

VALUE ADJUSTMENT BOARD

Chapter 12D-9, F.A.C. Uniform Rules of Procedure

PRESENTED BY
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Required the Department to develop rules for uniform procedures for VAB hearings, a uniform policy and procedures manual, and VAB training.

GOALS

Develop a uniform process with rules, forms and a manual of procedures to ensure due process and fair hearings for all parties.

PROCESS FOR RULEMAKING

Held public meetings, workshops, and hearings.

Some were held as Webcasts to encourage participation and reduce costs so counties could have more staff participate in the process

Received over 1700 public comments from all sources.

Reviewed over 2000 pages of transcripts.

Created VAB portal to receive comments and questions.

RESULTS

Chapter 12D-9 includes procedures for conducting hearings and on evidence and the standard of proof.

Chapter 12D-16 includes a set of forms to use in the process.

Chapter 12D-10 was partially repealed.

- These rules became effective March 30, 2010 and are now law.
- Value adjustment boards, clerks, property appraisers and tax collectors are required to follow these rules.
- These rules supercede any local procedures/rules and prior Department rules on the subject.
- VAB clerks and managers should ensure that all special magistrates, VAB attorneys and members of the board receive a copy of these rules (Available on the Department's website).

RESULTS (cont.)

The Manual of Procedures has been posted for public comment.

- The manual contains current documents which are not subject to change.
- Includes Florida specific law and reference materials.
- Chapter 12D-9 and the accompanying forms are the main body of the manual.
- Entire draft package is approximately 425 pages.
- We would like public comment about any other documents or materials that should be in the manual.

RESULTS (cont.)

The VAB training is currently under revision.

- Updating content to include adopted rules and forms.
- Looking at results from past surveys and are reviewing comments about content and presentation.
- A rough draft will be posted for public comment.
- This is a work in progress.
- We would like comments on contents and other items that should be included.

Both the VAB and the VAB training portals are still operative and we recommend using the portals for all questions and comments about the VAB process, rules, forms, the manual and training.

HIGH LEVEL REVIEW OF CHAPTER 12D-9, F.A.C.

Significantly expanded from the content in Chapter 12D-10, F.A.C.

- Most of Chapter 12D-10 was moved into Chapter 12D-9.

Provides much more detail on all parts of the process.

We understand that there will be questions when VAB's are implementing the new rules – it will be a new process for everyone.

PART I

Taxpayer rights; Informal Conference; Definitions; Composition of the Value Adjustment Board; Appointment of the Clerk; Appointment of Legal Counsel; Appointment of Special Magistrates

12D-9.001, Taxpayer Rights in Value Adjustment Board Hearings

Source is Chapter 192 which is a compilation of rights from other chapters.

Was not included in previous version of Chapter 12D-10.

PART I (cont.)

12D-9.002, Informal Conference Procedures

Expands on statutory language

Includes statement that requesting/participating in a conference does not extend the petition filing deadline.

12D-9.005, Duties of the Board

(2)(a) Specifically addresses local rules or procedures.

May be internal operating or administrative procedures – not rules.

Cannot conflict with, change, expand, suspend or negate rules.

Must be indispensable to the efficient operation of the VAB.

(2)(c) Advises that the board must not provide notices or establish procedures that instruct taxpayers to contact the property appraiser or tax collector or other agency with questions about the VAB.

PART I (cont.)

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

- (6) Provides for a petitioner to correct an incomplete petition, including the filing fee, after filing. The clerk will notify the petitioner and give them the opportunity to complete the petition within ten days from when the clerk mailed the notice.

12D-9.014, Prehearing Checklist

The clerk cannot allow hearings to begin until the VAB attorney verifies that all the requirements in Chapter 194, F.S. and the Department's rules were met.

PART II

Petitions; Representation of the Taxpayer; Scheduling and Notice of Hearing; Exchange of Evidence; Withdrawn or Settled Petitions; Hearing Procedures; Disqualifications or Recusal; Ex Parte Communication Prohibition; Record of the Proceedings; Petitions on Transfer of "Portability" Assessment Difference; Remanding Assessments; Recommended Decisions; Consideration and Adoption of Recommended Decisions; Final Decisions; Further Judicial Proceedings.

PART II (cont.)

