

The seal of the Texas Comptroller of Public Accounts is faintly visible in the background. It features a central five-pointed star surrounded by a wreath, with the words "THE COMPTROLLER OF PUBLIC ACCOUNTS" and "STATE OF TEXAS" around the perimeter.

**Glenn Hegar**

Texas Comptroller of Public Accounts

# Appraisal Review Board Manual

as of

January 2022

You may email general questions to:

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**Property Tax Assistance Division**

**P.O. Box 13528**

**Austin, TX 78711-3528**

**or by calling the**

**ARB Hotline: 800-252-7551**

Tax Code Section 5.041(f) states:

The comptroller may not advise a property owner, a property owner's agent, or the chief appraiser or another employee of an appraisal district on a matter that the comptroller knows is the subject of a protest to the appraisal review board. The comptroller may provide advice to an appraisal review board member as authorized by Subsection (a)(4) of this section or Section 5.103 and may communicate with the chairman of an appraisal review board or a taxpayer liaison officer concerning a complaint filed under Section 6.052.

Tax Code Section 5.041(a)(4) authorizes the Comptroller's office to provide answers to technical questions relating to the duties and responsibilities of ARB members and property appraisal issues. The Comptroller's office may provide advice to ARB members concerning:

- the duties and responsibilities of the ARB;
- property appraisal issues;
- the Comptroller's model hearing procedures; and
- the Comptroller's ARB survey.

The Comptroller's office may communicate with the ARB chairman or the taxpayer liaison officer about written complaints that the ARB has authority to resolve and that are filed with the appraisal district board of directors.

The Tax Code requires the Comptroller's office to prepare model hearing procedures for ARBs that must address specific issues and to prepare and implement a survey form for the purpose of providing the public with a reasonable opportunity to offer comments and suggestions concerning the ARB.<sup>2</sup>

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<sup>2</sup> Tax Code §§5.103 and 5.104

# Table of Contents

<b>Introduction to Appraisal Review Boards</b> . . . . .	1
<b>Chapter 1 – ARB Member Qualifications, Appointment and Oath</b> . . . . .	5
Who can serve? . . . . .	5
Special Panels . . . . .	5
Single Member Panels . . . . .	6
Appointing the ARB – size and terms . . . . .	8
Local Administrative District Judge Appointments . . . . .	8
ARB member removal . . . . .	9
Appointment of temporary ARB members . . . . .	9
Appointment of auxiliary ARB members . . . . .	10
Access to criminal history record information . . . . .	10
Oath of office . . . . .	10
Pay and training for ARB members . . . . .	10
ARB officers . . . . .	12
<b>Chapter 2 – ARB General Operations</b> . . . . .	13
Professionalism . . . . .	15
Hearing location and procedures . . . . .	15
Scheduling . . . . .	15
Time limits . . . . .	17
Support staff and legal counsel . . . . .	17
ARB records . . . . .	17
Limited Binding Arbitration . . . . .	18
LBA process . . . . .	18
Dismissal with Prejudice . . . . .	19
LBA Hearing . . . . .	19
Post Hearing . . . . .	19
Conflicts of interest . . . . .	20
<b>Chapter 3 – Six Parts of the ARB Process</b> . . . . .	23
Part 1 – ARB receives appraisal records . . . . .	23
Part 2 – ARB hears taxing unit challenges . . . . .	23
Part 3 – ARB hears property owner protests . . . . .	25
Who may file? . . . . .	25
Filing deadlines . . . . .	25
Forfeiture of remedy for nonpayment of taxes . . . . .	26
Notice of protest . . . . .	26
Notice of hearing . . . . .	27
Right to inspect appraisal records . . . . .	27

---

**Chapter 3 – Six Parts of the ARB Process (concluded)**

Delivery of evidence . . . . .	33
Settlement by agreement and waiver of protest . . . . .	33
Joint motion for agreed order . . . . .	33
Property owner representation . . . . .	33
Lessee’s representation . . . . .	34
Granting a hearing . . . . .	34
Conducting hearings . . . . .	34
ARB ex parte contacts and affidavit . . . . .	34
Appearance at the protest hearing . . . . .	41
Postponement of hearings . . . . .	41
Part 4 – ARB issues orders of determination . . . . .	44
Part 5 – ARB approves appraisal records . . . . .	45
Part 6 – Certification . . . . .	45

**Chapter 4 – Appraisal Concepts: Market Value, Special Appraisals and Unequal Appraisal . . . . . 47**

Ten protest grounds . . . . .	47
Appraised value reflects market value . . . . .	47
Highest and Best Use . . . . .	48
Generally accepted appraisal methods and techniques . . . . .	48
What Is USPAP? . . . . .	48
What Is Mass Appraisal? . . . . .	48
Three approaches to value . . . . .	49
Market data or sales comparison approach . . . . .	49
Income approach . . . . .	50
Cost approach . . . . .	50
Reconciliation . . . . .	50
Market value versus appraised value. . . . .	51
Agricultural and timber appraisal . . . . .	51
Value limitations and restrictions . . . . .	51
Unequal appraisal . . . . .	52

**Chapter 5 – Other Protest Grounds . . . . . 55**

Exemptions. . . . .	55
Owner’s qualifications . . . . .	55
Property’s qualifications and use . . . . .	56
Taxable situs . . . . .	56
Real property. . . . .	56
Personal property . . . . .	57
Property crossing state boundary lines . . . . .	57
Multi-state equipment . . . . .	57
Goods in interstate transit . . . . .	57
Property crossing taxing unit lines. . . . .	57
Taxation of business personal property used to produce income . . . . .	57
Agricultural, timber and other special appraisal . . . . .	59

<b>Chapter 5 – Other Protest Grounds (concluded)</b>	
Special inventory . . . . .	60
Sept. 1 Appraisal . . . . .	60
Ownership issues. . . . .	60
Other adverse actions . . . . .	60
<b>Chapter 6 – Evidence and Burdens of Proof</b>	61
Types of evidence . . . . .	61
Exchange of evidence . . . . .	61
The three Rs of evidence evaluation . . . . .	61
Relevance . . . . .	61
Reliability . . . . .	62
Witness qualifications . . . . .	62
Professional standards applied. . . . .	64
What are generally accepted appraisal methods and techniques? . . . . .	64
Rightness. . . . .	64
Burdens of proof . . . . .	64
Preponderance of the evidence . . . . .	64
Clear and convincing evidence . . . . .	65
Official notice . . . . .	66
Subpoenas and records. . . . .	66
Weighing the evidence . . . . .	66
<b>Chapter 7 – Duties after Records Approval</b>	67
Late-filed exemption applications . . . . .	67
Supplemental records . . . . .	67
Late protest based on failure to deliver notice. . . . .	67
Corrections after approval . . . . .	69
Changes by the chief appraiser . . . . .	69
Changes by the ARB. . . . .	70
Before delinquency date. . . . .	70
Types of corrections . . . . .	70
Combining and Separating Parcels . . . . .	71
Tangible Personal Property . . . . .	71
One-fourth over-appraisal error for residence homesteads . . . . .	71
One-third over-appraisal error for non-residence homesteads. . . . .	71
Joint motion on incorrect value . . . . .	72
Forfeiture of remedy for nonpayment of taxes . . . . .	72
<b>Chapter 8 – Post-ARB Review</b>	81
Review in state district court. . . . .	81
Binding arbitration . . . . .	82
Appeal to State Office of Administrative Hearings (SOAH) . . . . .	82
<b>Statement of Compliance</b>	97

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# Table of Contents for Exhibits

Exhibit 1 – Appraisal Review Board DOs and DON'Ts . . . . .	2
Exhibit – Chart of Kinship for Appraisal Personnel – Degrees of Consanguinity and Affinity Prohibitions	7
Exhibit 3 – ARB Appointment . . . . .	8
Exhibit 4 – Code of Judicial Conduct* . . . . .	9
Exhibit 5 – Form 2201, Statement of Elected/Appointed Officer . . . . .	11
Exhibit 6 – Form 2204, Oath of Office . . . . .	11
Exhibit 7 – Property Tax Protest and Appeal Procedures . . . . .	14
Exhibit 8 – Conflict of Interest Affidavit . . . . .	21
Exhibit 9 – Chief Appraiser Certification . . . . .	23
Exhibit 10 – Petition Challenging Appraisal Records . . . . .	24
Exhibit 11 – Property Owner’s Notice of Protest . . . . .	28
Exhibit 11-A – Property Owner’s Notice of Protest . . . . .	30
Exhibit 12 – Appraisal Review Board Protest Hearing Notice. . . . .	32
Exhibit 13 – Settlement and Waiver of Protest. . . . .	35
Exhibit 14 – Appointment of Agent for Property Tax Matters . . . . .	36
Exhibit 15 – Lessee’s Designation of Agent for Property Tax Matters . . . . .	38
Exhibit 16 – Appraisal Review Board Member Communication Affidavit . . . . .	40
Exhibit 17 – Property Owner’s Affidavit of Evidence . . . . .	42
Exhibit 18 – Order Determining Protest or Notice of Dismissal. . . . .	46
Exhibit 19 – Texas Administrative Code Section 155.2 . . . . .	63
Exhibit 20 – Order Approving Supplemental Records . . . . .	68
Exhibit 21 – Order Determining Motion to Correct Appraisal Roll . . . . .	73
Exhibit 22 – Chief Appraiser’s (Sample) Motion for Correction of Appraisal Roll . . . . .	74
Exhibit 23 – Property Owner’s (Sample) Motion for Correction of Appraisal Roll . . . . .	75
Exhibit 24 – Motion for Hearing to Correct One-Fourth Over-Appraisal Error of Residence Homestead . . . . .	76
Exhibit 25 – Motion for Hearing to Correct One-Third Over-Appraisal Error . . . . .	77
Exhibit 26 – Notice of Hearing. . . . .	78
Exhibit 27 – Joint Motion to Correct Incorrect Appraised Value . . . . .	79
Exhibit 28 – Model Hearing Procedures . . . . .	84

# Introduction to Appraisal Review Boards

What legal guidelines and precedents do you face as a member of an appraisal review board (ARB)? Who schedules protests and challenges? How do you decide what is a fair ruling on a protest or challenge? What is the limit of your authority? How do you let property owners and taxing units know your decisions? These questions and many more are routinely faced by ARB members.

The local administrative district judge appoints ARB members.<sup>2</sup> The directors provide the budget for ARB operations as authorized by statute but are prohibited from communicating with the ARB concerning matters that could be the subject of hearings except as authorized by law.<sup>3</sup> The ARB is a decision-making body that issues determinations of statutorily authorized protests and challenges brought by property owners and taxing units.<sup>4</sup> ARB members are not a party to the protest. ARBs are appointed to act independently of the appraisal district and to make fair and impartial determinations. ARBs only have the authority specifically given by statute.

An appearance before the ARB is often the first time a property owner faces a decision-making body of government. The ARB is encouraged to make the experience a positive one by its demeanor and professionalism. All ARB members should demonstrate fairness and courtesy in conducting hearings and consider the evidence presented by all parties to the protests.

The ARB may have to interpret the meaning of the Tax Code in some protests. For example, the legal requirements for exemption qualifications may require interpretation. When such interpretation is needed, the ARB should seek legal advice from its attorney.<sup>5</sup>

The ARB has no role in the day-to-day operations of the appraisal office or in appraising property. It does not instruct the appraisal staff about how to perform appraisals. The

staff of the appraisal district is authorized to provide clerical assistance.<sup>6</sup>

The ARB has the authority to change a value or correct the appraisal records on a protest, motion or challenge that has been filed.<sup>7</sup> In certain circumstances, the chief appraiser must make the reappraisals or correct the records ordered by the ARB.<sup>8</sup> Only in resolving property owner protests or motions to correct can the ARB make changes or set a value.<sup>9</sup>

This manual is designed to help newly appointed ARB members find answers to the many questions they will encounter in their work and to help them perform their duties effectively. The manual provides general information about policy, procedures and legal guidelines. It outlines official responsibilities, available resources and the chronology of the review process. The manual serves as the text for the official training course. This manual is not the same as the text used for the continuing education course that ARB members must take after taking this course, and it is not and cannot be substituted for that course.

A member of the ARB may not participate in a hearing conducted by the board unless the person has completed the new member training and received a certificate of course completion from the Comptroller's office.<sup>10</sup> At the conclusion of this course, each ARB member must complete a statement, on a form prescribed by the Comptroller's office, indicating that the member will comply with the requirements of the Tax Code in conducting hearings.<sup>11</sup>

**Exhibit 1** lists important **DOs** and **DON'Ts** that allow ARB members to be successful when conducting a hearing and reviewing evidence.

<sup>2</sup> Tex. Tax Code §6.41(d) and (d-1)

<sup>3</sup> Tex. Tax Code §§5.041, 6.411, 6.414, 6.42 and 6.43

<sup>4</sup> Tex. Tax Code §§41.07 and 41.47

<sup>5</sup> Tex. Tax Code §6.43(a)

<sup>6</sup> Tex. Tax Code §6.43(f)

<sup>7</sup> Tex. Tax Code §§25.25, 41.07 and 41.47

<sup>8</sup> Tex. Tax Code §41.08

<sup>9</sup> Tex. Tax Code §§41.07 and 41.47

<sup>10</sup> Tex. Tax Code §5.041(b)

<sup>11</sup> Tex. Tax Code §5.041(b-1)

EXHIBIT 1  
**Appraisal Review Board DOs and DON'Ts**

DOs	DON'Ts
<ol style="list-style-type: none"> <li>1. <b>DO</b> act in a professional, courteous and respectful manner always.</li> <li>2. <b>DO</b> make eye contact and listen attentively to the property owner and the appraisal district representative when they are presenting evidence and arguments.</li> <li>3. <b>DO</b> adopt ARB hearing procedures at a public meeting that incorporate the Comptroller's model hearing procedures and send them to the Comptroller's office for review.</li> <li>4. <b>DO</b> let the parties know how many copies of evidence to bring to the hearing as part of the ARB procedures and remind them orally at the beginning of the hearing.</li> <li>5. <b>DO</b> post the procedures in the hearing room as required by law and follow them.</li> <li>6. <b>DO</b> ensure that hearings are scheduled at reasonable intervals and times, including Saturdays or evenings, as provided by law, and that hearings are set at times and dates certain.</li> <li>7. <b>DO</b> ensure that the protesting party and the appraisal district representative exchange evidence prior to the start of the hearing.</li> <li>8. <b>DO</b> get legal advice from an attorney when questions arise.</li> <li>9. <b>DO</b> deliberate openly and make determinations without bias.</li> <li>10. <b>DO</b> maintain accurate hearing records, including retaining copies of evidence and ensuring that the hearings are properly recorded.</li> </ol>	<ol style="list-style-type: none"> <li>1. <b>DON'T</b> make rude remarks, become argumentative, threaten or attempt to intimidate anyone.</li> <li>2. <b>DON'T</b> show favoritism to either the property owner or the appraisal district or become an advocate for either party.</li> <li>3. <b>DON'T</b> exhibit a personal relationship with appraisal district staff or the property owner. If you cannot be impartial, you may not participate in the hearing.</li> <li>4. <b>DON'T</b> let your attention wander, and DON'T sleep during a hearing.</li> <li>5. <b>DON'T</b> refuse to admit documents into evidence unless advised by legal counsel to take such an action. Simply weigh the relevance or sufficiency of the evidence to make a decision.</li> <li>6. <b>DON'T</b> ask the appraisal staff for direction on a questionable issue. Always seek independent legal advice from the ARB attorney.</li> <li>7. <b>DON'T</b> present testimony or become a party to the hearing through your words and actions.</li> <li>8. <b>DON'T</b> make a determination that is not supported by the evidence presented at the hearing.</li> <li>9. <b>DON'T</b> whisper, text or pass notes when discussing an issue before making a determination.</li> <li>10. <b>DON'T</b> talk about pending protests to anyone.</li> </ol>

*Source: Texas Comptroller of Public Accounts.*



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The Comptroller's office is also required to develop a continuing education course that must be completed by ARB members. At the conclusion of this course, the member must complete a statement on a form prescribed by the Comptroller's office indicating that the member will comply with the requirements of the Tax Code in conducting hearings. ARB members may not participate in a hearing conducted by the board, vote on a determination of a protest or be reappointed to an additional term on the ARB until the member has completed the continuing education course and received a certificate of course completion. If the member is reappointed to an additional term on the ARB, he or she must successfully complete the continuing education course and comply with other requirements in each year the member continues to serve.<sup>12</sup>

Neither this manual nor the continuing education course addresses every situation you may face as an ARB member. You should not rely solely on these manuals for answers to the many questions that arise. This manual is only a guide to train new ARB members as they begin their work. Please consult with your attorney about legal issues in protest hearings, the development of ARB hearing procedures and any other matter requiring interpretation of law.

This manual and more information about local property taxes are available on the Comptroller's website at [comptroller.texas.gov/taxes/property-tax/](http://comptroller.texas.gov/taxes/property-tax/). The Comptroller's office is continually developing new online technological assistance to improve the operations of ARBs, so it is a good idea to bookmark this page as a valuable resource.

Pursuant to Tax Code Section 5.041(a)(4), the Comptroller's office established a toll-free telephone number dedicated to serving ARB members. ARB members needing assistance regarding technical questions relating to the duties and responsibilities of ARB members and property appraisal issues can call 800-252-7551 and leave a message. A Property Tax Assistance Division (PTAD) staff person will return the call.

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<sup>12</sup> Tex. Tax Code §5.041(e-2)



# Chapter 1

## ARB Member Qualifications, Appointment and Oath

### Who can serve?

Tax Code Chapter 6, Subchapter C addresses who is and is not eligible to serve on the ARB. To serve on the ARB, an individual must have lived in the appraisal district for at least two years before taking office.<sup>13</sup> For the most part, ARB members do not need any special qualifications, but they may not serve on the ARB if, at the time of service, they are:

- members of the appraisal district board of directors;
- officers or employees of the appraisal district;
- members of the governing body or employees of a taxing unit; or
- employees of the Comptroller's office.<sup>14</sup>

In counties with populations of 120,000 or more, persons may not serve if they: (1) are a former member of the board of directors, former officer or former employee of the appraisal district; (2) served as a member of the governing body or officer of a taxing unit for which the appraisal district appraises property, until the fourth anniversary of the date the person ceased to be a member or officer; (3) appeared before the ARB for compensation during the two-year period preceding the date the person is appointed; or (4) have served all or part of three previous terms as a board member or auxiliary board member on the ARB.<sup>15</sup>

An individual cannot serve as an ARB member if he or she is related within the second degree by blood or marriage to a person engaged in appraising property for property tax purposes or a tax agent paid to represent property owners in proceedings in the appraisal district. Knowingly violating this provision is a Class B misdemeanor. An individual

cannot serve as an ARB member if he or she is related within the third degree by blood or second degree by marriage to a member of the appraisal district's board of directors or to a member of the ARB.<sup>16</sup> **Exhibit 2** provides details on degrees of consanguinity (blood relations) and affinity (marriage relations).

The law also bars an individual from ARB service if he or she, or a business entity in which he or she has a substantial interest, has a contract with the appraisal district or with a taxing unit served by the appraisal district. Likewise, the taxing units and the appraisal district are prohibited from contracting with an ARB member or a business entity in which an ARB member has a *substantial interest*. Substantial interest is defined as either (1) combined ownership by the member or the member's spouse of at least 10 percent of the voting stock or shares of the business or (2) service by the member or the member's spouse as a partner, limited partner or officer in the business entity.<sup>17</sup>

An individual may not be eligible to serve on the ARB if he or she holds some other paid public office. The Texas Constitution does not allow a person to hold more than one paid public office.<sup>18</sup> ARB members should contact legal counsel to interpret what constitutes a paid position or whether a public officer is receiving compensation.

### Special Panels

An appraisal district's board of directors in a county with a population of 1 million or more must increase the number of ARB members to include enough ARB members to certain

<sup>13</sup> Tex. Tax Code §6.41(c)

<sup>14</sup> Tex. Tax Code §6.412(c)

<sup>15</sup> Tex. Tax Code §6.412(d)

<sup>16</sup> Tex. Tax Code §6.412(a)-(b)

<sup>17</sup> Tex. Tax Code §6.413(d)

<sup>18</sup> Tex. Const. art. XVI, §40

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complex property issues referred to special panels.<sup>19</sup> ARB members must meet special qualifications to be appointed to the special ARB panels established for certain appraisal districts. Special panel ARB members must:

- hold a law degree;
- hold a Master of Business Administration degree;
- be licensed as a certified public accountant;
- be accredited by the American Society of Appraisers;
- possess a MAI designation;
- possess a certified assessment evaluator designation;
- have at least ten years of experience in property tax appraisal or consulting; or
- be licensed as a real estate broker or sales agent.<sup>20</sup>

If an ARB needs special panel members but does not have enough qualified applicants, a special panel ARB member may be appointed who holds a bachelor's degree in any field.<sup>21</sup>

### **Single Member Panels**

An ARB can conduct hearings in single member panels upon written request of the property owner. The property owner can include the request in the notice of protest or submit a separate written request not later than 10 days before the hearing date.<sup>22</sup>

Single-member panels must be available in all counties and ARB members do not have to meet special qualifications to sit on a single-member panel. If the ARB does not accept the recommendation or motion made by a single-member panel, the ARB can determine the protest or send it for a rehearing to a different single-member panel that did not hear the original protest.<sup>23</sup>

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<sup>19</sup> Tex. Tax Code §6.41(b)

<sup>20</sup> Tex. Tax Code §6.425(d)

<sup>21</sup> Tex. Tax Code §6.425(e)

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<sup>22</sup> Tex. Tax Code §41.45(b-4)

<sup>23</sup> Tex. Tax Code §41.45(b-5)

**Chart of Kinship for Appraisal Personnel – Degrees of Consanguinity and Affinity Prohibitions**

<p style="text-align: center;"><b>1<sup>st</sup></b> <b>DEGREE</b></p>	<p style="text-align: center;"><b>2<sup>nd</sup></b> <b>DEGREE</b></p>	<p style="text-align: center;"><b>3<sup>rd</sup></b> <b>DEGREE</b></p>
<p><b>By Consanguinity</b></p> <ul style="list-style-type: none"> <li>• Parents</li> <li>• Children</li> </ul> <p><b>By Affinity</b></p> <ul style="list-style-type: none"> <li>• Spouses of relatives listed under first degree consanguinity</li> <li>• Spouse</li> <li>• Spouse’s parents</li> <li>• Spouse’s children</li> <li>• Stepparents</li> <li>• Stepchildren</li> </ul>	<p><b>By Consanguinity</b></p> <ul style="list-style-type: none"> <li>• Grandparents</li> <li>• Grandchildren</li> <li>• Brothers &amp; sisters</li> </ul> <p><b>By Affinity</b></p> <ul style="list-style-type: none"> <li>• Spouses of relatives listed under second degree consanguinity</li> <li>• Spouse’s grandparents</li> <li>• Spouse’s grandchildren</li> <li>• Spouse’s brothers &amp; sisters</li> </ul>	<p><b>By Consanguinity</b></p> <ul style="list-style-type: none"> <li>• Great grandparents</li> <li>• Great grandchildren</li> <li>• Nieces &amp; nephews</li> <li>• Aunts &amp; uncles</li> </ul> <p><b>By Affinity</b></p> <ul style="list-style-type: none"> <li>• NO PROHIBITIONS</li> </ul>
<p style="text-align: center;"><b>Eligibility Restrictions for Chief Appraisers, Directors, ARB Members and Others</b></p> <ul style="list-style-type: none"> <li>• ARB members cannot serve if they are related within the second degree by consanguinity or affinity to someone engaged in the business of appraising property for compensation for use in property tax proceedings before the appraisal district or ARB or of representing property owners for compensation in the appraisal district.<sup>24</sup></li> <li>• ARB cannot serve if they are related within the third degree by consanguinity or within the second degree by affinity to members of the appraisal district’s board of directors or the ARB.<sup>25</sup></li> <li>• ARB members cannot serve if they or their spouses have substantial interests in contracts with the appraisal district or taxing units participating in the district.<sup>26</sup></li> <li>• ARB members cannot participate in a property owner protest in which they are related to a party by affinity within the second degree or by consanguinity within the third degree.<sup>27</sup></li> <li>• Chief appraisers are disqualified from employment if related within the second degree by consanguinity or affinity to someone engaged in the business of appraising property for compensation for use in property tax proceedings or of representing property owners for compensation in the appraisal district.<sup>28</sup></li> <li>• Appraisal district board members cannot serve if related within the second degree by consanguinity or affinity to someone engaged in the business of appraising property for compensation for use in proceedings before the appraisal district or ARB or of representing property owners for compensation in that district.<sup>29</sup></li> <li>• Chief appraisers or individuals related to chief appraisers within the second degree by consanguinity or affinity cannot prepare appraisals to be used as evidence in protests or challenges concerning property that is taxable in the appraisal district in which the chief appraiser is employed.<sup>30</sup></li> <li>• Appraisal district board members are ineligible to serve if they or their spouses have substantial interests in contracts with the appraisal district or taxing units participating in the appraisal district if the contract relates to property tax.<sup>31</sup></li> <li>• Persons may not be employed by the appraisal district if they are related to a member of the board of directors within the second degree by affinity or within the third degree by consanguinity.<sup>32</sup></li> <li>• Persons or their spouses may not be employed by or contract with the appraisal district if they are related to the chief appraiser within the first degree by consanguinity or affinity.<sup>33</sup></li> <li>• Persons may not be employed by an appraisal district if they have served as an ARB member for the appraisal district at any time in the preceding two years.<sup>34</sup></li> </ul>		

