of paragraph  
77 (a), the presumption provided in subsection (1) is overcome and the value  
78 adjustment board or the court shall establish the assessment if there is competent,  
79 substantial evidence of value in the record which cumulatively meets the criteria of  
80 s. 193.011 and professionally accepted appraisal practices. If the record lacks such  
81 evidence, the matter must be remanded to the property appraiser with appropriate  
82 directions from the value adjustment board or the court, and the property appraiser  
83 must comply with those directions.  
84

85 (c) If the revised assessment following remand is challenged, the procedures  
86 described in this section apply.

**Section 194.3015, Florida Statutes**

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- (1) It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser’s assessment is not supported by any reasonable hypothesis of a legal assessment. All cases establishing the every-reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretive of legislative intent.
- (2) This section is intended to clarify existing law and apply retroactively.