12D-9.015, Petition; Form and Filing Fee

Subsection (11), Late filed petitions

- Expanded discussion of late filed petitions.
- Much more information and requirements than previously in 12D-10.
- The board may not extend the time for filing a petition.
- However, failing to meet the filing deadline is not a bar to being heard by the VAB.
- Provides definition of “good cause” and a list of extraordinary circumstances that would support a showing of good cause for filing late.
- Sets out a process for the VAB to determine whether there is good cause.

PART II (cont.)

12D-9.017, Ex Parte Communication

- Not originally in 12D-10.
- Part of ensuring due process and fair hearings for all parties.

12D-9.018, Representation of the Taxpayer

- Provides that a petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer.
- “Licensed” refers to holding a license or certification under Chapter 475, Part I or II, F.S., being a Florida certified public accountant under Chapter 473, F.S. or membership in the Florida Bar.

PART II (cont.)

12D-9.019, Scheduling and Notice of a Hearing

- Addresses the old “4 hour” provision in Chapter 194.
- Rather than use 4 hours as the timeframe, the rule uses “reasonable time” when discussing how long a petitioner should wait for a scheduled hearing.
- The petitioner may request to have their hearing immediately or;
- The clerk may reschedule if a reasonable time has passed.
- The clerk is authorized to determine whether or not a reasonable time has passed.

PART II (cont.)

12D-9.020, Exchange of Evidence

Allows that if the petitioner wants to exchange evidence and shows good cause to the clerk for not being able to meet the fifteen day timeframe and the property appraiser is unwilling to agree to a different timing:

- The clerk is authorized to reschedule the hearing to allow for the exchange of evidence.

PART II (cont.)

12D-9.020, Exchange of Evidence

- Addresses the provision in section 194.034(1)(d) which prohibits a petitioner from presenting evidence at the hearing that was requested in writing by the property appraiser.
- The evidence will be considered timely if provided to the property appraiser no later than 15 days before the hearing according to the exchange of evidence rules.

PART II (cont.)

12D-9.024, Procedures for Commencement of a Hearing.

- Unless waived by the parties, the board or special magistrate will make an opening statement or provide a brochure or taxpayer information sheet. States:
- The board or special magistrate is independent, impartial, and an unbiased body or officer;
- Neither work for the property appraiser/tax collector and is independent and not influenced by either official.
- Hearing will be orderly, fair and unbiased.
- Law does not allow evidence to be reviewed unless presented on the record at the hearing and that the relevance and credibility of the evidence will be reviewed to decide the results of the petition.

PART II (cont.)

12D-9.027, Process of Administrative Review.

- Provides the sequence of procedural steps for administrative reviews.
- Includes steps the property appraiser needs to take in order to establish a presumption of correctness.
- Provides steps to take after determining whether or not a presumption of correctness has been established.
- Describes evaluation of the evidence presented.

PART II (cont.)

12D-9.029, Procedures for Remanding Value Assessments to the Property Appraiser.

- Will be remanded when:
- Property appraiser did not establish a presumption of correctness or it has been decided that the presumption was established but overcome in the administrative review, or;
- Record does not contain the evidence necessary to establish a revised value.
- Provides procedures for remand and a continuation hearing if the petitioner finds the results of the remand to be unacceptable.

PART II (cont.)

12D-9.030, Recommended Decisions.

- Contains specific instructions for special magistrates to follow in producing a written recommended decision.
- Written decisions are specifically addressed in the VAB training.
- Required elements are: Findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination.

PART III

12D-9.037, Certification of Assessment Rolls.

- The board must include a certification that all requirements in Chapter 194 and the Department's rules were met.
- Also certify that the prehearing checklist in 12D-9.014 was followed.
- The certification has 11 statements on the legal requirements of the VAB process.

What's next?

Rule Chapters 12D-9, 12D-10, and 12D-16 (forms) are available on our website. We recommend that everyone involved in the VAB process become familiar with the provisions of these rule chapters.

What's next?

The Manual of Procedures is posted to the website for public review and comment. We are currently revising the taxpayer brochure to reflect the new rules and forms. This brochure will be included in the manual.

What's next?

A rough draft of the VAB training is posted to the website for public comment. We encourage all interested persons to review the training and provide suggestions or questions about the content. This is a work in progress but we wanted to solicit comment early in the process.

What's next?

The revised training will be available on or before June 30, 2010.

Submit any questions or comments you have on the rules, manual, training, or the VAB process in general to the VAB portal: VAB@dor.state.fl.us.