<sup>24</sup> Tex. Tax Code §6.412(a)(1)  
<sup>25</sup> Tex. Tax Code §6.412(a)(3)  
<sup>26</sup> Tex. Tax Code §6.413(a)  
<sup>27</sup> Tex. Tax Code §41.69  
<sup>28</sup> Tex. Tax Code §6.035(a)  
<sup>29</sup> Tex. Tax Code §6.035(a)  
<sup>30</sup> Tex. Tax Code §6.035(d)  
<sup>31</sup> Tax Code Section 6.036(a)  
<sup>32</sup> Tax Code Section 6.05(f)  
<sup>33</sup> Tax Code Section 6.05(g)  
<sup>34</sup> Tex. Tax Code §6.054(3)

The Tax Code disqualifies a person from serving on an ARB if the person owns property on which delinquent property taxes have been owed for more than 60 days after the date the person knew or should have known of the delinquency. This restriction does not apply if the person is paying the delinquent taxes under an installment payment agreement or has deferred or abated a suit to collect delinquent taxes.<sup>35</sup>

## Appointing the ARB – size and terms

As shown in **Exhibit 3**, the local administrative district judge appoints all ARB members and commissioners and the ARB chairman appoints special panel assignments.<sup>36</sup> ARB members in all counties serve two-year staggered terms that begin Jan. 1. The appraisal district board of directors must adopt a resolution providing for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. When making the initial or subsequent appointments, the local administrative district judge (judge) or the judge’s designee indicate which members will serve one-year terms to comply with required staggered term provisions.<sup>37</sup>

Taxing units that vote for appraisal district directors may disapprove the appointment of an ARB member by a majority of a voting taxing unit governing bodies passing a resolution within 15 days after the appraisal district board appoints the member.<sup>38</sup>

The appraisal district board of directors determines the number of ARB members to serve on the ARB, with a statutory minimum of three members.<sup>39</sup>

## Local Administrative District Judge Appointments

The judge appoints the ARB members including enough ARB members to fill each special panel.<sup>40</sup>

The judge may make ARB appointments directly or may, by written order, appoint from three to five persons to perform the duties of ARB commissioners.<sup>41</sup> If the judge chooses to appoint ARB commissioners, each commissioner must have the same qualifications as those required of an ARB member.<sup>42</sup> ARB commissioners serve a one-year term beginning Jan. 1.<sup>43</sup> The judge may reappoint ARB commissioners to successive terms at his or her discretion.<sup>44</sup>

ARB commissioners can also serve as ARB members.<sup>45</sup> They meet to perform their duties as directed by the judge.<sup>46</sup> The appraisal district must provide the judge or the ARB commissioners, as the case may be, the number of positions that require appointment to the ARB.<sup>47</sup> The appraisal district must also provide the judge or ARB commissioners any reasonable assistance they request.<sup>48</sup>

ARB commissioners must provide a list of proposed ARB members to the judge when requested, but no later than Jan. 1 of each year. The list must include at least five more names than the number of ARB positions to be filled. The judge may accept the proposed names or reject the list and return it to the ARB commissioners. If the judge rejects the list, the ARB commissioners must propose a new list until it is acceptable to the judge.<sup>49</sup>

EXHIBIT 3  
**ARB Appointment**

Members or Commissioners	County Population	Appointed By	Term
ARB members	All	Local administrative district judge	2 years
ARB commissioners	All	Local administrative district judge	1 year
ARB special panel members	1 million or greater	ARB Chairman	2 years

<sup>35</sup> Tex. Tax Code §6.412(a)(2)(A) and (B)

<sup>36</sup> Tex. Tax Code §§6.41(d) and 6.425(e)

<sup>37</sup> Tex. Tax Code §6.41(e)

<sup>38</sup> Tex. Tax Code §6.10

<sup>39</sup> Tex. Tax Code §6.41

<sup>40</sup> Tex. Tax Code §6.41(d-1) and (d-9)

<sup>41</sup> Tex. Tax Code §6.41(d-2)

<sup>42</sup> Tex. Tax Code §6.41(d-2)

<sup>43</sup> Tex. Tax Code §6.41(d-8)

<sup>44</sup> Tex. Tax Code §6.41(d-8)

<sup>45</sup> Tex. Tax Code §6.41(d-6)

<sup>46</sup> Tex. Tax Code §6.41(d-4)

<sup>47</sup> Tex. Tax Code § 6.41(d-5)

<sup>48</sup> Tex. Tax Code §6.41 (d-5)

<sup>49</sup> Tex. Tax Code § 6.41(d-7)

When the judge accepts the list presented by the ARB commissioners, the judge will select an adequate number of qualified individuals to permit the ARB chairman to fill positions on special panels and enter an order designating the individuals as members of the ARB.<sup>50</sup> An ARB member (along with a chief appraiser, appraisal district employee, agent or board member, property tax consultant or agent) commits an offense if the person communicates with the judge regarding the appointment of ARB members except as provided.<sup>51</sup>

## ARB member removal

The appraisal district board of directors, the local administrative district judge or the judge's designee may remove an ARB member for the following reasons:

- ARB member's relative is a fee appraiser or tax agent appearing before the ARB;<sup>52</sup>
- ARB member owes delinquent property taxes under certain circumstances;<sup>53</sup>
- ARB member or his or her spouse has a substantial interest in an appraisal district or taxing unit contract;<sup>54</sup>
- ARB member is involved in an ex parte communication about a protest outside of the hearing;<sup>55</sup>
- ARB member participates in a hearing when he or she has a conflict of interest or is related to a party of the hearing by marriage within the second degree or by blood within the third degree;<sup>56</sup>
- ARB member fails to attend ARB meetings as established by the appraisal district board's policy;<sup>57</sup> or
- Evidence of the ARB member's repeated bias or misconduct.<sup>58</sup>

Not later than 90 days after learning of a potential ground for removal, the appraisal district board of directors, the local administrative district judge or the judge's designee must remove the member or find by official action that removal is not warranted.<sup>59</sup>

ARB members can find throughout the Tax Code directives that define the limits of their authority. In addition, the ARB

should conform to the highest ethical standards. The *Code of Judicial Conduct* (**Exhibit 4**) governs the conduct of judges and may serve as a guide for ARB members.

### EXHIBIT 4

## Code of Judicial Conduct\*

- A Judge Should Uphold the Integrity and Independence of the Judiciary.
- A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.
- A Judge Should Perform the Duties of Office Impartially and Diligently.
- A Judge Should Conduct the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations.
- A Judge Should Refrain From Inappropriate Political Activity.
- A Judge Shall Comply with the Code of Judicial Conduct.

### Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

\* The Code of Judicial Conduct includes eight Canons; the last two are procedural in nature and are not included here. Each canon is described in much greater detail at <https://www.txcourts.gov/media/1452409/texas-code-of-judicial-conduct.pdf>.

Source: Office of Court Administration, 2011.

## Appointment of temporary ARB members

The appraisal district board of directors must adopt and implement a policy concerning the temporary replacement of an ARB member who has communicated with another

<sup>50</sup> Tex. Tax Code §6.41 (d-9) and (d-10)

<sup>51</sup> Tex. Tax Code §6.41(i)

<sup>52</sup> Tex. Tax Code §§6.41(f) and 6.412

<sup>53</sup> Tex. Tax Code §§6.41(f) and 6.412

<sup>54</sup> Tex. Tax Code §§6.41(f) and 6.413

<sup>55</sup> Tex. Tax Code §§6.41(f) and 41.66(f)

<sup>56</sup> Tex. Tax Code §§6.41(f) and 41.69

<sup>57</sup> Tex. Tax Code §6.41(f)

<sup>58</sup> Tex. Tax Code §6.41(f-3)

<sup>59</sup> Tex. Tax Code §6.41(f)

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person in violation of Tax Code Section 41.66(f) (see Chapter 4 of this manual). At each protest hearing, an ARB member must sign an affidavit that the member has not communicated about certain elements of the protest with another person except during the hearing on the protest. If an ARB member cannot sign the affidavit, the ARB member cannot hear the protest on that property.<sup>60</sup>

The appraisal district's board of directors' policy on appointing ARB members should provide for naming temporary ARB members. For example, if the ARB has enough members to place one regular ARB member on a panel needing a temporary member, the board of director's policy may choose to use current members as temporary panel replacements. On the other hand, a board of director's policy may prefer to designate a number of eligible individuals to serve only as temporary replacements for removed members.

## Appointment of auxiliary ARB members

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The Tax Code also authorizes appraisal district directors to appoint auxiliary ARB members to hear property owner protests and assist the board in performing its duties. The appraisal district directors by resolution select the number of auxiliary members.<sup>61</sup>

Auxiliary board members are appointed in the same manner and for the same term as regular board members and are subject to the same eligibility requirements and restrictions. In addition to hearing property owner protests before the ARB and sitting on hearing panels, auxiliary members are entitled to make recommendations to the ARB regarding a protest. Auxiliary members sitting on a hearing panel are considered regular board members for all purposes relating to the conduct of a hearing. An auxiliary member is not entitled to vote on the determination of the protest by the board, does not count toward a quorum and cannot serve as chairman or secretary of the ARB.<sup>62</sup> An auxiliary member may not hear a protest before a special panel established by Tax Code 6.45 unless the member is eligible for special panel appointment.<sup>63</sup>

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<sup>60</sup> Tex. Tax Code §41.66(g)

<sup>61</sup> Tex. Tax Code §6.414

<sup>62</sup> Tex. Tax Code §6.414

<sup>63</sup> Tex. Tax Code §6.414(d)

## Access to criminal history record information

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An appraisal district is authorized to obtain Department of Public Safety (DPS) criminal history records related to a person applying for an appointment to an ARB. An appraisal district is authorized to provide the local administrative judge or the ARB commissioners the criminal history record information obtained from DPS.<sup>64</sup>

## Oath of office

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Newly appointed and reappointed ARB members must sign a statement and take an oath of office before beginning a term. Jan. 1 of the year in which the term begins is the earliest date the oath may be administered. ARB members must be properly sworn before taking any official action. **After the ARB member signs the required statement (Exhibit 5) and takes the oath of office (Exhibit 6), he or she files the statement with the appraisal district office.**<sup>65</sup> The Secretary of State's Statutory Documents Division provides forms for this purpose online at <https://www.sos.state.tx.us/elections/forms/oath-of-office.pdf>.

## Pay and training for ARB members

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When setting its budget, the appraisal district board of directors must include amounts for ARB per diem payments and expense reimbursements. Specifically, ARB members (not auxiliary members) are entitled to be paid by the day (per diem) for each day the board meets. They are also entitled to reimbursement of actual and necessary expenses incurred in the performance of their official duties. Auxiliary ARB members are entitled to compensation as provided by the appraisal district budget, but are not entitled to per diem or reimbursement of expenses.<sup>66</sup>

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<sup>64</sup> Tex. Gov't. Code §411.1296

<sup>65</sup> Tex. Const. art. XVI, §1

<sup>66</sup> Tex. Tax Code §§6.414(f) and 6.42(c)



EXHIBIT 5  
**Form 2201, Statement of Elected/Appointed Officer**

Form #2201 Rev. 05/2020 Submit to: <b>SECRETARY OF STATE</b> Government Filings Section P O Box 12887 Austin, TX 78711-2887 512-463-6334 512-463-5569 - Fax Filing Fee: None	 <b>STATEMENT OF OFFICER</b>
<b>Statement</b> I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God. Title of Position to Which Elected/Appointed: _____	
<b>Execution</b> Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true. Date: _____ <div style="text-align: right;">           _____            Signature of Officer         </div>	

Source: Texas Secretary of State, 2020.

EXHIBIT 6  
**Form 2204, Oath of Office**

Form #2204 Rev 9/2017 Submit to: <b>SECRETARY OF STATE</b> Government Filings Section P O Box 12887 Austin, TX 78711-2887 512-463-6334 FAX 512-463-5569 Filing Fee: None	This space reserved for office use  <b>OATH OF OFFICE</b>
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS, I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God. <div style="text-align: right; margin-top: 20px;">           _____            Signature of Officer         </div>	
<b>Certification of Person Authorized to Administer Oath</b> State of _____ County of _____ Sworn to and subscribed before me on this _____ day of _____, 20____.	
<small>(Affix Notary Seal, only if oath administered by a notary)</small>	

Source: Texas Secretary of State, 2017.

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ARB members, including temporary or auxiliary members, must complete the Comptroller's training course before participating in any hearings. The course must provide at least eight hours of classroom or distance training and education, and the Comptroller may assess a fee not to exceed \$50 for each person trained whether he or she is an ARB member or not. If the ARB member is appointed *after* the Comptroller's office has offered ARB training courses for that year, the ARB member may participate in hearings, but must complete the new member training course at the first opportunity after the appointment.<sup>67</sup>

The Comptroller's new member training and continuing education cannot be provided by an appraisal district, the chief appraiser or other appraisal district staff, a member of the board of directors, ARB board member or a taxing unit.<sup>68</sup> The ARB is allowed to retain a certified appraiser to instruct ARB members on valuation methods if the appraisal district budgets for it.<sup>69</sup> An ARB may consider, based on legal advice, training itself concerning procedural and administrative matters, so long as the training does not conflict with appraisal and legal issues addressed in the Comptroller's training courses.

The Tax Code provides that certain communication about the training courses is prohibited. Except during a hearing or other ARB proceeding, the following persons cannot communicate with the ARB regarding the Comptroller's training courses or any matter presented or discussed during the courses:

- the chief appraiser;
- other appraisal district employees;
- a director of the appraisal district;
- an officer or employee of a taxing unit served by the appraisal district; and
- an attorney who represents (or whose firm represents) the appraisal district or taxing unit.<sup>70</sup>

ARB members should be aware of laws that require mandatory training for public officials on the Texas Open Meetings Act and Public Information Act. The laws require at least two hours of open government training, consisting of a one-hour educational course on the Open Meetings Act and

one-hour educational course on the Texas Public Information Act from the Office of the Attorney General.<sup>71</sup>

The Open Meetings Act training requirement applies to all elected or appointed officials who routinely participate in meetings subject to that law as part of their regular duties including ARB members. The Public Information Act training requirement applies to elected or appointed officials who respond to public information requests. ARB members have **90 days** to complete the required training and need take the course only once. The Office of the Attorney General (OAG) provides free training for all public officials through both online and video courses available for viewing on their website at [www.texasattorneygeneral.gov/og/open-government-training](http://www.texasattorneygeneral.gov/og/open-government-training). Officials may obtain a DVD copy of the training courses by calling the OAG's Public Information and Assistance line at 800-252-8011.

## ARB officers

The local administrative judge in the county in which the appraisal district is established selects a chairman and a secretary from among the ARB members. If possible, the judge should appoint a chairman of the ARB who has a background in law and property appraisal.<sup>72</sup>

The ARB presiding officer often has the responsibility for ensuring that hearings are conducted properly and procedures are followed.

A secretary's responsibilities could include the following: sending required notices, ensuring that meetings are posted and keeping official minutes or audio recordings of ARB proceedings. While the law only requires the selection of a presiding officer and a secretary, the ARB may determine that other officers are needed in order to conduct its business.

The ARB may meet at any time at the call of the presiding officer or as provided by ARB rules or procedures. The ARB must meet to examine the appraisal records within 10 days after the date the chief appraiser submits appraisal records to it.<sup>73</sup>

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<sup>67</sup> Tex. Tax Code §5.041(b), (c) and (e)

<sup>68</sup> Tex. Tax Code §5.041(e-3)

<sup>69</sup> Tex. Tax Code §5.041(h)

<sup>70</sup> Tex. Tax Code §5.041(g)

<sup>71</sup> Tex. Gov't. Code §§551.005 and 552.012

<sup>72</sup> Tex. Tax Code §6.42(a)

<sup>73</sup> Tex. Tax Code §6.42(b)

# Chapter 2

## ARB General Operations

By April 1, or as soon thereafter as practicable, if the property is a single-family residence that qualifies for a residence homestead exemption, or by May 1, or as soon thereafter as practicable, in connection with any other property, the chief appraiser must deliver a clear and understandable written notice to a property owner of the appraised value of the owner's property.<sup>74</sup> This notice is required if any of the following applies:

- the appraised value of the property is greater than it was in the preceding year;
- the appraised value of the property is greater than the value rendered by the property owner;
- the property was not on the appraisal roll in the preceding year;
- an exemption or partial exemption approved for the property for the preceding year was canceled or reduced for the current year;<sup>75</sup>
- the property was reappraised in the current year;
- the ownership changed from the preceding year;
- the property owner makes a written request for a notice; or<sup>76</sup>
- the residential property has not qualified for a homestead exemption in the current tax year and appraisal district records indicate that the address of the property is also the address of the owner.<sup>77</sup>

The chief appraiser must publish notice of the manner in which a property owner can bring a protest before the ARB. The notice must describe how to initiate a protest, set out the deadlines for filing a protest, explain the availability and purpose of an informal conference with the appraisal district and explain the manner in which an ARB order may be appealed. The Comptroller's model notice is *Property Tax Protest and Appeal Procedures (Exhibit 7)*.<sup>78</sup>

The notice must appear in a one-quarter-page ad in a newspaper having general circulation in the county for which the appraisal district is established. The notice may not be

published in the part of the paper in which legal notices and classified advertisements appear.<sup>79</sup> The notice also must comply with Comptroller Rule 9.3064.<sup>80</sup>

The ARB shall deliver a written notice to property owners regarding their hearing not later than the 15<sup>th</sup> day before its scheduled date. The notice must include the date, time and place of the hearing; a description of the subject matter of the hearing that identifies what is being protested; and a statement that notifies property owners that they are entitled to a postponement.<sup>81</sup>

The notice of protest shall be delivered by certified mail if the property owner requests this method; however, the ARB may require the property owner to pay the postage. If the property owner submits a written request for delivery by email and provides a valid email address, the ARB shall deliver the hearing notice electronically. The ARB's legal counsel should be consulted concerning agreements between the chief appraiser and property owners or owners' agents under Tax Code Section 1.085 regarding delivery of notices.<sup>82</sup>

In addition to the Notice of Protest Hearing, ARBs in counties with populations greater than 120,000 must deliver an electronic hearing reminder if the property owner requests the email or text message reminder in writing to the ARB. The electronic reminder must state the date, time and place of the protest hearing. The property owner is responsible for providing a valid email address or phone number where the reminder will be sent not earlier than the 7<sup>th</sup> day after receiving the hearing notice and not later than the day before the scheduled hearing. Failure to deliver the reminder is not considered a failure to provide notice under Tax Code Section 41.411. ARBs should discuss with the appraisal district staff that provides clerical support to determine the best way to implement this procedure.<sup>83</sup>

<sup>74</sup> Tex. Tax Code §25.19

<sup>75</sup> Tex. Tax Code §25.193

<sup>76</sup> Tex. Tax Code §25.19(g)

<sup>77</sup> Tex. Tax Code §25.192

<sup>78</sup> Tex. Tax Code §41.70

<sup>79</sup> Tex. Tax Code § 41.70

<sup>80</sup> 34 Tex. Admin. Code §9.3064

<sup>81</sup> Tex. Tax Code §41.46(a)

<sup>82</sup> Tex. Tax Code §41.46(d)(e)

<sup>83</sup> Tex. Tax Code §41.46(f)

## Property Tax Protest and Appeal Procedures

50-195 (Rev.12-21/22)  
[41.41.41.70]

### Property Tax Protest and Appeal Procedures

Property owners have the right to protest actions concerning their property tax appraisals. You may follow these appeal procedures if you have a concern about:

- the appraised (market) value of your property;
- the unequal value of your property compared with other properties;
- the inclusion of your property on the appraisal records;
- any exemptions that may apply to you;
- the qualification for an agricultural or timber appraisal;
- the taxing units taxing your property;
- the property ownership;
- the change of use of land receiving special appraisal;
- failure of the chief appraiser or appraisal review board (ARB) to send a required notice; or
- any action taken by the chief appraiser, county appraisal district (CAD) or ARB that applies to and adversely affects you.

#### Informal Review

*(Insert description of CAD's informal review process, if any, then give name and telephone number of person taxpayer should contact.)*

#### Review by the ARB

If you cannot resolve your problem informally with the CAD, you file a notice of protest requesting to have your case heard by the ARB.

The ARB is an independent board of citizens that hears and determines protests regarding property appraisals or other concerns listed above. It has the power to order the CAD to make the necessary changes based on evidence heard during the ARB hearing.

If you file a written request for an ARB hearing (notice of protest) before the deadline, the ARB will set your case for a hearing and send you written notice of the time, date, place and subject of the hearing. If necessary, you may request a hearing in the evening or on a Saturday. You may use Comptroller Form 50-132, *Property Appraisal - Notice of Protest*, to file your written request for an ARB hearing.

Prior to your hearing, you may request a copy of the evidence the CAD plans to introduce at the hearing to establish any matter at issue. Before a hearing on a protest or immediately after the hearing begins, you or your agent and the CAD are required to provide each other with a copy of any materials (evidence) intended to be offered or submitted to the ARB at the hearing. Evidence may be submitted for any hearing type either in paper or on a small portable electronic device (such as a CD, USB flash drive or thumb drive) which will be kept by the ARB. Do NOT bring evidence on a smart phone. The ARB's hearing procedures regarding all the requirements to properly submit evidence on a small portable electronic device must be reviewed.

To the greatest extent practicable, the hearing will be informal. You or your designated agent may appear in person, by telephone conference or videoconference call or by submission of a written affidavit to present your evidence, facts and argument. You must indicate the type of hear-

ing you request on your written notice of protest filed with the ARB not later than the 10th day before the hearing date and provide your evidence and written affidavit before the ARB hearing begins. You may use Comptroller Form 50-283, *Property Owner's Affidavit of Evidence to the Appraisal Review Board*, to submit evidence for your telephone conference call hearing or for hearing by affidavit.

You and the CAD representative have the opportunity to present evidence about your case. In most cases, the CAD has the burden of establishing the property's value by a preponderance of the evidence presented.

In certain protests, the chief appraiser has the burden of proving the property's value by clear and convincing evidence. You should review ARB hearing procedures to learn more about evidence and related matters.

You should not try to contact ARB members outside of the hearing. ARB members are required to sign an affidavit saying that they have not talked about your case before the ARB hears it.

#### Review by the District Court, an Arbitrator or SOAH

After it decides your case, the ARB must send you a copy of its order by certified mail. If you are not satisfied with the ARB's decision, you have the right to appeal to district court. As an alternative to district court, you may appeal through binding arbitration or the State Office of Administrative Hearings (SOAH) if you meet the qualifying criteria.

If you choose to go to district court, you must start the process by filing a petition with the district court within 60 days of the date you receive the ARB's order. If you chose to appeal through binding arbitration, you must file a request for binding arbitration with the CAD not later than the 60th day after you receive notice of the ARB order. If you chose to appeal to the SOAH, you must file an appeal with the CAD not later than the 30th day after you receive notice of the ARB's order. Appeals to district court, binding arbitration or SOAH all require payment of certain fees or deposits.

If you believe that the ARB or chief appraiser failed to comply with an ARB procedural requirement, you may file a complaint with the local taxpayer liaison. If it is not resolved by the ARB or chief appraiser, you can request limited binding arbitration to compel the ARB or the chief appraiser to comply.

#### Tax Payment

You must pay the amount of taxes due on the portion of the taxable value not in dispute, the amount of taxes due on the property under the order from which the appeal is taken or the amount of taxes due in the previous year.

#### More Information

You can get more information by contacting your CAD at *(insert CAD name, address, telephone number)*.

You can get Comptroller forms and additional information on how to prepare a protest from the Comptroller's website at [comptroller.texas.gov/taxes/property-tax/](http://comptroller.texas.gov/taxes/property-tax/).

### Deadline for Filing Protests with the ARB\*

#### Usual Deadline

Not later than May 15 (or within 30 days after a notice of appraised value was mailed to you, whichever is later).

Late protests are allowed for good cause if you miss the usual deadline. The ARB decides whether you have good cause. Late protests are not allowed after the ARB approves the appraisal records for the year.

#### Special Deadlines

For change of use (the CAD informed you that you are losing agricultural appraisal because you changed the use of your land), the deadline is not later than the 30th day after the notice of the determination was delivered to you.

For ARB changes (the ARB has informed you of a change that increases your tax liability and the change did not result from a

\* The deadline is postponed to the next business day if it falls on a weekend or legal, state or national holiday.

protest you filed), the deadline is not later than the 30th day after the notice of the change was delivered to you.

*(You may insert deadline for protests concerning omitted property if doing so would avoid taxpayer confusion.)*

If you believe the CAD or ARB should have sent you a notice and did not, you may file a protest until the day before taxes become delinquent (usually Feb. 1) or no later than the 125th day after the date you claim you received a tax bill from one or more of the taxing units that tax your property. The ARB decides whether it will hear your case based on evidence about whether a required notice was mailed to you.

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## Professionalism

A property owner's protest hearing is the ARB's most important opportunity for promoting good public relations. Property owners may base their opinions of the property tax system in general, and the ARB in particular, on their experience at the hearing. Fair and impartial hearings are required, and the ARB should make every effort to ensure that it conducts the hearings in such a manner. The ARB should conduct its business professionally and consider how the public perceives it. It should make every effort to make the hearings welcoming to all parties.

## Hearing location and procedures

Generally, ARB hearings must be conducted at the appraisal office because of budgetary and administration issues. The ARB may consider conducting some hearings at other locations or by videoconference for the convenience of property owners.

No later than May 15 of each year, the ARB shall hold a public hearing to consider the proposed model hearing procedures and make amendments accordingly. The hearing procedures are then adopted by resolution. The ARB may adopt procedures that supplement the Comptroller's model hearing procedures if they do not contradict or circumvent the model hearing procedures. ARBs must submit their adopted hearing procedures to the Comptroller's office annually for review.<sup>84</sup> The Comptroller's model hearing procedures may be found at the end of this manual as **Exhibit 28**.

The ARB must submit the adopted procedures to the following entities no later than 15 days after adoption:

- the Comptroller's Property Tax Assistance Division at [ptad.arb@cpa.texas.gov](mailto:ptad.arb@cpa.texas.gov);
- the appraisal district board of directors for which the ARB is established; and
- the appraisal district taxpayer liaison officer for which the ARB is established.

Copies of the procedures must be displayed in a prominent place in each room where hearings take place and on the appraisal district's website, if applicable.<sup>85</sup>

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<sup>84</sup> Tex. Tax Code §§5.103(d), 41.01(c) and 41.66(a)

<sup>85</sup> Tex. Tax Code §41.01(c),(d), and (e)

The Tax Code directs that hearing procedures "to the greatest extent practicable shall be informal."<sup>86</sup> Hearing procedures are legally required. Well-designed procedures can help the ARB do its work.

The law requires certain ARB hearing practices. The ARB must give each party the right to offer evidence, examine and cross-examine witnesses and present arguments on protest subjects. A property owner is entitled to elect to present his or her case at the hearing either before or after the appraisal district presents its case.<sup>87</sup> The ARB's procedures should reflect these and other hearing rights of property owners.<sup>88</sup>

The ARB must adopt a procedure that provides for protest hearings during evening hours or on a Saturday. The board may not schedule the start of the first protest hearing held on a weekday evening after 7 p.m.<sup>89</sup> The ARB's procedures should inform property owners of these times.

The procedures must be made available to the public. The ARB must post written ARB hearing procedures in a prominent place in each room in which it holds hearings. In addition, the ARB must provide its hearing procedures to a protesting property owner.<sup>90</sup>

ARB members should review their current written procedures, preferably at the first meeting after Jan. 1, when terms of office for new members begin. The ARB should make it a practice to review its procedures at its first meeting to make certain it incorporates any changes the Legislature may have made that impact ARB operations and property owner remedies.

## Scheduling

The ARB, through the clerical staff assigned to it, should assign a case number to each protest and challenge. Scheduling hearings on a protest filed by a property owner who is 65 or older, disabled, a military service member, a military veteran or the spouse of a military member or veteran takes priority over scheduling hearings filed by designated agents or other property owners.<sup>91</sup> A numbering system helps keep track of all records and evidence. The ARB then places the protests or challenges on a hearing schedule. The schedule

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<sup>86</sup> Tex. Tax Code §41.66(b)

<sup>87</sup> Tex. Tax Code §41.66(b)

<sup>88</sup> Tex. Tax Code §41.66(b)

<sup>89</sup> Tex. Tax Code §41.71(b)

<sup>90</sup> Tex. Tax Code §41.66(a)

<sup>91</sup> Tex. Tax Code §41.66(j-2)

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states the date and time of each hearing, the nature of each protest or challenge, a property description and other information. The ARB may not schedule a hearing on a property value before a property owner has filed a protest.<sup>92</sup>

A property owner may appear at the protest hearing in one of these ways:

1. in person to offer evidence and argument;
2. by telephone conference call or videoconference to offer argument with evidence offered and delivered by affidavit before the hearing begins; or
3. by written affidavit to offer evidence and argument delivered to the ARB before the hearing begins.<sup>93</sup>

A property owner does not waive the right to appear in person at the protest hearing by submitting an affidavit to the ARB or by electing to appear by telephone conference call or videoconference. The ARB is to consider an affidavit submitted only if the property owner does not appear in person at the hearing.<sup>94</sup>

If the property owner states in the affidavit that he or she does not intend to appear at the hearing, or state in the affidavit whether he or she intends to appear in person and has not elected to appear by telephone conference call or videoconference, the ARB is not required to consider the affidavit at the scheduled hearing and may consider the affidavit at a hearing designated for the specific purpose of processing affidavits.<sup>95</sup>

The ARB must conduct a protest hearing by telephone conference call or by videoconference if:

- the property owner provides sufficient written notice to the ARB of the owner's intent to appear by telephone conference call; or
- the ARB proposes that the hearing be conducted in that manner and the property owner agrees.

Notice to the ARB is provided either in the notice of protest or by written notice filed with the ARB no later than the 10th day before the date of the hearing.<sup>96</sup> A property owner who appears by telephone conference call must offer any ev-

idence by affidavit submitted to the ARB before the hearing begins.<sup>97</sup>

A hearing the ARB conducts by telephone conference call must be held in a location equipped with telephone equipment that allows each board member and the other parties to the protest who are present at the hearing to hear the property owner offer argument.<sup>98</sup> The ARB shall provide a telephone number for the property owner to call to participate in the hearing.<sup>99</sup> A property owner is responsible for providing access to a telephone conference call hearing to another person that the owner invites to participate in the hearing.<sup>100</sup>

Videoconference hearings require internet access. Counties with populations less than 100,000 that also lack the technological capability to conduct videoconference hearings are not required to offer them.<sup>101</sup> Property owners must request videoconference hearings in writing on either the notice of protest or at least 10 days before the date of the scheduled hearing.<sup>102</sup> The ARB must provide an internet location or uniform resource locator (URL) to the property owner to participate in the videoconference hearing and equipment set up that allows the ARB members and other parties present for the hearing to have the ability to see and hear the protest. If property owners invite others to participate in the videoconference hearing, the property owners are responsible for providing access to their participants. Property owners that opt for the videoconference hearings should be made aware that affidavits for presenting evidence are necessary for this type of hearing.<sup>103</sup>

A 2020 attorney general opinion addresses the Covid-19 pandemic and its effect on ARB procedures. KP-0307 responds to an inquiry regarding the format in which hearings and notices were given concerning protests during the pandemic. Some districts suspended 'in-person' hearings for health safety concerns. The opinion held that, per Tax Code Section 41.45(b)(b-1) and (n), property owners have a right to an in-person hearing. Tax Code Section 41.45(o) and 34 Texas Administrative Code Section 9.805(d) do not allow ARBs to require videoconferences in lieu of in-person hearings when

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<sup>92</sup> Op. Tex. Att'y Gen. No. GA-311 (2005)

<sup>93</sup> Tex. Tax Code §41.45(b)

<sup>94</sup> Tex. Tax Code §41.45(n)

<sup>95</sup> Tex. Tax Code §41.45(n)

<sup>96</sup> Tex. Tax Code §41.45(b-1)

<sup>97</sup> Tex. Tax Code §41.45(b)

<sup>98</sup> Tex. Tax Code §41.45(b-2)

<sup>99</sup> Tex. Tax Code §41.45(b-2)

<sup>100</sup> Tex. Tax Code §41.45(b-3)

<sup>101</sup> Tex. Tax Code §41.45(b-4)

<sup>102</sup> Tex. Tax Code §41.45(b-1)

<sup>103</sup> Tex. Tax Code §41.45(b)

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requested by property owners. Denying a property owner the hearing format they request may result in a lawsuit.

If more than one protest is filed relating to the same property, the ARB must schedule a single hearing on all timely filed protests that relate to the property. The ARB must also schedule joint hearings for all owners of a property owned in fractional or undivided interest. These include mineral properties.<sup>104</sup>

A hearing on a protest filed by a property owner or his or her designated agent must be set for a time and date certain. If the hearing is not commenced within two hours of the time set for the hearing, the ARB must postpone the hearing if requested by the owner or his or her designated agent.<sup>105</sup>

The ARB is required to grant a property owner or owner's agent request that the ARB schedule hearings on protests concerning up to 20 designated properties, identified in the same notice of protest, to be held consecutively on the same day.<sup>106</sup>

### **Time limits**

The ARB procedures may include a provision limiting each protest hearing to a reasonable time that allows for full presentation of the property owner's evidence, cross-examination and arguments. This helps ensure that protests and challenges are completed in a timely manner. Any limit should be reasonable and flexible.

The hearing procedures may give the presiding officer the authority to extend the hearing. Property owners are entitled to a reasonable amount of time to present relevant evidence and argument. What is reasonable depends on the circumstances of each protest. A protest about a residential property usually requires less presentation time than a complex protest involving a large industrial property, for example. In counties with populations of one million or more, property owners with eligible complex property protests can request to have a hearing with a special panel ARB.<sup>107</sup>

### **Support staff and legal counsel**

The appraisal office may provide clerical assistance to the ARB, including assisting the board with the scheduling and arranging of hearings and sending notices.<sup>108</sup>

The ARB may employ legal counsel as provided by the appraisal district budget, or the ARB may use the services of the county attorney.<sup>109</sup> The county attorney for the county in which the appraisal district is established may provide legal services to the ARB notwithstanding that the county attorney or an assistant to the county attorney represents or has represented the appraisal district or a taxing unit that participates in the appraisal district in any matter.<sup>110</sup> The appraisal district may specify in its budget whether the ARB is required to use the county attorney or employ a private attorney. If the budget authorizes the ARB to employ legal counsel, the budget must provide for reasonable compensation to be paid to the attorney serving as legal counsel to the ARB. The appraisal district cannot require the board to employ a specific attorney.<sup>111</sup>

An attorney or law firm is prohibited from serving as the ARB's attorney, if within the prior year, either has represented a property owner who owns property in the appraisal district, a taxing unit that participates in the appraisal district or the appraisal district in certain matters specified in statute.<sup>112</sup> The attorney is also prohibited from acting as an advocate in a hearing or proceeding conducted by the board. The attorney may provide advice to the board during a hearing and is required to disclose to the board all relevant legal authority in the controlling jurisdiction that is known to the attorney and not disclosed by the parties. The attorney is required to disclose a material fact that may assist the board in making an informed decision regardless of whether that fact is adverse to a party.<sup>113</sup>

### **ARB records**

The ARB should keep good records of proceedings.<sup>114</sup> It should establish and adopt procedures to ensure that the evidence presented is identified, the procedural requirements of law are met and other information is maintained.

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<sup>104</sup> Tex. Tax Code §41.45(a)

<sup>105</sup> Tex. Tax Code §41.66(i)

<sup>106</sup> Tex. Tax Code §41.66(j)

<sup>107</sup> Tex. Tax Code §6.425(b)(1) and (2)

<sup>108</sup> Tex. Tax Code §6.43(f)

<sup>109</sup> Tex. Tax Code §6.43(a)

<sup>110</sup> Tex. Tax Code §6.43(c)

<sup>111</sup> Tex. Tax Code §6.43(e)

<sup>112</sup> Tex. Tax Code §6.43(b)

<sup>113</sup> Tex. Tax Code §6.43(d)

<sup>114</sup> Tex. Tax Code §41.68

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Information maintained by the ARB may be used in litigation. Comptroller Rule 9.803<sup>115</sup> requires the ARB to keep the following records of the hearing:

- the names of the ARB members present and the date of the proceeding;
  - the name of the chief appraiser or his designee present at the proceeding;
  - the names of all other people appearing at the proceeding on behalf of the appraisal district;
  - the name and residence address of the property owner or the challenging taxing unit, as applicable;
  - the names of any people appearing at the proceeding on behalf of the board and any protesting or challenging party, a description of their relationship to the party on whose behalf they are appearing and a copy of any legally required written authorization for their appearance in a representative capacity;
  - a description of the property subject to protest or challenge;
  - the notice of protest, challenge petition or other document that gave rise to the proceedings and any written motions submitted to the board;
  - all affidavits signed by the ARB members in accordance with Tax Code Section 41.66(f)-(g);
  - an audio recording of testimony presented during the proceeding or a written summary of testimony if no audio recording is made;
  - all documents or physical evidence, including affidavits admitted as evidence;
  - the name and residence address of every witness and a statement that the witness testified under oath;
  - any formal motions made and the ARB's ruling on the motions;
  - all written requests for subpoenas, copies of subpoenas issued, all responses to subpoenas and records indicating compliance with Tax Code Section 41.61;
  - all records pertaining to service and enforcement pursuant to Tax Code Section 41.62;
  - all records pertaining to compensation for subpoenaed witnesses and records indicating compliance with Tax Code Section 41.63;
  - the final order the ARB issued;
  - the date of any final order and the date the notice is placed in the mail; and
- all notices pertaining to the protest or challenge received by the board pursuant to Tax Code Section 42.06.

## Limited Binding Arbitration

Tax Code Section 41A.015 allows property owners who have filed a notice of protest and believe that their ARB or chief appraiser failed to comply with a procedural requirement can file a request for limited binding arbitration (LBA) to compel the ARB or chief appraiser to comply with procedural requirements. Property owners can request to compel the ARB or the chief appraiser to:

1. rescind ARB procedural rules that are not in compliance with the Comptroller's model hearing procedures as required by Tax Code Section 5.103;
2. schedule a hearing on a protest as required by Tax Code Section 41.45;
3. deliver information to the property owner as required by Tax Code Section 41.461;
4. allow the property owner to offer evidence, examine or cross-examine witnesses or other parties and present arguments as required by Tax Code Section 41.66(b);
5. set a hearing for a time and date certain and postpone a hearing as required by Tax Code Section 41.66(i);
6. schedule hearings on protests concerning multiple properties identified in the same notice of protest on the same day at the request of the property owner or the property owner's designated agent as required by Tax Code Section 41.66(j) or
7. refrain from using or offering as evidence information requested by the property owner under Tax Code Section 41.461 that was not delivered to the property owner at least 14 days before the hearing as required by Tax Code Section 41.67(d).<sup>116</sup>

### LBA process

A property owner cannot file an LBA request unless the owner has first gone through the local complaint process.

**Step One:** The property owner delivers written notice of an alleged violation of procedural requirement to the ARB chair, chief appraiser and taxpayer liaison officer by certified mail, return receipt requested, on or before

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<sup>115</sup> Tex. Admin. Code §9.803

<sup>116</sup> Tex. Tax Code §41A.015(a)



the 5th business day after the date the ARB or chief appraiser was required to comply with the requirement.<sup>117</sup>

**Step Two:** The ARB chair or chief appraiser has 10 days to deliver a written statement confirming they will comply to the property owner.<sup>118</sup>

An ARB can cure an alleged failure to comply with a procedural requirement that occurred during an ARB hearing by rescinding the order determining the protest and scheduling a new hearing on the protest.<sup>119</sup> Failure to comply with a procedural requirement is not a ground for postponement of a hearing on a protest.<sup>120</sup>

**Step Three:** The property owner files the LBA request with the Comptroller's office no earlier than the 11th day or later than the 30th day after delivering the notice of violation in Step One. This request must be on Comptroller Form AP-241, Request for Limited Binding Arbitration, and include the appropriate deposit:

- \$450 – Residence homesteads with \$500,00 or less of value
- \$550 – All other property<sup>121</sup>

A property owner may request a single LBA hearing for the following if the filing requirements are met for each allegation:

- multiple properties;
- multiple protest hearings;
- multiple allegations of failure to comply; and
- allegations of failure to comply with more than one procedural requirement.

The arbitration deposit amount and the arbitrator's fee are computed as if a single property were the subject of the arbitration.

If the LBA request meets the legal requirements, the Comptroller's office will appoint an arbitrator to hear the dispute. Only arbitrators who are licensed attorneys may be appointed to hear LBA cases.<sup>122</sup>

## Dismissal with Prejudice

A LBA request will be dismissed with prejudice for lack of jurisdiction for the following reasons:

- Taxes on the subject property are delinquent for any prior year, have not been paid in full for the year at issue, or have not been deferred under Tax Code Section 33.06 or 33.065; or the undisputed tax amount was not paid before the statutory delinquency date.<sup>123</sup>
- The owner or agent has not delivered written notice to the ARB chair, the chief appraiser and the taxpayer liaison officer for the applicable appraisal district as required by Tax Code Section 41A.015(b)(1).<sup>124</sup>
- The property owner did not file the request earlier than the 11th day or later than the 30th day after the notice required by Tax Code Section 41A.015(b)(1) was delivered to the ARB chair, the chief appraiser and the taxpayer liaison officer for the applicable appraisal district.<sup>125</sup>
- The ARB or chief appraiser complied with the procedural requirement that was the subject of the LBA request.<sup>126</sup>

## LBA Hearing

The ARB, chief appraiser and property owner are parties to the LBA. The ARB can appear by counsel, chair or a person designated by the chair. The chief appraiser may appear by counsel, in person or by a designated employee, and the property owner may appear by counsel or other representation including a licensed real estate broker or salesperson, tax consultant or certified public accountant.<sup>127</sup>

The arbitrator will hear and evaluate the evidence, make a determination and deliver an electronic copy of the determination to the property owner, the ARB chair, the chief appraiser and the Comptroller's office.<sup>128</sup>

## Post Hearing

If the arbitrator determines that the ARB or chief appraiser failed to comply with a procedural requirement, the arbitrator must direct the ARB or chief appraiser, as applicable, to comply with the procedural requirement, or, if the protest hearing was held and the ARB issued an order of

<sup>117</sup> Tex. Tax Code §41A.015(b)(1)

<sup>118</sup> Tex. Tax Code §41A.015(b)(2)

<sup>119</sup> Tex. Tax Code §41A.015(c)

<sup>120</sup> Tex. Tax Code §41A.015(c)

<sup>121</sup> Tex. Tax Code §41A.015(d) and (e)

<sup>122</sup> Tex. Tax Code §41A.015(g)

<sup>123</sup> Tex. Tax Code §41A.10(b)

<sup>124</sup> Tex. Tax Code §41A.015(b)(1)

<sup>125</sup> Tex. Tax Code §41A.015(b)(2)

<sup>126</sup> Tex. Tax Code §41A.015(l)

<sup>127</sup> Tex. Tax Code §41A.015(h)

<sup>128</sup> Tex. Tax Code §41A.015(i)

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determination, the arbitrator must direct the ARB to rescind the order and hold a new hearing on the protest that complies with the procedural requirement. The arbitrator's determination is final and cannot be appealed.<sup>129</sup>

If the arbitrator determines that the ARB or chief appraiser complied with the procedural requirement, the Comptroller's office pays the arbitrator's fee out of the property owner's arbitration deposit.<sup>130</sup> If the arbitrator determines that the ARB or chief appraiser failed to comply with the procedural requirement, the appraisal district must pay the arbitrator's fee and the deposit will be refunded to the property owner, less the Comptroller's \$50 administrative fee.<sup>131</sup> The ARB or the chief appraiser, as soon as practicable after receiving notice of a determination, must take any action required to comply with the determination.<sup>132</sup>

A determination under this section does not affect the property owner's right to appeal the final ARB determination to district court under Tax Code Chapter 42 or to pursue any other statutory remedy available to the property owner.<sup>133</sup>

## Conflicts of interest

ARB members must comply with all conflict of interest laws. The Local Government Code requires ARB members not to participate in a vote or decision in which they or one of their close relatives has a substantial interest.<sup>134</sup> Under this law, the ARB member must file an affidavit stating the person's interest (**Exhibit 8**).

Substantial interest is defined as the following interest:

- in a business, if one owns 10 percent or more of its voting stock or shares, or owns either 10 percent or more or \$15,000 or more of its fair market value or received more than 10 percent of one's gross income from it in the previous year; or
- in real property, if one owns \$2,500 or more of the fair market value of the property, whether title is legal or equitable.

The Tax Code bars ARB members from taking part in any property owner protest in which they or one of their close relatives has an interest.<sup>135</sup> The ARB member cannot participate in the protest hearing or determination. When an ARB member determines he or she has an interest in a protest, the ARB member must abstain from joining in any discussions or votes on the issue.<sup>136</sup>

If there could be the appearance of favoritism or a conflict of interest, even if the ARB member does not believe he or she would actually be influenced, the Comptroller's office recommends that the ARB member should not participate in the hearing. The public must perceive the ARB as a fair and impartial body where no person, business or property is favored over another.

ARB members should take great care to avoid conflicts of interest or the appearance of improper actions. Keep in mind that a member of an ARB "may not participate in the determination of a property owner protest in which he is interested."<sup>137</sup>

If a court finds a violation of the law, it may nullify the ARB decision. A violation of Local Government Code Chapter 171 could result in the commission of a Class A misdemeanor.<sup>138</sup>

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<sup>129</sup> Tex. Tax Code §41A.015(j)(2)

<sup>130</sup> Tex. Tax Code §41A.015(l)(1)

<sup>131</sup> Tex. Tax Code §41A.015(k)

<sup>132</sup> Tex. Tax Code §41A.015(m)

<sup>133</sup> Tex. Tax Code §41A.015(n)

<sup>134</sup> Tex. Local Gov't. Code Chapter 171

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<sup>135</sup> Tex. Tax Code §41.69

<sup>136</sup> Tex. Tax Code §41.69

<sup>137</sup> Tex. Tax Code §41.69

<sup>138</sup> Tex. Local Gov't Code §171.006

EXHIBIT 8  
**Conflict of Interest Affidavit**

Texas Comptroller of Public Accounts

Form  
50-229

## Conflict of Interest Affidavit

State of Texas

County of \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who being by me duly sworn, on oath deposed and said:

My name is \_\_\_\_\_. I am a member of the Appraisal Review Board for the \_\_\_\_\_ County Appraisal District. I own substantial interest in \_\_\_\_\_.

The nature and extent of this substantial interest is as follows: (initial all that apply)

\_\_\_\_ I own 10 percent or more of the voting stock or shares of the above-referenced business entity.

\_\_\_\_ I own 10 percent or more or \$15,000 or more of the fair market value of the above-referenced business entity.

\_\_\_\_ Funds I received from the above-referenced business entity exceed 10 percent of my gross income for the previous year.

\_\_\_\_ I have an interest in the above-referenced real property and the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

\_\_\_\_ I am related in the first degree by consanguinity or affinity to a person who has a substantial interest in above referenced business or real property.

**sign here** ▶

\_\_\_\_\_

Date \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**sign here** ▶

\_\_\_\_\_

Notary Public, State of Texas

\_\_\_\_\_

Commission expires

The Property Tax Assistance Division at the Texas Comptroller of Public Accounts provides property tax information and resources for taxpayers, local taxing entities, appraisal districts and appraisal review boards.

For more information, visit our website:  
[comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-229 • 11-16/5



# Chapter 3

## Six Parts of the ARB Process

Prior to the ARB beginning hearings, it must send its adopted procedures to the Comptroller's office for review. The ARB follows its adopted hearing procedures during protest hearings.<sup>139</sup> To allow for transparency, a copy of the adopted hearing procedures should be posted prominently in each room where an ARB hearing will take place and on the appraisal district's website (if it maintains one).<sup>140</sup>

ARBs consider property owner protests in a short period of time. The ARB should begin its work by May 15 and is required by statute to substantially complete its work by July 20. The board of directors of an appraisal district in a county with a population of at least 1 million may, by resolution, extend the deadline to Aug. 30.<sup>141</sup> During this time, ARB members hear and make determinations on property owner protests and taxing unit challenges.

The ARB's review process generally involves the following six parts:

- Part 1.** ARB receives the appraisal records;
- Part 2.** ARB hears and determines taxing unit challenges;
- Part 3.** ARB hears and determines property owner protests;
- Part 4.** ARB issues orders determining protests or challenges and sends these to the chief appraiser and to parties;
- Part 5.** ARB approves the appraisal records; and
- Part 6.** Chief appraiser certifies an appraisal roll to each taxing unit.

### Part 1 – ARB receives appraisal records

The chief appraiser begins the review process by transferring the appraisal records to the ARB by May 15.<sup>142</sup> The chief appraiser may submit all records at once or may submit them in groups. The chief appraiser submits a sworn statement

with the appraisal records as required by Tax Code Section 25.22(b) (**Exhibit 9**).

#### EXHIBIT 9

#### Chief Appraiser Certification

I, \_\_\_\_\_, chief appraiser for \_\_\_\_\_ Appraisal District, solemnly swear that I have made or caused to be made a diligent inquiry to ascertain all property in the district subject to appraisal by me and that I have included in the records all property that I am aware of at an appraised value determined as required by law.

### Part 2 – ARB hears taxing unit challenges

The ARB hears any taxing unit's formal objections to the records. The Tax Code calls a taxing unit hearing a challenge. The property owner's hearing is called a protest.

Taxing unit challenges are limited. Taxing units cannot dispute the appraised value placed on a particular property for review, but they may challenge the following:

- exclusion of property from the appraisal records for the taxing unit or the district;
- a grant in whole or in part of a partial exemption, other than an exemption under Tax Code Section 11.35;
- a determination that land qualifies for special appraisals; and
- failure to identify a taxing unit in which a property is taxable.<sup>143</sup>

Taxing units must file challenges before June 1 or within 15 days after the chief appraiser submits the appraisal records, whichever is later.<sup>144</sup> **Exhibit 10** is an example of a challenge petition.

<sup>139</sup> Tex. Tax Code §41.01(d)

<sup>140</sup> Tex. Tax Code §41.01(e)

<sup>141</sup> Tex. Tax Code §41.12

<sup>142</sup> Tex. Tax Code §25.22

<sup>143</sup> Tex. Tax Code §41.03

<sup>144</sup> Tex. Tax Code § 41.04

EXHIBIT 10  
**Petition Challenging Appraisal Records**

## Petition Challenging Appraisal Records

Form 50-215

This petition is brought before the Appraisal District Review Board of \_\_\_\_\_ Case No. \_\_\_\_\_

County, Texas to challenge the appraisal records for tax year \_\_\_\_\_. Taxing unit \_\_\_\_\_

Address \_\_\_\_\_

Taxing unit challenges the following with respect to the property or geographical area described below:

- an exclusion of property from the appraisal records;
- a grant in whole or in part of a partial exemption, other than an exemption under Tax Code Section 11.35;
- a determination that land qualifies for appraisal as provided by Texas Code Chapter 23, Subchapter C, D, E or H; or
- a failure to identify the taxing unit as one in which a particular property is taxable.

Describe the property involved in this challenge.

Briefly explain why the challenge is necessary.

Name \_\_\_\_\_ Title \_\_\_\_\_ Taxing Unit Name \_\_\_\_\_

**sign here** ▶

Signature \_\_\_\_\_ Date \_\_\_\_\_

The ARB must notify the taxing unit in writing of the date, time and place of its challenge hearing. The ARB sends the notice by first-class mail at least 10 days before the hearing date. The ARB's secretary also must deliver notice of the date, time and place for the challenge hearing to each taxing unit in which the property involved in the challenge is or may be taxable.<sup>145</sup> Each taxing unit may attend to offer evidence or argument.<sup>146</sup>

When the challenge includes property involving taxable leasehold or another type of interest in property owned by the state or a taxing unit, the state or taxing unit also receives notice of the ARB hearing. The state or taxing unit may appear at the ARB hearing to offer evidence and arguments.<sup>147</sup> If an ARB correction increases a property owner's tax liability, the affected owner must be sent a correction order and given 30 days from the date of mailing to file a protest and request a hearing.<sup>148</sup>

## Part 3 – ARB hears property owner protests

Generally, the usual last day for filing most protests is May 15, or not later than 30 days after the date the notice was delivered to the property owner.<sup>149</sup> Other exceptions to the normal deadline are discussed later in this section.

### Who may file?

Normally, the person who owned the property Jan. 1 or the person's agent files a protest.<sup>150</sup> A property owner who acquires property between Jan. 1 and the protest deadline may file a protest in the place of the Jan. 1 owner. A property owner who acquires property while a protest is pending may apply to the ARB to continue the protest in the place of the owner who filed the protest.<sup>151</sup> A person who claims an interest in the property may file a protest even if the person is not shown as the owner on the appraisal district records.<sup>152</sup> Both previous and current property owners can file.<sup>153</sup> The ARB should hold a joint hearing for both.

The Tax Code allows a lessee who is contractually obligated to reimburse the lessor (property owner) for property taxes to protest to the ARB the appraised value of the leased property. The lessee may protest only if the owner does not protest; the protest is limited to a single protest by either the property owner or the lessee. The lessee's right to protest exists for leased personal or real property. The person bringing a protest under these provisions of law is considered the owner of the property for purposes of the protest.<sup>154</sup> A person leasing property who is contractually obligated to reimburse the lessor for property taxes may designate another person to act as his or her agent for the protest.<sup>155</sup>

### Filing deadlines

The usual deadline for filing most protests is May 15, as previously stated.<sup>156</sup> Filing deadlines that fall on a Saturday, Sunday or a legal state or national holiday are postponed until the next business day.<sup>157</sup>

A property owner's notice of protest, payment or other documentation submitted to the appraisal district is considered on time if it is properly addressed with postage or handling charges prepaid and is sent by common or contract carrier or regular first-class mail and bears a post office cancellation mark or carrier's receipt mark indicating a date on or earlier than the specified due date and within the specified period, or the property owner furnishes proof that it was deposited with the carrier on or before the due date and within the specified period.<sup>158</sup>

The usual deadline may be postponed in a number of cases. If the appraisal district mails a notice of appraised value after the delivery deadline of April 1 for residence homesteads and May 1 for other properties, the deadline is 30 days from the mailing date.<sup>159</sup> The deadline to protest a change of use determination for agricultural land or a protest of determination of refund for heavy equipment dealers is 30 days after notice is delivered to the property owner.<sup>160</sup>

A property owner who misses the original deadline for good cause may still file a protest. The deadline in this case is the day before the ARB approves the appraisal records.<sup>161</sup> In

<sup>145</sup> Tex. Tax Code §41.06

<sup>146</sup> Tex. Tax Code § 41.05

<sup>147</sup> Tex. Tax Code §41.06(c)

<sup>148</sup> Tex. Tax Code §§41.11 and 41.44

<sup>149</sup> Tex. Tax Code §§41.44(a)(1)

<sup>150</sup> Tex. Tax Code §§41.41 and 1.111

<sup>151</sup> Tex. Tax Code §41.412

<sup>152</sup> Tex. Tax Code §41.44(d)

<sup>153</sup> Tex. Tax Code §41.412

<sup>154</sup> Tex. Tax Code §41.413

<sup>155</sup> Tex. Tax Code §41.413(g)

<sup>156</sup> Tex. Tax Code §41.44

<sup>157</sup> Tex. Tax Code §1.06

<sup>158</sup> Tex. Tax Code §1.08

<sup>159</sup> Tex. Tax Code §§25.19(a)(1) and § 41.44(a)(1)

<sup>160</sup> Tex. Tax Code §§41.44(a)(3) and 41.44(a)(4)

<sup>161</sup> Tex. Tax Code §41.44(b)

such a case, the property owner receives a two-step hearing. First, the ARB decides whether the property owner had good cause for missing the deadline. Second, if the ARB determines the owner had good cause, the ARB hears the protest. A good cause is usually something not within the property owner's control. ARB policies should address the issue of what constitutes good cause.

The deadline to protest changes the ARB makes to the appraisal records under Tax Code Chapter 25 is within 30 days of the date notice of the ARB change is delivered to the owner.<sup>162</sup>

The deadline for filing a protest may be contested if the property owner claims the appraisal district or ARB did not mail a required notice. To perfect such a protest, a property owner must pay, before the delinquency date, the amount of taxes due on the portion of the taxable value of the property that is the subject of the protest and that is not in dispute. Otherwise, the property owner will forfeit his or her right to a final determination of the protest. The ARB is authorized to excuse this payment requirement if the property owner files an oath of inability to pay the taxes.<sup>163</sup>

If a lessee is contractually obligated to reimburse the real property owner for property taxes, the lessor is required to send to the lessee a copy of the property's notice of appraised value not later than the 10th day after the owner receives the notice. This requirement does not apply if the real property owner and the person leasing the property have agreed in the contract to waive the statutory notice requirements or that the person leasing the property will not protest the appraised value of the property. The owner's failure to provide the notice does not affect the protest deadline for the property in question.<sup>164</sup>

The law also allows property owners working offshore or on full-time active military duty out of the country on the date of the deadline to file a late protest. The owner or his or her agent must file the protest before taxes on the property become delinquent. A person working offshore would have to be continuously employed in the Gulf of Mexico for a period of at least 20 days during which the protest deadline passed. Owners may provide evidence of their offshore employment by furnishing the ARB a letter from their employer or supervisor or, if the owner is self-employed, a sworn affidavit. For active

duty military personnel, the property owner must provide a valid military identification card and a deployment order.<sup>165</sup>

### **Forfeiture of remedy for nonpayment of taxes**

A property owner may lose the right to a final determination of a protest claiming the ARB did not mail a required notice if certain taxes are not paid. The Tax Code provides that the pendency of this protest does not affect the delinquency date for the taxes on the protested property. The delinquency date applies only to the amount of taxes required to be paid. The delinquency date is postponed to the 125th day after the date one or more taxing units first delivered written notices of the taxes due. If the property owner pays the taxes not in dispute, the delinquency date for any additional amount of taxes due on the property is due on receipt of the supplemental tax bill under Tax Code Sections 42.42 (b) and (c).<sup>166</sup>

A property owner who pays an amount of taxes greater than required does not forfeit the right to a final determination of protest by making the payment. If the protest filed under these provisions is timely, the taxes paid are considered paid under protest, even if paid before the motion is filed.<sup>167</sup>

### **Notice of protest**

A property owner's written notice of protest may take any form, but must be in writing and show at least the following three elements: the property owner's identification, including a person claiming an ownership interest in the property even if that person is not listed on the appraisal records as an owner; the property that is the subject of the protest; and an indication of the owner's dissatisfaction with some determination by the appraisal district.<sup>168</sup>

A notice of protest is not untimely or insufficient based on a finding of incorrect ownership if the notice identifies the property owner for the tax year at issue or uses a misnomer of a person or who is:

- an owner of the property at any time during the tax year;
- the person shown on the appraisal records as the owner of the property, if that person filed the protest;
- a lessee authorized to file a protest; or
- an affiliate of or entity related to a person described above.<sup>169</sup>

<sup>162</sup> Tex. Tax Code §41.44(a)(2)

<sup>163</sup> Tex. Tax Code §§41.411 and 41.4115

<sup>164</sup> Tex. Tax Code §41.413(d)

<sup>165</sup> Tex. Tax Code §41.44(c-1)-(c-2)

<sup>166</sup> Tex. Tax Code §41.4115

<sup>167</sup> Tex. Tax Code §41.4115

<sup>168</sup> Tex. Tax Code §41.44(d)

<sup>169</sup> Tex. Tax Code §41.44(e)



The Comptroller's office prescribes two model notice of protest forms that ARBs and appraisal districts must make easily accessible to the public and deliver to property owners requesting them.<sup>170</sup> The Comptroller's model forms (**Exhibits 11 and 11-A**) permit the property owner to request or decline a copy of the ARB's hearing procedures.<sup>171</sup> Once a hearing date is set, the property owner is sent a copy of the ARB hearing procedures regardless of whether the property owner requested a copy when filing the protest.<sup>172</sup>

Property owners who live in a county with a population of more than 500,000 and are protesting the determination of the appraised value or an unequal appraisal of a residence homestead may file their protests electronically. Electronic filing is available for all counties that maintain an internet website that is accessible to the public. An electronic notice of protest must include a statement that the protest is brought under Tax Code Sections 41.41(a)(1) or 41.41(a)(2), statement of the property owner's good faith estimate of the value of the property and an email address that the appraisal district may use to communicate electronically with the property owner in connection with the protest. The appraisal district is required to maintain the email address in confidence.<sup>173</sup>

Appraisal districts that maintain a website will provide a form that allows property owners to request electronic delivery notifications concerning changes in value, exemption eligibility or exemption application status to their property. Property owners who request electronic delivery notifications should be aware that a chief appraiser is not required to mail the same notice if property owners have successfully submitted their requests for email delivery of notifications.<sup>174</sup>

### **Notice of hearing**

The ARB must provide a protesting property owner, authorized person<sup>175</sup> or agent<sup>176</sup> with written notice that includes the time, date and place of the protest hearing; a description of the subject matter being protested sufficient to identify the specific action being protested; and a statement that entitles the property owner to a postponement (**Exhibit 12**). The ARB must deliver the notice to the property owner not later than the 15th day before the date of the hearing. Property owners may

request delivery by certified mail in their notice of protest; however, the board can ask for reimbursement of the postage. The ARB shall deliver the hearing notice by electronic mail if the property owner provides a valid email address and requests that delivery method. A property owner may waive in writing his or her right to the hearing notice.<sup>177</sup> Additionally, the chief appraiser is entitled to advance notice of the hearing, but the law does not specify how far in advance.<sup>178</sup>

ARBs in counties with 120,000 or more populations must offer electronic reminders of the date, time, and place of scheduled protest hearings by text or email. A text or email reminder must be sent if the property owner requested it on the Notice of Protest or by written request, and includes a verified email address or mobile phone number. The reminder must be sent no later than the day before the hearing and not earlier than the seventh day after receiving the scheduled hearing notice.<sup>179</sup>

The state or taxing unit also receives notice of the ARB hearing when the protest hearing concerns property involving taxable leasehold or other type of interest in property owned by the state or taxing unit. The state or taxing unit may appear at the ARB hearing to offer evidence and arguments.<sup>180</sup>

### **Right to inspect appraisal records**

In general, a property owner or the owner's designated agent is entitled to inspect and copy the appraisal records relating to property of the property owner together with supporting data, schedules and any other material or information that is obtained or used in making appraisals for the appraisal records relating to the property. Confidential information provided to the appraisal district under Tax Code Section 22.27 (other than residential property or vacant land) may not be inspected.<sup>181</sup>

A property owner or the owner's designated agent also has the right to inspect and copy appraisal firm information used or considered in the owner's appraisal at the offices of an appraisal firm under contract with the appraisal district to appraise property. The appraisal firm must make the information available for inspection and copying not later than the 15th day after delivery of a written request to inspect the information.<sup>182</sup>

<sup>170</sup> Tex. Tax Code §41.44(d)

<sup>171</sup> Tex. Tax Code §41.66(a)

<sup>172</sup> Tex. Tax Code §41.461(a)(3)

<sup>173</sup> Tex. Tax Code §41.415

<sup>174</sup> Tex. Tax Code §1.086

<sup>175</sup> Tex. Tax Code §1.111(j)

<sup>176</sup> Tex. Tax Code §1.111(a)

<sup>177</sup> Tex. Tax Code §41.46(d)-(e).

<sup>178</sup> Tex. Tax Code §41.46(b)

<sup>179</sup> Tex. Tax Code §41.46(f)

<sup>180</sup> Tex. Tax Code §41.46(c)

<sup>181</sup> Tex. Tax Code §25.195

<sup>182</sup> Tex. Tax Code §§25.195 and 22.27

EXHIBIT 11  
Property Owner's Notice of Protest

Property Owner's Notice of Protest  
for Counties with Populations Greater than 120,000

Form 50-132

Tax Year

Appraisal District's Name

Appraisal District Account Number (if known)

**GENERAL INFORMATION:** A property owner or an owner's designated agent can use this form to file a protest with the appraisal review board (ARB) pursuant to Tax Code Section 41.41. Lessees contractually obligated to reimburse a property owner for property taxes may be entitled to protest as a lessee if all Tax Code requirements are met, including those in Tax Code Section 41.413.

**FILING INSTRUCTIONS:** File this document and all supporting documentation with the appraisal district office in the county in which the property is taxable. **Do not file this document with the Texas Comptroller of Public Accounts.**

Section 1: Property Owner or Lessee

- Person Age 65 or Older    Disabled Person    Military Service Member    Military Veteran  
 Spouse of a Military Service Member or Veteran

Name of Property Owner or Lessee

Mailing Address, City, State, ZIP Code

Phone Number (area code and number)

Email Address\*

\* An email address of a member of the public could be confidential under Government Code Section 552.137; however, by including the email address on this form, you are affirmatively consenting to its release under the Public Information Act.

Section 2: Property Description

Physical Address, City, State, Zip Code (if different than above)

If no street address, provide legal description:

Mobile Home Make, Model and Identification (if applicable):

Section 3: Reasons for Protest

To preserve your right to present each reason for your protest to the ARB according to law, be sure to select all boxes that apply. Failure to select the box that corresponds to each reason for your protest may result in your inability to protest an issue that you want to pursue.

- |   |   |
|---|---|
| <input type="checkbox"/> Incorrect appraised (market) value and/or value is unequal compared with other properties.                                 | <input type="checkbox"/> Change in use of land appraised as ag-use, open-space or timberland.   |
| <input type="checkbox"/> Property should not be taxed in _____ (taxing unit).   | <input type="checkbox"/> Incorrect appraised or market value of land under special appraisal for ag-use, open-space or other special appraisal. |
| <input type="checkbox"/> Property is not located in this appraisal district or otherwise should not be included on the appraisal district's record. | <input type="checkbox"/> Owner's name is incorrect.   |
| <input type="checkbox"/> Failure to send required notice. _____ (type)  | <input type="checkbox"/> Property description is incorrect.   |
| <input type="checkbox"/> Exemption was denied, modified or cancelled.   | <input type="checkbox"/> Incorrect damage assessment rating for a property qualified for a temporary disaster exemption.                        |
| <input type="checkbox"/> Temporary disaster damage exemption was denied or modified.  | <input type="checkbox"/> Other: _____   |
| <input type="checkbox"/> Ag-use, open-space or other special appraisal was denied, modified or cancelled.   |   |

Section 4: Additional Facts

What is your opinion of your property's value? (Optional) \$ \_\_\_\_\_

Provide facts that may help resolve this protest:

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-132 • 1-22/23

EXHIBIT 11 (concluded)  
Property Owner's Notice of Protest (page 2)

Property Owner's Notice of Protest for Counties with Populations Greater than 120,000

Form 50-132

Section 5: Hearing Type

Do you request an informal conference with the appraisal office before the protest hearing?  Yes  No

Do you request a hearing with a single-member ARB panel?  Yes  No

A property owner does not waive the right to appear in person at a protest hearing by submitting an affidavit to the ARB or by electing to appear by telephone conference call.

I intend to appear in the ARB hearing scheduled for my protest in the following manner (Check only one box):

- In person
- By telephone conference call and will submit evidence with a written affidavit delivered to the ARB before the hearing begins.\*\* (May use Comptroller Form 50-283, Property Owner Affidavit of Evidence)
- by videoconference and will submit evidence with a written affidavit delivered to the ARB before the hearing begins.\*\* (May use Comptroller Form 50-283, Property Owner Affidavit of Evidence)
- On written affidavit submitted with evidence and delivered to the ARB **before** the hearing begins

\*\* If you decide later to appear by telephone conference call or videoconference, you must provide written notice to the ARB at least 10 days before the hearing date. You are responsible for providing access to the call to any person(s) you wish to invite to participate in the hearing. Review the ARB's hearing procedures for county-specific conference call or videoconference procedures.

Section 6: ARB Hearing Notice and Procedures

I request my notice of hearing to be delivered by (check one box only):

- Regular first-class mail
- Certified mail and agree to pay the cost (if applicable)
- Email to \_\_\_\_\_  
Email Address

If a protest goes to a hearing, the ARB automatically sends each party a copy of the ARB's hearing procedures.

I want the ARB to send me a copy of its hearing procedures  Yes  No

Do you request an electronic reminder by text or email of the date, time and place of your ARB protest hearing? (check one box only):

- Yes, by text to \_\_\_\_\_  
Mobile Phone Number
- Yes, by email to \_\_\_\_\_  
Email Address
- No

Do you request the ARB's final order of determination to be delivered via email? (check one box only):

- Yes, by email to \_\_\_\_\_  
Email Address
- No

Section 7: Special Panel Request for Property Value of \$52 Million or More

I request a special panel to hear my protest:  Yes  No

My property is appraised at \$52 million or greater:  Yes  No

Appraisal district's value assigned to your property \$ \_\_\_\_\_

Classification of your property:

- Commercial real and personal property
- Industrial and manufacturing real and personal property
- Real and personal property of utilities
- Multifamily residential real property

Section 8: Certification and Signature

Property Owner  Property Owner's Agent  Other: \_\_\_\_\_

print here ▶

\_\_\_\_\_  
Print Name of Property Owner or Authorized Representative

sign here ▶

\_\_\_\_\_  
Signature of Property Owner or Authorized Representative

\_\_\_\_\_  
Date

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

Page 2

EXHIBIT 11-A  
Property Owner's Notice of Protest

Property Owner's Notice of Protest

Form 50-132-A

for Counties with Populations Less than 120,000

Tax Year

Appraisal District's Name

Appraisal District Account Number (if known)

**GENERAL INFORMATION:** A property owner or an owner's designated agent can use this form to file a protest with the appraisal review board (ARB) pursuant to Tax Code Section 41.41. Lessees contractually obligated to reimburse a property owner for property taxes may be entitled to protest as a lessee if all Tax Code requirements are met, including those in Tax Code Section 41.413.

**FILING INSTRUCTIONS:** File this document and all supporting documentation with the appraisal district office in the county in which the property is taxable. **Do not file this document with the Texas Comptroller of Public Accounts.**

Section 1: Property Owner or Lessee

- Person Age 65 or Older    Disabled Person    Military Service Member    Military Veteran  
 Spouse of a Military Service Member or Veteran

Name of Property Owner or Lessee

Mailing Address, City, State, ZIP Code

Phone Number (area code and number)

Email Address\*

\* An email address of a member of the public could be confidential under Government Code Section 552.137; however, by including the email address on this form, you are affirmatively consenting to its release under the Public Information Act.

Section 2: Property Description

Physical Address, City, State, Zip Code (if different than above)

If no street address, provide legal description:

Mobile Home Make, Model and Identification (if applicable):

Section 3: Reasons for Protest

To preserve your right to present each reason for your protest to the ARB according to law, be sure to select all boxes that apply. Failure to select the box that corresponds to each reason for your protest may result in your inability to protest an issue that you want to pursue.

- |   |   |
|---|---|
| <input type="checkbox"/> Incorrect appraised (market) value and/or value is unequal compared with other properties.                                 | <input type="checkbox"/> Change in use of land appraised as ag-use, open-space or timberland.   |
| <input type="checkbox"/> Property should not be taxed in _____ (taxing unit).   | <input type="checkbox"/> Incorrect appraised or market value of land under special appraisal for ag-use, open-space or other special appraisal. |
| <input type="checkbox"/> Property is not located in this appraisal district or otherwise should not be included on the appraisal district's record. | <input type="checkbox"/> Owner's name is incorrect.   |
| <input type="checkbox"/> Failure to send required notice, _____ (type)  | <input type="checkbox"/> Property description is incorrect.   |
| <input type="checkbox"/> Exemption was denied, modified or cancelled.   | <input type="checkbox"/> Incorrect damage assessment rating for a property qualified for a temporary disaster exemption.                        |
| <input type="checkbox"/> Temporary disaster damage exemption was denied or modified.  | <input type="checkbox"/> Other: _____   |
| <input type="checkbox"/> Ag-use, open-space or other special appraisal was denied, modified or cancelled.   |   |

Section 4: Additional Facts

What is your opinion of your property's value? (Optional) \$ \_\_\_\_\_

Provide facts that may help resolve this protest:

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-132-A • 1-22/1

EXHIBIT 11-A (concluded)  
**Property Owner's Notice of Protest (page 2)**

Property Owner's Notice of Protest for Counties with Populations Less than 120,000

Form 50-132-A

**Section 5: Hearing Type**

Do you request an informal conference with the appraisal office before the protest hearing? .....  Yes  No

Do you request a hearing with a single-member ARB panel? .....  Yes  No

A property owner does not waive the right to appear in person at a protest hearing by submitting an affidavit to the ARB or by electing to appear by telephone conference call.

I intend to appear in the ARB hearing scheduled for my protest in the following manner (*Check only one box*):

- In person
- By telephone conference call or videoconference and will submit evidence with a written affidavit delivered to the ARB before the hearing begins.\*\* (*May use Comptroller Form 50-283, Property Owner Affidavit of Evidence*)
- On written affidavit submitted with evidence and delivered to the ARB **before** the hearing begins

\*\* If you decide later to appear by telephone conference call or videoconference, you must provide written notice to the ARB at least 10 days before the hearing date. You are responsible for providing access to the call to any person(s) you wish to invite to participate in the hearing. Review the ARB's hearing procedures for county-specific telephone conference call procedures.

**Section 6: ARB Hearing Notice and Procedures**

I request my notice of hearing to be delivered by (*check one box only*):

- Regular first-class mail
- Certified mail and agree to pay the cost (*if applicable*)
- Email to the electronic address I provided in Section 1 of this form

If a protest goes to a hearing, the ARB automatically sends each party a copy of the ARB's hearing procedures.

I want the ARB to send me a copy of its hearing procedures .....  Yes  No

**Section 7: Certification and Signature**

- Property Owner
- Property Owner's Agent
- Other: \_\_\_\_\_

**print here** ▶

\_\_\_\_\_

Print Name of Property Owner or Authorized Representative

**sign here** ▶

\_\_\_\_\_

Signature of Property Owner or Authorized Representative

\_\_\_\_\_

Date

EXHIBIT 12  
Appraisal Review Board Protest Hearing Notice

Appraisal Review Board Protest Hearing Notice

Form 50-216

Property Owner

Tax Year(s)

Address, City, State, Zip Code

Appraisal Review Board for the \_\_\_\_\_ Appraisal District.

Case Number

Account Number

Property Address or Legal Description

Specific Subject Matter(s) of the Protest Hearing

Dear Property Owner:

The following hearing is scheduled on your filed protest referenced above.

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Place: \_\_\_\_\_

Telephone Conference Call Number or Videoconference Access Information: \_\_\_\_\_

**Failure to appear for your hearing may result in the dismissal of your protest and may jeopardize other rights to which you may otherwise be entitled.**

**Telephone Conference Call or Videoconference:** To appear by telephone conference call or videoconference, you must provide the following to the ARB before the hearing:

1. written notice at least 10 days before the hearing that you want a telephone conference call or videoconference hearing (if you have not done so already); and
2. a written affidavit with your evidence. (You may use Comptroller Form 50-283, Property Owner's Affidavit of Evidence.)

If you wish to invite individuals to participate in your telephone conference call or videoconference hearing, you are responsible for providing them access to the hearing.

**Videoconferences:** Availability of videoconference hearings is not required in counties with a population of less than 100,000 that lack the technological capabilities to conduct a videoconference hearing pursuant to Tax Code Section 41.45(b-4).

**Written Affidavit:** To appear by written affidavit, you must attest to the affidavit before a notary public or an office authorized to administer oaths. The affidavit must state whether you intend to appear at the hearing and must be submitted to the ARB **before** it begins the hearing on the protest. By submitting an affidavit you do not waive the right to appear in person at the protest hearing. The ARB may consider the affidavit only if you do not appear at the hearing in person.

**Evidence Submission:** Evidence and/or documentation to support your protest may be submitted for any hearing type either in paper or on a small portable electronic device (such as a CD, USB flash drive or thumb drive) which will be kept by the ARB. Do NOT bring evidence on a smart phone. See the ARB's hearing procedures regarding the requirements to properly submit evidence on a small portable electronic device.

**Evidence Inspection:** At least 14 days before a protest hearing, the chief appraiser must inform the property owner that the owner or agent may request a copy of the data, schedules, formulas and all other information that the chief appraiser will introduce at the hearing.

**Property Owner Representation:** You may have a representative or agent appear for you. This person must have written authorization to represent you that you personally signed and filed with the appraisal district at or before the hearing on the protest.

**Postponements:** On request made to the ARB before the date of the hearing, a property owner who has not designated an agent under Tax Code Section 1.111 to represent the property owner at the hearing is entitled to one postponement of the hearing to a later date without showing cause. In addition and without limitation as to the number of postponements, the ARB shall postpone the hearing to a later date if good cause is shown by the property owner or the owner's agent or if the chief appraiser consents to the postponement. The hearing may not be postponed to a date less than five or more than 30 days unless agreed to by the chief appraiser and the ARB chairman or the chairman's representative.

A property owner or agent under Tax Code Section 1.111 is entitled to a postponement if a scheduled hearing has not commenced within two hours of the time initially set for the hearing.

**Electronic Hearing Reminder:** You may request email and/or text message hearing reminders in counties with a population of 120,000 or more by submitting a written request that includes a valid email address or telephone number.

**Property Owner Rights:** The Tax Code includes specific provisions regarding your legal rights and responsibilities with regard to protest hearings in addition to those mentioned above. You should carefully read Tax Code Chapter 41 for more information.

**Accommodations:** If you have further questions or if you require accommodations due to disability, please contact:

Contact Name

Contact Telephone Number

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

50-216 • 1-22/13

If denied the information, the owner or agent may take the denial to the ARB for a special hearing. Failure by the appraisal firm to provide the requested information may result in an ARB decision not to approve the appraisal records relating to the property until the requested information is made available.<sup>183</sup>

### **Delivery of evidence**

At least 14 days before the protest hearing, the chief appraiser will inform owners or their agents of their entitlement to copies of the data, schedules, formulas and all information the chief appraiser will use at their hearing. The chief appraiser may not charge the owners or their agents for copies provided to them regardless of how the copies are prepared, delivered or made available.<sup>184</sup>

The chief appraiser shall deliver the information requested:

- by regular first-class mail addressed to the property owner or agent at the address provided in the request for information;
- in an electronic format as provided by an agreement under Tax Code Section 1.085; or
- by referring the property owner or the agent to a secure internet website.<sup>185</sup>

### **Settlement by agreement and waiver of protest**

Appraisal districts must make available and hold informal conferences with property owners who request one on or with their notice of protest. The informal conference must be held prior to the protest hearing because it provides an opportunity to appraisal district staff to resolve the dispute before the protest is brought before the ARB.<sup>186</sup> Residence homestead owners may reach a settlement with the appraisal district by electronic exchange of data, if the appraisal district is required by law to provide for electronic protest filing.<sup>187</sup>

If the property owner and appraisal district reach a settlement agreement to the owner's protest at the informal meeting or by electronic exchange, both parties may sign a settlement and waiver of protest form (**Exhibit 13**).

By signing this form, the property owner agrees on a settlement with the appraisal district and withdraws the protest on the matter.<sup>188</sup> If the owner's agent signs the form, the

agreement between the agent and the appraisal district is final. The Tax Code does not grant ARBs the authority to review or reject agreements between an owner and the appraisal district.

If the property owner rejects a settlement offer made in person or electronically, the ARB must hear and determine the property owner's protest, provided the owner filed a timely notice of protest.

### **Joint motion for agreed order**

The chief appraiser and the property owner or their designated agent may file a joint motion with the ARB notifying the board that they have agreed to a disposition of the protest and request the board to issue an agreed order. The joint motion must contain the terms of the disposition of the protest. The ARB chairman shall issue the agreed order not later than the 5th day after the date on which the joint motion is filed with the ARB. If the chairman is not able to issue the agreed order within the five-day period, the board shall issue the agreed order not later than the 30th day after the date on which the joint motion was filed with the ARB. The chief appraiser and the protesting party may designate in the joint motion that the agreed order is appealable in the same manner as any other determination made by the ARB under Tax Code Section 41.47.<sup>189</sup>

The ARB should seek legal advice from its attorney concerning how to treat joint motions filed by property owners or their designated agent and the chief appraiser.

### **Property owner representation**

A property owner may have a property tax consultant (also known as an agent) present the protest, provided that the owner, a property manager or other person who has the legal authority to act for the property owner in naming tax agents authorizes the agent's appointment in writing in a form prescribed by the Comptroller's office.<sup>190</sup> The agent cannot sign the form on behalf of the owner.<sup>191</sup> Generally, the property owner must use Comptroller Form 50-162 for designating an agent (**Exhibit 14**).<sup>192</sup> If a lessee designated as an agent by the owner designates another, with owner approval, to act as agent, the lessee is to use Form 50-834 (**Exhibit 15**).<sup>193</sup> The ARB may not require a property owner to designate an agent in any other manner.<sup>194</sup> An owner does not have to file an agent designation form for an

<sup>183</sup> Tex. Tax Code §25.195(e)

<sup>184</sup> Tex. Tax Code §41.461

<sup>185</sup> Tex. Tax Code §41.461(c)

<sup>186</sup> Tex. Tax Code 41.445

<sup>187</sup> Tex. Tax Code §41.415

<sup>188</sup> Tex. Tax Code §1.111(e)

<sup>189</sup> Tex. Tax Code §41.47(f) and (g)

<sup>190</sup> Tex. Tax Code §1.111(a) and (b)

<sup>191</sup> Tex. Tax Code §1.111(b)

<sup>192</sup> 34 Tex. Admin. Code §9.3044(a)

<sup>193</sup> Tex. Tax Code §1.111(a-1) and 34 Tex. Admin. Code § 9.3044(i)

<sup>194</sup> Tex. Tax Code §1.111(g)

attorney, mortgage lender, an owner's employee or a person who simply acts as a courier.<sup>195</sup>

### **Lessee's representation**

A person leasing real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the ARB the appraised value of the property if the property owner does not file a protest relating to the property.<sup>196</sup> The lessee may designate another person to act as an agent in the manner provided by Tax Code Section 1.111. Designated agents have the same authority and are subject to the same limitations as agents designated by property owners.<sup>197</sup>

### **Granting a hearing**

The ARB must schedule a hearing on a protest filed as required by Tax Code Section 41.44.<sup>198</sup> The hearing should be scheduled as soon as practicable but no later than 90 days after appraisal records are approved.<sup>199</sup> A property owner who is denied a hearing to which he or she was entitled has the right to bring suit directly to district court. The owner may sue directly by filing a petition or an application to force the ARB to provide the hearing. If the court finds that the owner was wrongfully denied a hearing, it will order the ARB to hold the hearing. In addition, the court may award the property owner court costs and attorney's fees.<sup>200</sup> Tax Code Chapter 41A on limited binding arbitration allows property owners to appeal procedural issues and an arbitrator to compel the ARB to comply with certain procedural requirements related to protests, such as being denied a hearing.<sup>201</sup>

A property owner with pooled or unitized mineral interests may file protests with the ARBs of more than one appraisal district. The ARB for the county where the production site is located must hear and decide on the protest before any other ARB in the other appraisal district(s) may hold a hearing on a protest filed with that ARB. If there are two or more production sites for the pooled or unitized mineral interests, the ARB in the county where at least two-thirds of the area of the mineral interest is located hears and decides the protest before the other ARB(s).<sup>202</sup>

### **Conducting hearings**

A majority of ARB members constitutes a quorum that must be present to conduct business.<sup>203</sup> Hearings must be conducted according to locally adopted ARB procedures that must incorporate the Comptroller's model hearing procedures (**Exhibit 28**).<sup>204</sup>

A property owner or chief appraiser can file a complaint with the taxpayer liaison officer (TLO) of the appraisal district alleging that the ARB is not complying with its adopted hearing procedures or that the ARB implemented hearing procedures that do not comply with the Comptroller's model hearing procedures. The TLO will investigate the reported complaint and report the findings to the appraisal district board of directors. If the allegations in the complaint are determined to be true, the board of directors will direct the ARB chairman to take remedial action. If the ARB chairman fails to take the actions necessary to bring the ARB into compliance, the board of directors can remove the ARB chairman from the position as chairman.<sup>205</sup>

### **ARB ex parte contacts and affidavit**

An ARB member must be very careful to maintain an unbiased approach to each property under protest. An ARB member may not communicate with another person about a protest, including evidence, argument, facts or any merits of the case except during the hearing on the protest. An ARB member is also prohibited from communicating with another person concerning a property that is the subject of the protest, except when the property is discussed in another protest or used before the ARB as a comparison or sample property in another protest or proceeding.<sup>206</sup>

The affidavit form prescribed by the Comptroller's office states that the member has not communicated about the property under protest in the ways discussed above (**Exhibit 16**). If the member cannot sign the form, he or she cannot participate in the hearing. The removed member may not hear, discuss or vote on the protest. The appointing authority can temporarily replace an ARB member who must be removed from a protest hearing.<sup>207</sup> The ARB must provide the property owner or agent documents indicating that the members present at the hearing signed the required affidavit.<sup>208</sup>

<sup>195</sup> 34 Tex. Admin. Code §9.3044(f)

<sup>196</sup> Tex. Tax Code §41.413(a) and (b)

<sup>197</sup> Tex. Tax Code §41.413(g)

<sup>198</sup> Tex. Tax Code §41.45(a)

<sup>199</sup> Tex. Tax Code §41.45(a)

<sup>200</sup> Tex. Tax Code §41.45(f)

<sup>201</sup> Tex. Tax Code §41A.015

<sup>202</sup> Tex. Tax Code §41.455

<sup>203</sup> Tex. Tax Code §6.42(a)

<sup>204</sup> Tex. Tax Code §§5.103(d) and 41.66

<sup>205</sup> Tex. Tax Code §41.66(q)

<sup>206</sup> Tex. Tax Code §41.66(f)

<sup>207</sup> Tex. Tax Code §41.66(g)

<sup>208</sup> Tex. Tax Code §41.66(p)



EXHIBIT 13  
**Settlement and Waiver of Protest**

Texas Comptroller of Public Accounts

Form  
50-218

## Settlement and Waiver of Protest

To the Appraisal Review Board for \_\_\_\_\_ County

Case No.: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Property Owner: \_\_\_\_\_

Description of Property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

### SETTLEMENT AND WAIVER OF PROTEST

I acknowledge that the subject matter of the protest filed on the above date concerning the property described above has been settled. I hereby withdraw my protest and waive my right to any further proceeding in this matter.

Describe Actions to be Taken:

\_\_\_\_\_

**sign here** ▶

\_\_\_\_\_

Property Owner

**sign here** ▶

\_\_\_\_\_

Appraisal District Representative

**sign here** ▶

\_\_\_\_\_

Agent's Signature if on Behalf of Property Owner

\_\_\_\_\_

Date

The Property Tax Assistance Division at the Texas Comptroller of Public Accounts provides property tax information and resources for taxpayers, local taxing entities, appraisal districts and appraisal review boards.

For more information, visit our website:  
[comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-218 • 11-16/6

EXHIBIT 14  
**Appointment of Agent for Property Tax Matters**

Texas Comptroller of Public Accounts

Form  
50-162

## Appointment of Agent for Property Tax Matters

This form is for use by a property owner in designating a lessee or other person to act as the owner's agent in property tax matters. You should read all applicable law and rules carefully, including Tax Code Section 1.111 and Comptroller Rule 9.3044. This designation will not take effect until filed with the appropriate appraisal district. Once effective, this designation will be in effect until the earlier of (1) the date of a written revocation filed with the appraisal district by the owner or the owner's designated agent, or (2) the expiration date, if any, designated below.

**In some cases, you may want to contact your appraisal district or other local taxing units for free information and/or forms concerning your case before designating an agent.**

Appraisal District Name

Date Received (appraisal district use only)

### STEP 1: Owner's Name and Address:

Name

Telephone Number (include area code)

Address

City, State, Zip Code

**STEP 2: Identify the Property for Which Authority is Granted. Identify all property for which you are granting the agent authority and, unless granting authority for all property listed for you, provide at least one of the property identifiers listed below (appraisal district account number, physical or situs address, or legal description). A chief appraiser may, if necessary to identify the property, request additional information. In lieu of listing property below, you may attach a list of all property to which this appointment applies, denoting the total number of additional pages attached in the lower right-hand corner below.**

(check one)

all property listed for me at the above address

the property(ies) listed below:

Appraisal District Account Number

Physical or Situs Address of Property

Legal Description

Appraisal District Account Number

Physical or Situs Address of Property

Legal Description

Appraisal District Account Number

Physical or Situs Address of Property

Legal Description

Appraisal District Account Number

Physical or Situs Address of Property

Legal Description

If you have additional property for which authority is granted, attach additional sheets providing the appraisal district account number, physical or situs address, or legal description for each property.

Identify here the number of additional sheets attached: .....

The Property Tax Assistance Division at the Texas Comptroller of Public Accounts provides property tax information and resources for taxpayers, local taxing entities, appraisal districts and appraisal review boards.

For more information, visit our website:  
[comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-162 • 12-16/13

EXHIBIT 14 (concluded)  
**Appointment of Agent for Property Tax Matters (page 2)**

Texas Comptroller of Public Accounts

Form  
50-162

**STEP 3: Identify the Agent:**

Name \_\_\_\_\_ Telephone Number (include area code) \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

**STEP 4: Specify the Agent's Authority**

The agent identified above is authorized to represent me in (check one):

- all property tax matters concerning the property identified
- the following specific property tax matters:  
\_\_\_\_\_

The agent identified above is authorized to receive confidential information pursuant to Tax Code Sections 11.48(b)(2), 22.27(b)(2), 23.123(c)(2), 23.126(c)(2) and 23.45(b)(2): .....  Yes  No

I hereby direct, as indicated below, the appraisal district, appraisal review board, and each taxing unit participating in the appraisal district to deliver the documents checked below to the agent identified above regarding the property identified. I acknowledge that such documents will be delivered only to the agent at the agent's address indicated above and will not be delivered to me unless the affected offices choose to send me copies or are otherwise required by law. I understand that these documents can affect my legal rights and that the appraisal district, appraisal review board and the taxing units are not required to send me copies if I direct them to deliver the documents to my agent.

- all communications from the chief appraiser
- all communications from the appraisal review board
- all communications from all taxing units participating in the appraisal district

**STEP 5: Date the Agent's Authority Ends.** Pursuant to Tax Code Section 1.111(c), this designation remains in effect until the date indicated or until a written revocation is filed with the appraisal district by the property owner or the owner's designated agent. A designation may be made to expire according to its own terms but is still subject to prior revocation by the property owner or designated agent. Pursuant to Tax Code Section 1.111(d), a property owner may not designate more than one agent to represent the property owner in connection with an item of property. The designation of an agent in connection with an item of property revokes any previous designation of an agent in connection with that item of property. By designating an agent on this form, previous designations of other agents in connection with the items of property shown on the form are revoked.

Date Agent's Authority Ends . . . . . \_\_\_\_\_

**STEP 6: Identification, Signature, and Date:**

**sign here** ▶

Signature of Property Owner, Property Manager or Other Person \_\_\_\_\_ Date \_\_\_\_\_  
Authorized to Act on Behalf of the Property Owner\*

**print here** ▶

Printed Name of Property Owner, Property Manager or Other Person \_\_\_\_\_ Title \_\_\_\_\_  
Authorized to Act on Behalf of the Property Owner

The individual signing this form is (check one):

- the property owner
- a property manager authorized to designate agents for the owner
- other person authorized to act on behalf of the owner other than the person being designated as agent

\* This form must be signed by the property owner, a property manager authorized to designate agents for the owner or other person authorized to act on behalf of the owner other than the person being designated as agent. If you are a person other than the property owner, the appraisal district may request a copy of the document(s) authorizing you to designate agents or act on behalf of the property owner.

**If you make a false statement on this form, you could be found guilty of a Class A misdemeanor or a state jail felony under Penal Code Section 37.10.**

For more information, visit our website: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

Page 2

EXHIBIT 15  
**Lessee's Designation of Agent for Property Tax Matters**

Texas Comptroller of Public Accounts

Form  
50-834

## Lessee's Designation of Agent for Property Tax Matters

This form is for use by a lessee to designate a person to act as the lessee's agent in property tax matters pursuant to Tax Code Section 1.111(a-1).  
**Note: Only a lessee who has been designated previously by the property owner under Tax Code Section 1.111(a) as the property owner's agent as shown by execution of Form 50-162, Appointment of Agent for Property Tax Matters, may use this form to designate a person to act as the lessee's agent in property tax matters.** An agent designated by a lessee under Tax Code Section 1.111(a-1) has the same authority and is subject to the same limitations as an agent designated by a property owner under Tax Code Section 1.111(a).

### STEP 1: Lessee and Property Owner Contact Information

Name of Lessee	Primary Phone Number (area code and number)	Email Address*		
Mailing Address	City	County	State	ZIP Code
Name of Property Owner (i.e., Lessor)	Primary Phone Number (area code and number)	Email Address*		
Mailing Address	City	County	State	ZIP Code

### STEP 2: Property Identification

Provide the physical or situs address, the legal description or the appraisal district account number of the property for which you are designating an agent to act for you in property tax matters. A chief appraiser may request additional information to identify the property.

Physical Address	City	County	State	ZIP Code
Legal Description	Appraisal District Account Number			

If there are additional properties for which you wish to designate the agent to act for you in property tax matters, attach additional sheets providing the appraisal district account number, physical or situs address or legal description for each property.

State the number of additional sheets attached: .....

### STEP 3: Agent Designation

The following individual is designated to act as agent for the lessee and owner of the property identified in Step 2 in property tax matters pursuant to Tax Code Section 1.111(a-1) (only one individual's name is permitted).

Name of Agent	Primary Phone Number (area code and number)	Email Address*		
Mailing Address	City	County	State	ZIP Code

### STEP 4: Specify the Agent's Authority:

The agent identified above is authorized to represent me in (check one):

- all property tax matters concerning the property identified in Step 2
- the following specific property tax matters concerning the property identified in Step 2:

The agent identified above is authorized to receive confidential information pursuant to Tax Code Sections 11.48(b)(2), 22.07(e), 22.27(b)(2), 23.123(c)(2), 23.1242(p), 23.126(c)(2), 23.127(l), 23.128(p) and 23.45(b)(2): .....  Yes  No

The Property Tax Assistance Division at the Texas Comptroller of Public Accounts provides property tax information and resources for taxpayers, local taxing entities, appraisal districts and appraisal review boards.

For more information, visit our website:  
[comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-834 • 12-16/3

EXHIBIT 15 (concluded)  
**Lessee's Designation of Agent for Property Tax Matters (page 2)**

Texas Comptroller of Public Accounts

Form  
50-834

**STEP 4: Specify the Agent's Authority: (continued)**

I hereby direct, as indicated below, the appraisal district, appraisal review board and each taxing unit participating in the appraisal district to deliver the documents checked below to the agent identified above regarding the property identified. I acknowledge that such documents will be delivered only to the agent at the agent's address indicated above and will not be delivered to me unless the affected offices choose to send me copies or are otherwise required by law. I understand that these documents can affect my legal rights and that the appraisal district, appraisal review board and the taxing units are not required to send me copies if I direct them to deliver the documents to my agent.

- all communications from the chief appraiser
- all communications from the appraisal review board
- all communications from all taxing units participating in the appraisal district

**STEP 5: End of Agent's Authority**

Under Tax Code Section 1.111(c), the designation of an agent on this form remains in effect until the date indicated below or until a written revocation is filed with the appraisal district by the property owner, the lessee or the designated agent. A designation may be made to expire according to its own terms but is still subject to prior revocation by the property owner, the lessee or the designated agent. Under Tax Code Section 1.111(d), only one agent may be designated in connection with an item of property at a time; the subsequent designation of an agent in connection with an item of property revokes any previous designation of an agent in connection with that item of property. By designating an agent on this form, previous designations of other agents in connection with the property identified in Step 2 of this form are revoked.

Date Agent's Authority Ends: \_\_\_\_\_

**STEP 6: Lessee's Authorization**

I, \_\_\_\_\_,  
Printed Name of Lessee or Authorized Individual

swear or affirm the following with regard to the property identified in Step 2 above: (1) that I am the lessee of the property, or another person authorized to act on behalf of the lessee in this matter other than the agent designated in Step 3 above;\*\* (2) that the property owner previously designated the lessee under Tax Code Section 1.111(a) to act as the owner's agent and executed Form 50-162, *Appointment of Agent for Property Tax Matters* to that effect; and (3) that the agent designated in Step 3 of this form is authorized to act on behalf of the lessee and the property owner in property tax matters as indicated in this form.

**sign here** ▶

Signature of Lessee or Authorized Individual \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Mailing Address \_\_\_\_\_ Primary Phone Number (area code and number) \_\_\_\_\_ Email Address\* \_\_\_\_\_

**STEP 7: Property Owner's Approval**

I, \_\_\_\_\_,  
Printed Name of Property Owner or Authorized Individual

swear or affirm the following with regard to the property identified in Step 2 above: (1) that I am the property owner, or another person authorized to act on behalf of the owner in property tax matters other than the agent designated in Step 3 above or the lessee identified herein;\*\* (2) that the property owner previously designated the lessee identified above under Tax Code Section 1.111(a) to act as the owner's agent and executed Form 50-162, *Appointment of Agent for Property Tax Matters* to that effect; and (3) that the property owner approves of the lessee's designation of the agent identified in Step 3 of this form to act in property tax matters as indicated in this form.

**sign here** ▶

Signature of Property Owner or Authorized Individual \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Signer's Mailing Address \_\_\_\_\_ Primary Phone Number (area code and number) \_\_\_\_\_ Email Address\* \_\_\_\_\_

\* An email address of a member of the public could be confidential under Government Code Section 552.137; however, by including the email address on this form, you are affirmatively consenting to its release under the Public Information Act.

\*\* If you are a person authorized to act in this matter on behalf of the property owner or the lessee (other than a person designated as the agent in Step 3,) the appraisal district may request a copy of the document(s) authorizing you to act on behalf of the property owner or lessee in this matter.

For more information, visit our website: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

Page 2

50-834 • 12-16/3

EXHIBIT 16  
**Appraisal Review Board Member Communication Affidavit**

# Appraisal Review Board Member Communication Affidavit

Form 50-133

Tax year \_\_\_\_\_

Appraisal District's Name \_\_\_\_\_

Appraisal District Account Number (if known) \_\_\_\_\_

**GENERAL INSTRUCTIONS:** This form is for use by an appraisal review board member to affirm that the member has not communicated with another person in violation of Tax Code Section 41.66(f). Documentation indicating this signed affirmation will be provided to the property owner or his or her designated agent at the hearing's conclusion.

**FILING INSTRUCTIONS:** Each ARB member must sign an affidavit at the beginning of a protest hearing pursuant to Tax Code Section 41.66(g).

## SECTION 1: Property Description

Physical Address, City, State, Zip Code \_\_\_\_\_

If no street address, provide legal description.

Mobile Home Make, Model and Identification Number (if applicable) \_\_\_\_\_

## SECTION 2: Affirmation and Signature

State of Texas

County of \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me duly sworn, deposed as follows:  
Affiant Name

My name is \_\_\_\_\_. I have not communicated with another person in violation of Tax Code Section 41.66(f).

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Affiant Signature \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public, State of Texas \_\_\_\_\_

My Commission Expires \_\_\_\_\_

Notary's Printed Name \_\_\_\_\_

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

50-133 • 11-19/3

An ARB member who communicates with the chief appraiser, an appraisal district employee or a board of director member concerning a property owner protest outside of the hearing may be penalized. The chief appraiser, appraisal district employee, board of director member, property tax consultant or an attorney is also subject to a penalty if he or she communicates with an ARB member with the intent to influence an ARB decision. Both offenses are punishable as Class A misdemeanors.<sup>209</sup>

The same penalty does not apply if an ARB member talks to a property owner outside of a hearing. The ARB member cannot sign the sworn affidavit and cannot participate in that property owner's hearing.

The ex parte prohibition does not apply to discussions between the ARB and its attorney, between the ARB and the chief appraiser or another employee or a member of the board of directors, or between the ARB and a property tax consultant or attorney representing a property owner protest if the communications are limited to and involve the following:

- a hearing on a protest or other proceeding before the ARB;
- a social conversation;
- administrative, clerical or logistical matters related to the scheduling and operation of hearings;
- processing of documents, the issuance of orders, notices or subpoenas;
- necessary and appropriate conversation to enable the local administrative district judge to determine whether to appoint, reappoint or remove a person from the ARB; or
- operation of the ARB.<sup>210</sup>

### **Appearance at the protest hearing**

As a matter of procedure, the ARB chair calls the cases in the order scheduled and makes certain each party takes an oath promising the accuracy of the party's testimony. All testimony must be given under oath.<sup>211</sup>

Most property owners will represent themselves at the protest hearing. Some property owners may designate a lessee or agent to present the protest and perform other required actions.<sup>212</sup> An attorney may represent a client without filing an agent designation, as can most mortgage lenders and authorized corporate

employees.<sup>213</sup> Other agents should not be recognized by the ARB unless a properly executed designation of agent form is filed at or before the hearing on the motion or protest.<sup>214</sup>

The law requires a person who provides property tax consulting services for compensation to be certified and registered with the state.<sup>215</sup> If a consultant who is not registered as required by law appears before the ARB, the ARB should seek legal advice on how to address the matter.

As discussed in Chapter 2 regarding scheduling, a property owner may appear in person, by telephone conference call, videoconference or by affidavit. Counties with populations less than 100,000 that lack the technological capability of conducting videoconference hearings do not have to make them available.<sup>216</sup>

If the owner appears either by telephone conference call, videoconference or affidavit, the evidence must be submitted to the ARB as a notarized sworn statement before the hearing begins.<sup>217</sup> A property owner does not waive the right to appear in person at the protest hearing by submitting an affidavit to the ARB or by electing to appear by telephone conference call.<sup>218</sup> See **Exhibit 17** for the model affidavit.

The owner may submit a notarized letter that includes the owner's name, a property description and evidence or argument. A statement specifying the chief appraiser, appraisal district or ARB's determination from which the owner seeks relief constitutes a sufficient argument.<sup>219</sup>

An ARB should consult with its attorney to determine what to do if the property owner does not appear. It should develop procedures on how it will respond in such a case.

### **Postponement of hearings**

Under certain circumstances, property owners or their designated agents may request that the ARB postpone a protest hearing until a later date.<sup>220</sup> Postponements are authorized in Tax Code Sections 41.45 and 41.66, and the conditions for postponement are described in the Comptroller's model hearing procedures (**Exhibit 28**).

<sup>209</sup> Tex. Tax Code §6.411(d)

<sup>210</sup> Tex. Tax Code §6.411(c) and (c-1)

<sup>211</sup> Tex. Tax Code §41.67(a)

<sup>212</sup> Tex. Tax Code §§1.111 and 41.66(c)

<sup>213</sup> 34 Tex. Admin. Code §9.3044(f)

<sup>214</sup> Tex. Tax Code §1.111(b)

<sup>215</sup> Tex. Occ. Code §1152.002

<sup>216</sup> Tex. Tax Code §41.45(b-4)

<sup>217</sup> Tex. Tax Code §41.45(b)

<sup>218</sup> Tex. Tax Code §41.45(n)

<sup>219</sup> Tex. Tax Code §41.45(i) and (j)

<sup>220</sup> Tex. Tax Code §§41.45 and 41.66

EXHIBIT 17  
Property Owner's Affidavit of Evidence

Property Owner's Affidavit of Evidence

Form 50-283

Tax Year \_\_\_\_\_

Appraisal District's Name \_\_\_\_\_

Appraisal District Account Number (if known) \_\_\_\_\_

**GENERAL INSTRUCTIONS:** This form is for use by a property owner to offer and submit evidence and/or argument for an appraisal review board (ARB) protest hearing by telephone conference call, videoconference or written affidavit pursuant to Tax Code Section 41.45.

**FILING INSTRUCTIONS:** This affidavit and evidence for the hearing may be submitted to the ARB either in paper or on a small portable electronic device (such as a CD, USB flash drive or thumb drive) which will be kept by the ARB.

SECTION 1: Property Owner or Lessee

Name of Property Owner or Lessee \_\_\_\_\_

Mailing Address, City, State, Zip Code \_\_\_\_\_

Phone Number (area code and number) \_\_\_\_\_

Email Address\* \_\_\_\_\_

\* An email address of a member of the public could be confidential under Government Code Section 552.137; however, by including the email address on this form, you are affirmatively consenting to its release under the Public Information Act.

SECTION 2: Property Description

Physical Address, City, State, Zip Code (if different than above) \_\_\_\_\_

If no street address, provide legal description. \_\_\_\_\_

Mobile Home Make, Model and Identification Number (if applicable) \_\_\_\_\_

SECTION 3: Reasons for Protest

To preserve your right to present each reason for your protest to the ARB according to law, be sure to select all boxes that apply. Failure to select the box that corresponds to each reason for your protest may result in your inability to protest an issue that you want to pursue.

- |   |   |
|---|---|
| <input type="checkbox"/> Incorrect appraised (market) value and/or value is unequal compared with other properties.                                 | <input type="checkbox"/> Ag-use, open-space or other special appraisal was denied, modified or cancelled.                                       |
| <input type="checkbox"/> Property should not be taxed in _____ (name of taxing unit).   | <input type="checkbox"/> Change in use of land appraised as ag-use, open-space or timberland.   |
| <input type="checkbox"/> Property is not located in this appraisal district or otherwise should not be included on the appraisal district's record. | <input type="checkbox"/> Incorrect appraised or market value of land under special appraisal for ag-use, open-space or other special appraisal. |
| <input type="checkbox"/> Failure to send required notice. _____ (type)  | <input type="checkbox"/> Owner's name is incorrect.   |
| <input type="checkbox"/> Exemption was denied, modified or cancelled.   | <input type="checkbox"/> Property description is incorrect.   |
| <input type="checkbox"/> Temporary disaster damage exemption was denied or modified.  | <input type="checkbox"/> Incorrect damage assessment rating for a property qualified for a temporary disaster exemption.                        |
|   | <input type="checkbox"/> Other: _____   |

SECTION 4: Evidence

Attach evidentiary materials (such as letters, receipts, deeds, photographs, etc.) to be submitted with this affidavit.

Provide the total number of pages or images submitted as evidence with this affidavit: \_\_\_\_\_

SECTION 5: Statement of Facts or Arguments

State all facts or arguments that may help resolve your case.

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

50-283 • 1-22/9



EXHIBIT 17 (continued)  
**Property Owner's Affidavit of Evidence**

Property Owner's Affidavit of Evidence

Form 50-283

**SECTION 6: Hearing Type**

Indicate how you intend to participate in the ARB hearing regarding your protest (select only one box).

- I do **not** intend to appear at the hearing in person, by telephone conference call or by videoconference.  
This affidavit and the evidence and/or argument submitted with it may be used at the hearing if I do not appear in person at the hearing.
- I intend to appear **in person** at the hearing.  
This affidavit may not be used for the hearing if I do appear in person at the hearing.
- I intend to appear **by telephone conference call** for the hearing.  
This affidavit and the evidence submitted with it may be used for the hearing if I do not appear in person at the hearing.
- I intend to appear by **videoconference** for the hearing.  
This affidavit and the evidence submitted with it may be used for the hearing if I do not appear in person at the hearing.\*

**NOTE:** If you decide later to appear by telephone conference call or videoconference, you must provide written notice to the ARB at least 10 days before the hearing date and submit your evidence with an affidavit (if not previously done).

You may change your mind and appear in person at the ARB hearing. You do not waive the right to appear in person at the hearing by submitting this affidavit to the ARB. If you indicate that you intend NOT to appear at the hearing or you do not complete this section of the form and you do not elect to appear by telephone conference call or videoconference, the ARB is not required to consider the affidavit at a scheduled hearing, and may consider the affidavit at a hearing designed for the specific purpose of processing affidavits.

**SECTION 7: Name and Signature**

State of Texas

County of \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me duly sworn, deposed as follows:  
Affiant Name

1. My name is \_\_\_\_\_, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in this affidavit as well as any materials attached to this affidavit. I am submitting and offering any materials as evidence or argument to the ARB for consideration at the protest hearing for the property described in Section 2 of this affidavit.  
Affiant Name
2. Any materials submitted with this affidavit as evidence were generated or collected by me or for me, and are the original or exact duplicates of the original.
3. Any materials I am submitting as evidence comprise a total of \_\_\_\_\_ pages or images and are described in Section 4 of this affidavit. I am attaching any materials in paper form or on a small portable electronic device (such as a CD, USB flash drive or thumb drive) onto which images of the materials have been loaded as prescribed by the ARB's hearing procedures.
4. The facts contained in this affidavit are true and correct, and the information reflected in any evidentiary materials attached to this affidavit are true and correct.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Affiant Signature

SWORN TO AND SUBSCRIBED before me on the

\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

**Important Information**

**GENERAL INFORMATION:** This form is for use by a property owner to offer and submit evidence and/or argument for an appraisal review board (ARB) protest hearing by telephone conference call, videoconference or written affidavit pursuant to Tax Code Section 41.45.

Property owners not appearing in person at a scheduled ARB protest hearing are required to offer and submit evidentiary materials (such as documents, photographs, etc.) or argument (such as a written statement that specifies the action of the appraisal district relating to the property from which relief is sought) by written affidavit delivered to the ARB before the hearing.

Tax Code Section 41.45(b-4) does not require ARBs in counties with populations less than 100,000 that lack technological capabilities to conduct videoconferences.

**FILING INSTRUCTIONS:** This affidavit and evidence for the hearing may be submitted to the ARB either in paper or on a small portable electronic device (such as a CD, USB flash drive or thumb drive) which will be kept by the ARB. Evidence should NOT be provided on a smart phone. Review the ARB's hearing procedures regarding the requirements to properly submit evidence on a small portable electronic device. **Do not file this document with the Texas Comptroller of Public Accounts.**

**DEADLINES:** The affidavit and evidence must be submitted to the ARB before the protest hearing begins.

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

Page 2

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## Part 4 – ARB issues orders of determination

The ARB may rule on a protest at the conclusion of the protest hearing or may postpone the decision to a later date. If the ARB divides into panels to hear separate cases, a hearings panel cannot make a final decision. An ARB's decision is *not final* until a majority of the entire ARB approves the panel's recommendation.<sup>221</sup>

The ARB's procedures should address how the ARB will handle panel recommendations. Another panel hearing will be conducted if the full ARB rejects a panel's decision. The second panel must be composed of ARB members who did not hear the first protest. If three members are not available to make up a new panel, the full ARB may determine the protest. The ARB must notify the property owner of the new hearing in the same manner provided for a regular ARB hearing.<sup>222</sup> If a special panel makes a recommendation that the ARB does not accept, the ARB may refer it for a rehearing to a different special panel composed of ARB members who did not hear the original protest.<sup>223</sup> If at least three other special panel members are not available, the ARB will make the determination.<sup>224</sup> Similarly, if the ARB does not accept the recommendation of a single-member panel, it can determine the protest or refer the matter to a different single-member panel for rehearing.<sup>225</sup>

If the ARB postpones a decision, it must tell the parties when it will make the final decision by delivering a notice of hearing. Any postponed decisions must be made in open sessions.<sup>226</sup>

ARBs may not make a determination of appraised value to be greater than the appraised value shown in the appraisal records as submitted to the ARB. An exception applies if a greater value is requested and agreed to by the property owner. This is not applicable if the protest subject concerns the cancellation, modification or denial of an exemption or the determination that the property does not qualify for appraisal as provided by Subchapter C (Land Designated for Agricultural Use), D (Appraisal of Agricultural Land),

E (Appraisal of Timberland) or H (Appraisal of Restricted-use Timberland) of Chapter 23.<sup>227</sup>

Generally, the ARB's final orders come in two forms: orders determining property owners' protests<sup>228</sup> and orders determining taxing units' challenges.<sup>229</sup> These are written orders specifying the ARB's disposition of the protests and challenges.<sup>230</sup> If the protest is of the determination of the appraised value of the owner's property, the ARB's order must list the appraised value of the land and improvements separately when concerning real property appraisal as allocated by the chief appraiser in the appraisal records and as finally determined by the ARB.<sup>231</sup> The ARB records should indicate the ARB's determination on each issue addressed during the hearing. **Exhibit 18** shows an example of an *Order Determining a Protest or Notice of Dismissal*. Use of this form is not mandatory; however, this form of order identifies the range of issues that may be the subject of any protest that comes before an ARB. The ARB order for each protest should identify specifically each issue that was heard during the protest hearing, state the ARB's decision on each issue and provide the ARB's determination on value as well as the value as shown on the appraisal records. **Exhibit 18** also includes a *Notice of Final Order*, a *Notice of Issuance of ARB Order to Taxing Unit* and an *Order to Correct Appraisal Records*.

In counties with populations greater than 120,000, property owners or their agents designated under Tax Code Section 1.111 can request that orders of determination be emailed to them. Property owners may submit multiple requests for various properties. In each request, property owners must:

- make the request in writing;
- designate the desired recipients on each request, including the property owner's legal counsel and/or designated representative(s); and
- submit the request for email orders before the protest hearing takes place.<sup>232</sup>

The chief appraiser will email a copy of the notice of issuance of the order and a copy of the ARB order if the subject property is not in an agreement under Tax Code Section

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<sup>221</sup> Tex. Tax Code §41.45(d-2)

<sup>222</sup> Tex. Tax Code §41.45(d-2) and (d-3)

<sup>223</sup> Tex. Tax Code §41.45(d-1)

<sup>224</sup> Tex. Tax Code §41.45(d-1)

<sup>225</sup> Tex. Tax Code §41.45(b-5)

<sup>226</sup> Tex. Tax Code §41.45(d-3)

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<sup>227</sup> Tex. Tax Code §41.47(c-2)

<sup>228</sup> Tex. Tax Code §41.47

<sup>229</sup> Tex. Tax Code §41.07

<sup>230</sup> Tex. Tax Code §§41.07(a) and 41.47(a)

<sup>231</sup> Tex. Tax Code §41.47(c)

<sup>232</sup> Tex. Tax Code 41.47(d-1)

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1.085. The chief appraiser must email the order no later than the 21st day after the ARB issues it.<sup>233</sup>

ARBs located in counties with a population of less than 4 million will send the order of determination along with the ARB survey no later than 30 days after the hearing took place. In larger counties with populations greater than 4 million, the board has 45 days to send out its determination and survey. An order of determination will include an ARB survey with instructions on how the protesting party can complete and submit it.<sup>234</sup>

## Part 5 – ARB approves appraisal records

The ARB should approve appraisal records by July 20 or Aug. 30.<sup>235</sup>

Taxing units may sue the ARB or chief appraiser in district court for failure to meet the deadlines. If the court finds the deadline was missed for a good reason, it must set a new deadline. If the court finds there was not a good reason, the deadline becomes 10 days from the date the court signs the judgment. The court may enforce its deadlines by holding parties in contempt or may make any other order necessary to ensure compliance.<sup>236</sup>

It may be impossible or impractical to approve all the appraisal records by the July 20 deadline. The ARB must substantially complete all protest hearings before approving the appraisal records. If the sum of appraised values of property on which property owners have filed protests but have not received determinations is more than 5 percent of the total appraised value of other properties in the appraisal district, the ARB cannot approve the appraisal records.<sup>237</sup>

To help achieve 95 percent completion of the appraisal records, the ARB may wish to hear protests first on properties with larger appraised values before it hears protests on properties with lower appraised values.

The board of directors of an appraisal district in a county with a population of at least 1 million may change the threshold percentage from 95 percent to 90 percent.<sup>238</sup> In other

words, the value involved in pending protests at the time of appraisal record approval may not be more than 10 percent of the appraised value of properties that are not under protest in the appraisal district.

If the ARB believes it will not complete its review by July 20, or Aug. 30 in the larger counties, it should notify the chief appraiser and the taxing units of the earliest estimated date for completion and explain the reasons for the delay. The ARB should make every effort to meet the July 20 or Aug. 30 deadlines.

## Part 6 – Certification

The appraisal records, as the ARB changes and approves them, constitute the appraisal roll for the appraisal district. July 25 is the deadline for the chief appraiser to prepare and certify each taxing unit's appraisal roll to its tax assessor.<sup>239</sup> If by July 20 the ARB has not approved the appraisal records, the chief appraiser will prepare and certify to the tax assessor an estimate of the taxable value of property in each taxing unit not later than July 25.<sup>240</sup>

When protests are still pending after certification, the chief appraiser gives each taxing unit a list of pending protests with the taxing unit's certified appraisal roll.<sup>241</sup>

The list must show each property and give two values for each – the value proposed by the appraisal district and the value claimed by the property owner. The chief appraiser must estimate a probable value for the property if the owner does not indicate a value in the protest. The taxing unit uses the lower of the two values in calculating its no new revenue and voter approval tax rates.<sup>242</sup>

A taxing unit cannot levy a tax on a property under protest until the ARB approves a final value for that property. The Tax Code contains procedures for adding approved supplemental records to appraisal and tax rolls.<sup>243</sup>

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<sup>233</sup> Tex. Tax Code 41.47(d-1)

<sup>234</sup> Tex. Tax Code §41.47(d) and (f)(1)(2)

<sup>235</sup> Tex. Tax Code §41.12

<sup>236</sup> Tex. Tax Code §43.04

<sup>237</sup> Tex. Tax Code §41.12

<sup>238</sup> Tex. Tax Code §41.12(c)

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<sup>239</sup> Tex. Tax Code §26.01(a)

<sup>240</sup> Tex. Tax Code §26.01(a-1)

<sup>241</sup> Tex. Tax Code §26.01(c)

<sup>242</sup> Tex. Tax Code §26.01(c)

<sup>243</sup> Tex. Tax Code §§25.23, 25.25 and 26.15

EXHIBIT 18  
Order Determining Protest or Notice of Dismissal

Order Determining Protest or Notice of Dismissal

Form 50-221

Appraisal Review Board \_\_\_\_\_ County, Texas

Property Legal Description:

Case No. \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Property Account No: \_\_\_\_\_

ORDER DETERMINING PROTEST OR NOTICE OF DISMISSAL

On \_\_\_\_\_, \_\_\_\_\_, the Appraisal Review Board of \_\_\_\_\_ County, Texas, heard the protest of \_\_\_\_\_ concerning the appraisal records for tax year \_\_\_\_\_.

The appraisal review board (ARB) delivered proper notice of the date, time, place and subject of the hearing. The property owner or agent and the chief appraiser of the appraisal district (CAD) were given the opportunity to testify and to present evidence. After considering the evidence and arguments presented at the hearing, the ARB has determined that the protest concerned the following action(s) permitted by Tax Code Section 41.41(a):

- incorrect appraised or market value
- unequal appraisal
- inclusion of the property on the appraisal records
- denial in whole or in part of a partial exemption
- determination that land does not qualify for appraisal according to Tax Code Chapter 23, Subchapters C, D, E or H
- determination of the appropriate damage assessment rating under Tax Code Section 11.35
- any other matter permitted by Tax Code Section 41.41(a)

Based on the evidence, the ARB makes the following determination(s) as indicated by a  mark and hereby issues the following as its ORDER DETERMINING PROTEST OR NOTICE OF DISMISSAL:

- The ARB lacks jurisdiction to determine the protest and hereby dismisses the protest.
- The property's appraised value is excessive, and the appraisal records should be changed to: a land value of \$ \_\_\_\_\_ from the CAD land value of \$ \_\_\_\_\_; and an improvement value of \$ \_\_\_\_\_ from the CAD improvement value of \$ \_\_\_\_\_.
- The property's market value is excessive, and the appraisal records should be changed to \$ \_\_\_\_\_ from the CAD value\* of \$ \_\_\_\_\_.
- The appraised or market value of the subject property is not excessive and the appraisal records should not be changed or should be increased. The appraised value of the land is \$ \_\_\_\_\_; the appraised value of the improvement is \$ \_\_\_\_\_; and the property's market value is \$ \_\_\_\_\_.
- The subject property was unequally appraised and the appraisal records should be adjusted to reflect a land value of \$ \_\_\_\_\_ and an improvement value of \$ \_\_\_\_\_.
- The subject property was not unequally appraised and the appraisal records should reflect the appraised land value of \$ \_\_\_\_\_ and an improvement value of \$ \_\_\_\_\_.
- The subject property qualified for the exemption for which application was made and the appraisal records should be changed accordingly.
- The subject property qualified for a temporary exemption under Tax Code Section 11.35 and should be assigned a damage assessment rating of Level \_\_\_\_\_.
- The subject property qualified for special appraisal and the appraisal records should be changed to reflect an appraised value of \$ \_\_\_\_\_.
- The property owner's protest concerning other matters permitted by Tax Code Section 41.41(a) is upheld and the appraisal records should be changed to reflect the following change(s): \_\_\_\_\_
- The property owner's protest concerning other matters permitted by Tax Code Section 41.41(a) is denied and the appraisal records should not be changed.

# Chapter 4

## Appraisal Concepts: Market Value, Special Appraisals and Unequal Appraisal

### Ten protest grounds

Tax Code Sections 41.41(a) and (c) identify 10 separate grounds or issues that a property owner is entitled to protest:

1. appraised or market value of the owner's property;
2. unequal appraisal of the owner's property;
3. inclusion of the owner's property on the appraisal records;
4. denial to the owner in whole or in part of a partial exemption;
5. determination that the owner's property does not qualify for special agricultural or timber appraisal;
6. identification of the taxing units in which the owner's property is taxable;
7. determination of the property's ownership;
8. determination that the use of agricultural or timberland under special appraisal has changed; or
9. any other action of the appraisal district, chief appraiser or ARB that applies to and adversely affects the property owner.

The tenth ground for protest recently added to Texas Tax Code Section 41.41 (c) refers to House Bill 492 which proposed the right to protest the denial, modification or assessment rating of a property qualified for a temporary exemption due to damage by disaster under Section 11.35.<sup>244</sup>

This chapter focuses on the following grounds of protest and the appraisal concepts related to them:

1. the market value of an owner's property;
2. the unequal appraisal of an owner's property; and
3. the determination of special appraisal or appraised value.

<sup>244</sup> Tex. Tax Code §41.41(a) and (c)

### Appraised value reflects market value

The majority of protests filed in Texas each year involve whether the owner's property was appraised correctly.<sup>245</sup> Tax Code Chapter 23 sets out the standards that apply to appraisals for property tax purposes.<sup>246</sup> Tax Code Section 23.01(a) states "Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1."<sup>247</sup>

Tax Code Section 1.04(7) specifically defines market value as follows:

"Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

- (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
- (B) both the seller and purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
- (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of . . . the other.<sup>248</sup>

All taxable property must be appraised at its market value unless the law provides for a different value.<sup>249</sup> For example, land designated for agricultural use is taxed on its productivity value rather than its market value.<sup>250</sup>

<sup>245</sup> Tex. Tax Code §41.41(a)(1)

<sup>246</sup> Tex. Tax Code Chapter 23

<sup>247</sup> Tex. Tax Code §23.01(a)

<sup>248</sup> Tex. Tax Code §1.04(7)

<sup>249</sup> Tex. Tax Code §23.01(a)

<sup>250</sup> Tex. Tax Code §§23.41

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## Highest and Best Use

Highest and best use is a fundamental appraisal concept that requires understanding of the subject property and the selection of appropriate comparable sales. The concept relies on a property being utilized in a manner that yields the greatest value for the subject. Property must be appraised at its highest and best use rather than at its current use, which may or may not be the same. Highest and best use requires the property's category and purpose be legally permissible, physically possible, financially feasible and maximally productive. The highest and best use of residential homestead property in Texas is always as residence homestead. This is another example of a jurisdictional exception in Texas.<sup>251</sup>

Real property located in a designated historic district, or in a zone designated as historic under municipal, state, or federal law must be appraised under consideration of those effects on the property's value. Restrictions placed on historic districts may determine the owner's ability to alter, improve, or repair the property and the chief appraiser must consider those factors in the appraisal.<sup>252</sup>

## Generally accepted appraisal methods and techniques

Tax Code Section 23.01(b) sets the following professional standard for determining market value.

The market value of property shall be determined by the application of generally accepted appraisal methods and techniques. If the appraisal district determines the appraised value of the property using mass appraisal standards, the mass appraisal standards must comply with the *Uniform Standards of Professional Appraisal Practice*. The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. Each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value.<sup>253</sup>

The publications to follow as guidelines recommended in the Tax Code are the Appraisal Institute's *Appraisal of Real Estate* and *Dictionary of Real Estate Appraisal*, The Appraisal Foundation's *Uniform Standards of Professional Appraisal*

<sup>251</sup> Tax Code §23.01(d)

<sup>252</sup> Tax Code §23.013(e)

<sup>253</sup> Tex. Tax Code §23.01(b)

*Practice* [USPAP] and a publication that includes information related to mass appraisal.<sup>254</sup>

## What Is USPAP?

Texas law requires that the market value of property be determined as of Jan. 1 by the application of generally accepted appraisal methods and techniques.<sup>255</sup> If an appraisal district uses mass appraisal methods to determine the appraised value of property — which most do — it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>256</sup> The Appraisal Foundation, authorized by the U.S. Congress to set appraisal standards and appraiser qualifications, developed USPAP for use by professional appraisers in the United States. The Appraisal Foundation also provides guidance on recognized valuation methods and techniques for all valuation professionals.<sup>257</sup> Copies of USPAP are available at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

## What Is Mass Appraisal?

Appraisal districts are required to value thousands of properties. They have neither the time nor the money to separately appraise each individual property. Instead, they use mass appraisal which The Appraisal Foundation defines as “the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.”<sup>258</sup> The Comment to USPAP Standard 5: Mass Appraisal, Development – which applies to appraisal districts performing mass appraisals – states that a “mass appraisal includes:

1. identifying properties to be appraised;
2. defining market area of consistent behavior that applies to properties;
3. identifying characteristics (supply and demand) that affect the creation of value in that market area;
4. developing a model structure that reflects the relationship among the characteristics affecting value in the market area;
5. calibrating the model structure to determine the contribution of the individual characteristics affecting value;

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<sup>254</sup> Tex. Tax Code § 23.01(h)

<sup>255</sup> Tex. Tax Code §23.01(a) and (b)

<sup>256</sup> Tex. Tax Code §23.01(b)

<sup>257</sup> [http://www.appraisalfoundation.org/imis/TAF/About\\_Us/TAF/About\\_Us.aspx](http://www.appraisalfoundation.org/imis/TAF/About_Us/TAF/About_Us.aspx); website of The Appraisal Foundation accessed on Feb. 8, 2021.

<sup>258</sup> Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, p. 5

6. applying the conclusions reflected in the model to the characteristics of the property(ies) being appraised; and
7. reviewing the mass appraisal results.<sup>259</sup>

In *Property Appraisal and Assessment Administration*, a publication of the International Association of Assessing Officers (IAAO),<sup>260</sup> the difference between mass appraisal and single-property appraisal is explained:

Assessors need skills in both mass appraisal and single-property appraisal, skills in mass appraisal to produce the initial values in a reappraisal and in single-property appraisal to defend assessed values within the courts and to appraise special-purpose properties not easily valued by mass appraisal. Simply stated, single-property appraisal is the valuation of a particular property as of a given date; mass appraisal is the valuation of many properties as of a given date, using standard procedures and statistical testing. Both require market research. The principal differences are in scale and quality control.<sup>261</sup>

The *Fundamentals of Mass Appraisal*, another IAAO publication, explains the use of models — representations of how something works — in the mass appraisal context:

Property valuation models express the forces of supply and demand at work in the local market and seek to explain or predict the market value of properties from available real estate data. They are based on the sales comparison, cost, and income approaches to value.

Because the models necessarily reflect the vicissitudes of the marketplace, mass appraisal model building requires sound appraisal theory, data analysis, and research methods. The best models are appropriate, credible, and reliable. Models that reflect the local market are also easier to defend.<sup>262</sup>

<sup>259</sup> Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, p. 32

<sup>260</sup> The IAAO, founded in 1934, is a nonprofit, educational, and research association; it is a professional organization of government assessment officials and others interested in the administration of the property tax with members worldwide from governmental, business and academic communities.

<sup>261</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 88 (1990)(IAAO publication)

<sup>262</sup> Robert J. Gloudemans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 249 (2011)(IAAO publication)

## Three approaches to value

According to Tax Code Section 23.0101, “. . . In determining the market value of property, the chief appraiser shall consider the cost, income, and market data [or sales] comparison methods of appraisal and use the most appropriate method.”<sup>263</sup> Tax Code Section 23.013 describes the Market Data [or Sales] Comparison Method of Appraisal, Tax Code Section 23.012 describes the Income Method of Appraisal and Tax Code Section 23.011 describes the Cost Method of Appraisal.<sup>264</sup> Generally speaking, the sales comparison approach, the income approach and the cost approach are the three standard market valuation methods the appraisal profession recognizes.<sup>265</sup>

### Market data or sales comparison approach

The sales comparison approach is the valuation method typically preferred in appraising single-family homes and vacant land in mass appraisal when adequate sales data are available.<sup>266</sup> Tax Code Section 23.013 states:

(a) If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.

(b) A sale is not considered to be a comparable sale unless the sale occurred within 24 months of the date as of which the market value of the subject property is to be determined, except that a sale that did not occur during that period may be considered to be a comparable sale if enough comparable properties were not sold during that period to constitute a representative sample.

(b-1) Notwithstanding Subsection (b), for a residential property in a county with a population of more than 150,000, a sale is not considered to be a comparable sale unless the sale occurred within 36 months of the date as of which the market value of the subject property is to be determined, regardless of the number of comparable properties sold during that period.

<sup>263</sup> Tex. Tax Code §23.0101

<sup>264</sup> Tex. Tax Code §§23.011, 23.012 and 23.013

<sup>265</sup> Robert J. Gloudemans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 2-3 (2011) (IAAO publication); and Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 82 (1990) (IAAO publication)

<sup>266</sup> Robert J. Gloudemans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 170 (2011) (IAAO publication)

(c) A sale of a comparable property must be appropriately adjusted for any change in the market value of the comparable property during the period between the date of the sale of the comparable property and the date as of which the market value of the subject property is to be determined.

(d) Whether a property is comparable to the subject property shall be determined based on similarities with regard to location, square footage of the lot and improvements, property age, property condition, property access, amenities, views, income, operating expenses, occupancy, and the existence of easements, deed restrictions, or other legal burdens affecting marketability.<sup>267</sup>

### Income approach

The income approach is most suitable for types of properties frequently purchased and held for the purpose of producing income, such as apartments, retail properties and office buildings.<sup>268</sup> Tax Code Section 23.012 provides:

“(a) If the income method of appraisal is the most appropriate method to use to determine the market value of real property, the chief appraiser shall:

- (1) analyze comparable rental data available to the chief appraiser or the potential earnings capacity of the property, or both, to estimate the gross income potential of the property;
- (2) analyze comparable operating expense data available to the chief appraiser to estimate the operating expenses of the property;
- (3) analyze comparable data available to the chief appraiser to estimate rates of capitalization or rates of discount; and
- (4) base projections of future rent or income potential and expenses on reasonably clear and appropriate evidence.

(b) In developing income and expense statements and cash-flow projections, the chief appraiser shall consider:

- (1) historical information and trends;

(2) current supply and demand factors affecting those trends; and

(3) anticipated events such as competition from other similar properties under construction.”<sup>269</sup>

### Cost approach

The cost approach is especially useful for appraisal of property types for which sales and income data are scarce, unique properties and new construction.<sup>270</sup> Tax Code Section 23.011 requires a chief appraiser who uses the cost method to:

- (1) use cost data obtained from generally accepted sources;
- (2) make any appropriate adjustment for physical, functional or economic obsolescence;
- (3) make available to the public on request cost data developed and used by the chief appraiser as applied to all properties within a property category and may charge a reasonable fee to the public for the data;
- (4) clearly state the reason for any variation between generally accepted cost data and locally produced cost data if the data vary by more than 10 percent; and
- (5) make available to the property owner on request all applicable market data that demonstrate the difference between the replacement cost of the improvements to the property and the depreciated value of the improvements.<sup>271</sup>

The cost approach is not used to determine the market value of land.

### Reconciliation

After an appraiser has considered and applied the traditional approaches to value, a final determination must be made as to the final concluded value of the subject property. If an appraiser considered the Cost Approach, Income Approach and Market Data (Sales Comparison) Approach to value, there could potentially be three different conclusions. It is then the responsibility of the appraiser to make

<sup>267</sup> Tex. Tax Code §23.013

<sup>268</sup> Robert J. Gloude-mans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 176 (2011) (IAAO publication)

<sup>269</sup> Tex. Tax Code §23.012

<sup>270</sup> Robert J. Gloude-mans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 193 (2011) (IAAO publication); and Joseph K. Eckert, Ph.D., Robert J. Gloude-mans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 206 (1990) (IAAO publication)

<sup>271</sup> Tex. Tax Code §23.011



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a final decision of value. The final decision, or reconciliation, should consider several factors that will consider the quantity and quality of the approaches. First and foremost, the reconciliation should consider which approach is most relevant in the marketplace. For example, if the subject property is an existing shopping center, it may be likely that the Income Approach is the technique used by sellers and buyers of that property type. Thus, the appraiser may give the most weight to the Income Approach in this instance. The appraiser should also consider the quality of the data. If there were few quality data available in the application of one of the three approaches to value, then little weight may be given to that approach. Finally, the quantity of data should be considered. If the marketplace would normally rely on the Market Data (Sales Comparison) Approach to value a single-family residence, but the appraiser only had one comparable sale, then the Sales Comparison Approach may have to be weighted less in the reconciliation.

## Market value versus appraised value

Depending on special circumstances, as authorized by law, a property may be taxed at either its market or appraised value and the property owner may protest either or both values.<sup>272</sup> Tax Code Chapter 23 contains the methods and procedures for market valuation as well as appraisal valuation. Some types of special appraisal include appraising the productivity value of agricultural land or timberland, defining market value for inventory, specifying what constitutes appraised value for certain types of property and limiting the value on qualifying residence homesteads.<sup>273</sup> The following paragraphs provide more specific information regarding some of these special appraisals.

### Agricultural and timber appraisal

Land qualified as agricultural or timberland can be appraised on the basis of its productivity value which is based on the average annual net income typical for that category of land.<sup>274</sup> It is also appraised at its market value, which is usually higher than the land's productivity value.

Wildlife management use also qualifies property for productivity valuation. To qualify for wildlife management use, the property must be qualified for agricultural or timberland appraisal at the time the owner changes to wildlife management

use. In certain circumstances, an exception exists for land used to protect federally endangered species under a federal permit. An exception exists for conservation or restoration projects in certain circumstances.<sup>275</sup> Such land qualifies for special use appraisal regardless of its use in prior years.<sup>276</sup>

Agricultural use also includes the use of land to raise or keep bees for pollination or to produce human food or other tangible products having a commercial value, provided that the land used is not less than five or more than 20 acres.<sup>277</sup>

An owner may protest the chief appraiser's appraisal, including the market value and the productivity value.<sup>278</sup>

### Value limitations and restrictions

The Tax Code places limits on appraised values of some properties — residence homesteads — and instructs appraisers to consider certain conditions when appraising other property types for ad valorem tax purposes.

### Cap on Increase on Appraised Value of Residence Homesteads

Tax Code Section 23.23(a) essentially states that the appraised value of a residence homestead for a tax year cannot exceed 10 percent of the previous tax year's appraised value. If there are any new improvements to the property, however, the market value of these improvements is to be included in the appraised value for the subsequent tax year as new improvements, but these are not subject to this 10 percent limit or cap.<sup>279</sup>

When appraising a residence homestead, the chief appraiser must include in the appraisal records both the home's market value and the limited appraised value as provided by Tax Code Section 23.23.<sup>280</sup> A limitation takes effect for a residence homestead on Jan. 1 of the tax year following the first tax year the owner qualifies that property for the residence homestead exemption. For this limitation, a person who acquires property Jan. 1 and receives a residence homestead exemption (other than age 65 or older or disabled exemptions) for a portion of that tax year is considered to have qualified for the residence homestead exemption as of Jan. 1 of the tax year following the tax year in which the owner acquired the property. The limitation expires on Jan. 1 of the first tax year

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<sup>272</sup> Tex. Tax Code §41.41(a)(1)

<sup>273</sup> Tex. Tax Code Chapter 23

<sup>274</sup> Tex. Tax Code §§23.51(4) and (5) and 23.52(a)

<sup>275</sup> Tex. Tax Code §23.51(7)(B) and (C) and (8)

<sup>276</sup> Tex. Tax Code §23.51(7)(A),(B) and (C)

<sup>277</sup> Tex. Tax Code §23.51(2)

<sup>278</sup> Tex. Tax Code §41.41(a)(1)

<sup>279</sup> Tex. Tax Code §23.23(a)(2)

<sup>280</sup> Tex. Tax Code §23.23(b)

that neither the owner nor the owner’s spouse or surviving spouse qualifies for the residence homestead exemption.<sup>281</sup>

The limited homestead value may increase for any new improvement to the residence homestead.<sup>282</sup> A new improvement does not include ordinary maintenance of the existing structure, the grounds or another feature of the property.<sup>283</sup> A new improvement also does not include a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by wind or water damage if the replacement structure meets certain criteria.<sup>284</sup>

### Method of Appraisal for Low-Income or Moderate-Income Housing

Tax Code Section 23.215 identifies the approach to value to be used when appraising nonexempt low-income or moderate-income housing owned by an organization. If this real property meets certain conditions set out in the statute, the chief appraiser is required to appraise the property using the income method.<sup>285</sup> In computing the income for this property, the chief appraiser is to recognize the restrictions on the income of the renters who qualify for these housing units as well as the amount of rent they may be charged.<sup>286</sup> The capitalization rate to be used is the same the chief appraiser applies in appraising other rent-restricted properties.<sup>287</sup>

### Appraisal Consideration for Government Restricted Land Use

In those instances where a governmental entity has imposed a restriction on the use of land — such as a restriction to preserve wildlife habitat — and the owner did not consent to it, the chief appraiser is required to consider the effect this restriction has on the value of the property.<sup>288</sup>

## Unequal appraisal

Owners may protest both the value and unequal appraisal of their properties. In the typical unequal appraisal case, the property owner claims that the property’s appraised value is higher or greater than “the median appraised value of a reasonable number of comparable properties appropriately adjusted.”<sup>289</sup> Effective beginning Jan. 1, 2016, the Texas

Legislature set standards to govern “unequal appraisal” cases that are similar to the standards for market value cases.<sup>290</sup> Tax Code Section 23.01(f) was added and reads as follows:

The selection of comparable properties and the application of appropriate adjustments for the determination of an appraised value of property by any person [in an unequal appraisal case] must be based on the application of generally accepted appraisal methods and techniques. Adjustments must be based on recognized methods and techniques that are necessary to produce a credible opinion.<sup>291</sup>

An unequal appraisal case can be broken down into five separate elements or parts. If the evidence shows that the following standard has been met, then the protest is determined in favor of the appraisal district:

1. the appraised value of the subject property is **equal to or less than**
2. the median appraised value of
3. a reasonable number of
4. comparable properties that are
5. appropriately adjusted.<sup>292</sup>

On the other hand, if the evidence shows that the appraised value of the subject property is **greater than** the median appraised value of a reasonable number of comparable properties, appropriately adjusted, then the protest is determined in favor of the protesting party.

The ARB’s evaluation of expert witness testimony – by reference to generally accepted appraisal methods and techniques – should focus on the evidence presented on three key issues:

1. Is the **number** of properties selected for the sample **reasonable**?
2. Is each of the properties in the sample **comparable** to the subject property?
3. Was the **value** of each comparable property **appropriately adjusted** by reference to the subject property?

Below are the types of questions the ARB may ask about the expert’s evidence to get answers on these key issues.

<sup>281</sup> Tex. Tax Code §23.23(c) and (c-1)

<sup>282</sup> Tex. Tax Code §23.23(a)(2) and (e)

<sup>283</sup> Tex. Tax Code §23.23(e)

<sup>284</sup> Tex. Tax Code §23.23(f)

<sup>285</sup> Tex. Tax Code §§23.215(b) and 11.1825(q)

<sup>286</sup> Tex. Tax Code §11.1825(q)(1)

<sup>287</sup> Tex. Tax Code §11.1825(q)(2)

<sup>288</sup> Tex. Tax Code §23.22

<sup>289</sup> Tex. Tax Code §41.43(b)(3)

<sup>290</sup> Tex. H.B. 2083, 84th Leg., Reg. Sess. (2015), amending Tex. Tax Code §23.01

<sup>291</sup> Tex. Tax Code §23.01(f)

<sup>292</sup> Tex. Tax Code §41.43(b)(3)

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First, is the **number** of properties selected for the sample **reasonable**? To determine reasonableness, evidence that answers the following questions may be helpful:

1. How did the appraiser pick the number of comparable properties?
2. What selection method or system was used and why?
3. Was the selection random?
4. What was the appraiser’s reasoning in arriving at that sample number?
5. Is there a statistical basis for the number of sample properties selected given the size of the population in the county of properties just like the subject property?

In one case, *Sagemont Plaza v. Harris County Appraisal District*, 30 S.W.3d 425, 427 (Tex.App. — Corpus Christi, 2000, pet. denied), the court of appeals noted that the owner’s expert had “applied no statistical formula in his calculation of the appropriate number of sample population size for the median level appraisal determination.” In other words, the expert failed to establish the reasonableness of his sample size, one of the critical elements in establishing the median in an unequal appraisal case. As a result, the trier-of-fact could choose to disbelieve this expert’s testimony.

The second key issue is whether each of the properties in the sample selected really is **comparable** to the subject property.

In assessing comparability, evidence that answers these questions may be helpful:

- Which characteristics of the subject property did the appraiser select to focus on and why?
- Are all the properties similar in size, location and physical characteristics?
- Are they all in the same or similar neighborhoods or market areas?

The third key issue is whether the **value** of each comparable property has been **appropriately adjusted** by reference to the subject property. In assessing the appropriateness of an adjustment, these questions may be helpful:

- What method or technique was used?
- How did the appraiser select the percentage or dollar adjustment applied?
- Is there any evidence to support the adjustment selected?

An example of how comparability and appropriateness of adjustments can be effectively evaluated is set out in the appellate court opinion in *Weingarten Realty Investors v. Harris County Appraisal District*, 93 S.W.3d 280 (Tex.App. — Houston [14th Dist.] 2002, no pet.).

In *Weingarten*, the Houston court of appeals found that the comparable properties the appraiser used to perform his equal and uniform valuation analysis for a large retail shopping center in Houston were questionably comparable and questionably appropriately adjusted for several reasons.

- The comparable properties were significantly smaller retail centers than the subject property.
- Nine of the 10 comparable properties had per-square-foot appraised values significantly lower than the subject property.
- Only 10 comparable properties were used in the calculation even though there were 191 retail centers in the northwest quadrant of Harris County where the subject was located.
- Only portions of the retail centers were used in the analysis.
- Only physical characteristics of condition, age, size and location were used in adjusting the comparable property values.
- The percentage adjustment for each characteristic of the comparable properties was subjective.

The court of appeals agreed that this testimony properly was rejected as unreliable because the expert “lacked a reliable foundation for his opinions.”<sup>293</sup>

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<sup>293</sup> *Weingarten*, 93 S.W.3d at 286.



# Chapter 5

## Other Protest Grounds

This chapter addresses the other seven grounds for protest – Tax Code Sections 41.41(a)(3) through (9) and (c) – which include tax exemptions, taxable situs and property types entitled to special appraisal.

### Exemptions

Property owners and taxing units may appeal the chief appraiser's exemption determinations. An individual property owner may not challenge the granting of an exemption to another property owner.<sup>294</sup> If the chief appraiser denies an exemption application for personal property used to produce income, the property owner must render the property within 30 days of the exemption denial.<sup>295</sup> While a property owner can protest the denial of an exemption, a taxing unit may challenge the granting of an exemption before the ARB, except for temporary disaster exemptions granted by Tax Code Section 11.35.<sup>296</sup> Property is taxable unless exempt from taxation by law.<sup>297</sup>

A partial exemption removes a percentage or a fixed dollar amount of a property's value from taxation. An absolute exemption excludes the entire property from taxation.

In most cases, the law requires the property owner to apply for the exemption.<sup>298</sup> If a property owner fails to file a required application on time, he or she usually forfeits the right to the exemption. Timely exemption applications ask for most of the information ARB members need to decide an exemption issue. Most exemption cases will depend on one or more of the following three issues: the owner's qualifications, the property's qualifications or the property's use.

### Owner's qualifications

Ownership requirements vary by exemption. Exemptions such as those for individuals or families (homestead or disabled veterans' exemptions) may require evidence of age, physical condition or disability, military service, family relationship or other factors.<sup>299</sup>

With some exceptions, Jan. 1 is the date for determining if a property owner qualifies for a specific exemption.<sup>300</sup> For example, homeowners who turn 65 or who become disabled during a tax year qualify for the age 65 or older or disabled persons exemption as if the homeowner qualified on Jan. 1 of the tax year and the exemption applies to the entire tax year. This also applies to the exemptions for a homestead donated by a charitable organization to a partially disabled veteran, the surviving spouse of an armed services member killed or fatally injured in the line of duty and the surviving spouse of a first responder killed in the line of duty.<sup>301</sup>

When the state, a political subdivision of the state and other qualifying organizations acquire property used for public purposes, the chief appraiser determines the property's exemption qualifications as of the acquisition date and the exemption is effective immediately.<sup>302</sup> Organizations that acquire property after Jan. 1 of a tax year and qualify for an exemption for the applicable portion of the tax year immediately on qualification include cemeteries, charitable organizations, religious organizations, private schools, community housing development organizations, youth development associations, nonprofit water supply and wastewater service corporations, veteran's organizations and other nonprofit organizations.<sup>303</sup> In addition, a person who qualifies for the 100 percent or totally disabled veteran residence homestead exemption after Jan. 1 may

<sup>294</sup> Tex. Tax Code §41.41(a)(4)

<sup>295</sup> Tex. Tax Code §22.02

<sup>296</sup> Tex. Tax Code §41.03(a)(2)

<sup>297</sup> Tex. Tax Code §11.01(a)

<sup>298</sup> Tex. Tax Code §11.43(a)

<sup>299</sup> Tex. Tax Code §§11.13, 11.131 and 11.22

<sup>300</sup> Tex. Tax Code §11.42(a)

<sup>301</sup> Tex. Tax Code §11.42(c)

<sup>302</sup> Tex. Tax Code §11.42(b)

<sup>303</sup> Tex. Tax Code §11.42(d)

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receive the exemption for the applicable portion of the tax year immediately on qualification.<sup>304</sup>

The general deadline for filing an exemption application is before May 1.<sup>305</sup> Charitable organizations improving property for low-income housing and community housing development associations must file the application for exemption within 30 days of acquiring the property.<sup>306</sup> Certain other organizations must file for exemption within one year of acquiring the property.<sup>307</sup>

Exemptions for schools, charitable organizations, religious organizations, youth development organizations and water supply and wastewater service corporations require the property owner to have a charter or bylaws dedicating property to that purpose. Special charter provisions must provide for disposition of property upon dissolution to public or charitable organizations. Finally, the organization must operate as a nonprofit organization.<sup>308</sup> In some instances, an organization's charter and bylaws may be adequate evidence. In others, evidence about the way the organization or business operates may be needed.

### **Property's qualifications and use**

Many exemptions apply only to specific classes of property. The property owner must list all property subject to the exemption and demonstrate to the ARB that each property meets exemption requirements.

How and when the property owner uses the property is often critical in determining exemption cases. An important factor is whether a property's use is exclusive, primary or incidental. The ARB should consult with legal counsel in interpreting these matters.

In response to natural disasters that have affected Texas counties in recent years, taxing units must offer a temporary exemption for property that qualifies as damaged by disaster following a declaration by the governor. The chief appraiser determines whether an item of qualified property is at least 15 percent damaged by the disaster in order to assign it a damage assessment rating using a Level 1-4 scale with help from resources like FEMA or the county emergency management authority. The damage assessment rating

determines what percentage of the property is exempt from taxation effective for the number of days remaining in the tax year after the day on which the governor first makes the disaster area declaration. The temporary disaster area exemption expires on January 1 of the first tax year in which the property is reappraised.<sup>309</sup>

## **Taxable situs**

The word situs, for property tax purposes, refers to the location where property is deemed taxable. The law links the taxability of property to its location. If a taxing unit can legally levy a tax on property, that property has taxable situs in the taxing unit.<sup>310</sup>

A taxing unit may challenge appraisal records that omit property it can tax.<sup>311</sup> Similarly, a property owner may protest that the property should not be on the appraisal roll, either for the district or for a taxing unit.<sup>312</sup>

The discussion of certain issues related to situs that follows is not intended to be complete and comprehensive. The issues in this area are often complex and technical. The ARB should always consult its legal counsel when questions of law arise.

To disprove any situs in the appraisal district, the property owner must show either that the property has taxable situs in some other appraisal district or that the property is not taxable in this state.<sup>313</sup> Exceptions exist for certain portable drilling rigs located in Texas.<sup>314</sup> If the property owner proves the property has situs in another appraisal district, the Tax Code directs the chief appraiser to notify the chief appraiser of the other district of that fact.<sup>315</sup>

### **Real property**

Situs disputes rarely involve real property because it does not move. Real property includes land, improvements, mines, quarries, items fixed to land and interests in real property such as minerals in place.<sup>316</sup>

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<sup>304</sup> Tex. Tax Code §11.42(e)

<sup>305</sup> Tex. Tax Code §11.43(d)

<sup>306</sup> Tex. Tax Code §11.436(a)

<sup>307</sup> Tex. Tax Code §11.43(d)

<sup>308</sup> Tex. Tax Code §§11.19, 11.20, 11.21 and 11.30

<sup>309</sup> Tex. Tax Code §11.35

<sup>310</sup> Tex. Tax Code Chapter 21

<sup>311</sup> Tex. Tax Code §41.03(a)(2) and (5)

<sup>312</sup> Tex. Tax Code §§41.41(a)(3) and (6) and 41.42

<sup>313</sup> Tex. Tax Code §41.42

<sup>314</sup> Tex. Tax Code §21.02(e)

<sup>315</sup> Tex. Tax Code §41.42

<sup>316</sup> Tex. Tax Code §1.04(2)

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A taxing unit can tax the real property in its boundaries on Jan. 1.<sup>317</sup> Boundary disputes or property description disagreements create the most common real property situs problems.

### **Personal property**

Most situs problems involve movable personal property or tangible items that are not real property. Personal property that stays in one taxing unit during the year creates no problems. Situs problems usually involve property that crosses boundary lines during the year. The general rule is personal property has situs at its Jan. 1 location unless it was there only temporarily.<sup>318</sup> Movable property is taxable in the taxing unit when:

- it is located in that taxing unit for more than a temporary period on Jan. 1;
- it is temporarily somewhere else on Jan. 1, but is normally located in the taxing unit;
- it normally returns to that taxing unit between uses elsewhere; or
- the owner resides or maintains a principal place of business in the taxing unit and the property has no other situs under any of the preceding circumstances.<sup>319</sup>

### **Property crossing state boundary lines**

Multi-state situs problems usually involve businesses that operate or move goods in more than one state. Goods and equipment gain taxable situs in Texas if they are present in the state for more than a temporary period. They also gain situs if continually used in Texas.<sup>320</sup>

If they are temporarily outside the state on Jan. 1, but their owner resides here, they still have situs here.<sup>321</sup> Equipment used in several states may be partially taxed in some or all of the states.<sup>322</sup> To receive an allocation in value, a property owner must submit an allocation application, as well as a rendition, with the chief appraiser in the taxing county. A person may protest the cancellation of an allocation.<sup>323</sup>

### **Multi-state equipment**

A business that uses equipment in more than one state on a regular basis may qualify for allocation of property value. The chief appraiser reduces the property's value according to the percentage of time or mileage in this state compared with total use in all states that could tax the property.<sup>324</sup>

Commercial interstate air carriers are allowed to designate the tax situs of their aircraft that land in Texas as either the carrier's principal office in Texas or the Texas airport from which the carrier has the highest number of departures.<sup>325</sup> Commercial and business air carriers must apply for tax allocation with the chief appraiser in the appraisal district in which the property has taxable situs.<sup>326</sup>

### **Goods in interstate transit**

Items that cross Texas in transit from one state to another do not become taxable in Texas. The transit must be unbroken. If the property stops in Texas for some business purpose unrelated to safe and efficient transportation, it could become taxable in Texas.

### **Property crossing taxing unit lines**

In most cases, property has situs in the taxing unit where it was located on Jan. 1.<sup>327</sup> A property has only one taxable situs in Texas as there is no allocation of property value for property moving among Texas taxing units. For example, if a mobile home moved from one county to another county in the middle of the tax year, it would be taxed in the first county.

## **Taxation of business personal property used to produce income**

The ARB may deal with issues concerning rendered property, such as business personal property. Tax Code Chapter 22 includes mandatory rendition requirements. A rendition identifies, describes and gives the location of taxable property on Jan. 1. Property owners must render annually to appraisal districts all tangible personal property used to produce income in Texas.<sup>328</sup> At their option, owners and secured parties may render other types of property.<sup>329</sup>

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<sup>317</sup> Tex. Tax Code §21.01

<sup>318</sup> Tex. Tax Code §21.02

<sup>319</sup> Tex. Tax Code §21.02

<sup>320</sup> Tex. Tax Code §11.01

<sup>321</sup> Tex. Tax Code §11.01

<sup>322</sup> Tex. Tax Code §21.03

<sup>323</sup> Tex. Tax Code §21.09

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<sup>324</sup> 34 Tex. Admin. Code §9.4033

<sup>325</sup> Tex. Tax Code §21.05(d)

<sup>326</sup> Tex. Tax Code §§21.09 and 21.10

<sup>327</sup> Tex. Tax Code §§21.01 and 21.02

<sup>328</sup> Tex. Tax Code §22.01(a)

<sup>329</sup> Tex. Tax Code §22.01(c)

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Rendition statements filed by property owners include the following:

- property owner’s name and address;
- general property description by type or category;
- if classified as inventory – description and general estimate of quantity;
- property’s physical location or taxable situs; and
- property owner’s good faith estimate of the property’s market value or, at the owner’s option, historical cost when new and the year of the property’s acquisition.<sup>330</sup>

For property with an aggregate value of less than \$20,000, the owner’s rendition is required to contain only the owner’s name and address, general property description by type or category and the property’s physical location or taxable situs.<sup>331</sup>

Rendition forms may permit a property owner to furnish other information not specifically required. For example, a property owner who is not required to give an estimate of value may, at the owner’s option, provide that opinion. Rendition forms allow the owner to check a box on the form indicating that the information in the previous year’s rendition filed by the owner is still accurate.<sup>332</sup>

The chief appraiser may request a statement from the owner of property valued at \$20,000 or more to explain how the owner arrived at the good faith estimate of market value for the subject property. The statement must summarize the following information to:

- identify the property, including physical and economic characteristics and source of information;
- specify the effective date of the value estimate; and
- explain the basis of the rendered value. If the business owner has 50 employees or less, the owner may base the estimate on depreciation schedules used for federal income tax purposes.<sup>333</sup>

The property owner or owner’s agent must deliver the statement in writing or electronically within 21 days after the date of the chief appraiser’s request. The statement is inadmissible in an administrative or judicial proceeding, except to determine the following:

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<sup>330</sup> Tex. Tax Code §22.01(a)  
<sup>331</sup> Tex. Tax Code §22.01(f)  
<sup>332</sup> Tex. Tax Code §22.01(l)  
<sup>333</sup> Tex. Tax Code §22.07(c)

- compliance with the Tax Code;
- any effort at tax evasion; or
- the property owner’s protest before an ARB.<sup>334</sup>

The statement is confidential, and the chief appraiser may only disclose it as provided in the Tax Code.<sup>335</sup>

The general statutory deadline to file a rendition is April 15. A property owner may file a written request on or before April 15 to request an extension of that due date. The chief appraiser must extend that property owner’s deadline to May 15. The chief appraiser also may extend the May 15 deadline another 15 days if the property owner shows good cause in writing.<sup>336</sup>

When a third party, such as an appraisal firm under contract with an appraisal district, appraises the property and the property owner provides substantially equivalent information to this third party, then the owner does not have to file the rendition with the appraisal district.<sup>337</sup> An owner of property regulated by the Public Utility Commission, Texas Railroad Commission, Surface Transportation Board or Federal Energy Regulatory Commission complies with rendition requirements by submitting a copy of the property’s annual regulatory report and sufficient allocation information. The chief appraiser must first make a written request for that report and information.<sup>338</sup> These rendition statements and property reports must be delivered to the chief appraiser not later than April 30, and the chief appraiser may extend the deadline 15 days for good cause.<sup>339</sup>

Property owners do not have to render exempt property, such as a church’s personal property or implements of husbandry used for farm, ranch and timber production.<sup>340</sup> A person is not required to render personal property that is included in the appraisal of real property that takes into account the value of furniture, fixtures and equipment in or on the real property.<sup>341</sup>

A penalty of 10 percent of the total amount of the taxes imposed on the property may be assessed if a person fails to

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<sup>334</sup> Tex. Tax Code §22.07(d)  
<sup>335</sup> Tex. Tax Code §22.07(e)  
<sup>336</sup> Tex. Tax Code §22.23(d)  
<sup>337</sup> Tex. Tax Code §22.01(i)  
<sup>338</sup> Tex. Tax Code §22.01(h)  
<sup>339</sup> Tex. Tax Code §22.23(d)  
<sup>340</sup> Tex. Tax Code §22.01(j)  
<sup>341</sup> Tex. Tax Code §22.01(m)



timely file a rendition statement.<sup>342</sup> While the chief appraiser may waive this penalty, the Tax Code does not provide a similar authorization to waive the penalty for fraud or intent to evade a tax. To receive a penalty waiver, the owner first must send the chief appraiser a written request for failure to timely file a rendition or property report and provide any appropriate supporting documentation before June 1 or within 30 days of being notified of the penalty, whichever is later. The chief appraiser must then determine whether to waive the penalty based on the information submitted and on the following factors:

- the property owner's compliance history;
- type, nature and taxability of the property involved;
- type of business involved;
- completeness of records;
- property owner's reliance on appraisal district advice;
- changes in appraisal district policies affecting renditions; and
- any other relevant factor.<sup>343</sup>

The chief appraiser may waive the penalty if the appraiser determines that the property owner exercised reasonable diligence to comply or has substantially complied with rendition requirements. If the chief appraiser refuses to waive the penalty, the chief appraiser is required to deliver by first-class mail the notice of denial. The owner may protest that decision to the ARB. A chief appraiser and a property owner may enter into a settlement agreement on the matter being protested, if both parties agree there is a mistake.<sup>344</sup>

## Agricultural, timber and other special appraisal

An owner may protest to the ARB if the chief appraiser denies the application of special appraisal for any reason. Special appraisal includes agricultural, timber and restricted use timberland uses described in Tax Code Chapter 23, Subchapters C, D, E, F and H. In determining if property qualifies for wildlife management use valuation, the law requires the chief appraiser to use standards developed by the Texas Parks and Wildlife Department. If there is a protest of the chief appraiser's decision, the ARB is also required to use these standards.<sup>345</sup>

Once allowed, agricultural land applications are not required in subsequent years. However, the chief appraiser may require the property owner to reapply if the appraiser has good cause to believe the land's eligibility has ended. The appraiser will send, by certified mail, a notice to the property owner that a new application is required, along with a copy of the application. Before a chief appraiser makes a change of use determination that agricultural land no longer qualifies for special appraisal, the chief appraiser must follow specific notice requirements for landowners who are age 65 or older.<sup>346</sup> The property owner is also required to notify the appraisal office in writing before May 1 after eligibility of the land ends or after a change in the category of agricultural use.<sup>347</sup>

Generally, the rollback tax, which is based on the difference in market and productivity values for the previous three years, is an additional penalty that applies when an owner of land qualified as open-space land devoted to farm, ranch, wildlife management or timberland purposes on the basis of its productive capacity changes the use of the land to a non-agricultural or non-timber use.<sup>348</sup> A property owner subject to a change of use determination may protest the chief appraiser's determination.<sup>349</sup>

Some changes to a nonagricultural use do not trigger the rollback tax. Use of qualified agricultural land as the property owner's residence homestead does not trigger the rollback tax.<sup>350</sup> Qualified agricultural land obtained by a religious organization is not subject to the rollback tax if, within five years, the organization converts the land to an eligible religious use provided by Tax Code Section 11.20.<sup>351</sup> Also, there is no rollback tax for qualified land that is owned by a charitable organization under Tax Code Section 11.18 for providing housing and related services to persons 62 years of age or older in a retirement community and is exempt for that purpose within five years.<sup>352</sup> A change of use by religious organizations and certain cemeteries also will not trigger the rollback tax.<sup>353</sup> Similarly, an organization qualified as a school under Tax Code Section 11.21 is not subject to the rollback tax if the organization converts the land to an eligible use within five years.<sup>354</sup> Qualified agricultural land

<sup>342</sup> Tex. Tax Code §22.28

<sup>343</sup> Tex. Tax Code §22.30

<sup>344</sup> Tex. Tax Code §§22.30 and 41.41(a)(9)

<sup>345</sup> Tex. Tax Code §23.521(d)

<sup>346</sup> Tex. Tax Code §§1.07(d), 23.54(e) and 23.551

<sup>347</sup> Tex. Tax Code § 3.54(h)

<sup>348</sup> Tex. Tax Code §23.55(o)

<sup>349</sup> Tex. Tax Code §41.41(a)(8)

<sup>350</sup> Tex. Tax Code §23.55(i)

<sup>351</sup> Tex. Tax Code §23.55(l)

<sup>352</sup> Tex. Tax Code §§11.18(d)(19) and 23.55(o)

<sup>353</sup> Tex. Tax Code §23.55(j), (k) and (l)

<sup>354</sup> Tex. Tax Code §§11.18(d)(19) and 23.55(q)

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transferred to the state or a political subdivision to be used for a public purpose is not subject to the rollback tax.<sup>355</sup>

The rules for qualifying agricultural and timberland are explained in three Comptroller publications:

- *Manual for the Appraisal of Agricultural Land;*
- *Guidelines for Qualification of Agricultural Land in Wildlife Management Use;* and
- *Manual for the Appraisal of Timberland.*

These publications also discuss in detail deadlines for applying for the appraisal. The chief appraiser is required to follow these manuals in qualifying and appraising agricultural and timberland.<sup>356</sup>

The Comptroller's office also publishes manuals explaining how to qualify for two other types of specially appraised properties: deed-restricted airport property and recreational park-scenic land.<sup>357</sup>

## Special inventory

The Tax Code provides a special method for the appraisal of certain types of inventory including motor vehicles, heavy equipment, retailed manufactured housing and vessels and outboard motors. Owners of these types of special inventory must file a declaration with the chief appraiser on or before Feb. 1 of each year or not later than 30 days of starting a business if the dealer was not in business on Jan. 1. Generally, the dealer must include in the declaration the market value of the inventory for the current year, based on the prior year's inventory sales divided by 12. The chief appraiser is required to estimate the value of special inventory of an owner who was not a dealer on Jan. 1 of the preceding year by extrapolating sales data, if any, generated in the preceding tax year.<sup>358</sup>

Excluded from this process are fleet transactions, transactions between dealers and subsequent sales. Dealers are required to make monthly reports and prepayments.<sup>359</sup> Property owners may protest to the ARB any action by the appraisal district that applies to and adversely affects the dealer.<sup>360</sup>

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<sup>355</sup> Tex. Tax Code §23.55(f)

<sup>356</sup> Tex. Tax Code §§23.52(d) and 23.73(b)

<sup>357</sup> Tex. Tax Code §§23.83(e) and 23.93(e)

<sup>358</sup> Tex. Tax Code §§23.121 -23.129

<sup>359</sup> Tex. Tax Code §§23.121 -23.129

<sup>360</sup> Tex. Tax Code §41.41(a)(9)

## Sept. 1 Appraisal

A business owner may have his or her inventory appraised at its value on Sept. 1 of the previous year, four months before the normal Jan. 1 date.<sup>361</sup> The owner must file a request before Aug. 1 of the previous year to qualify. Since inventories are valued according to the quantity of goods present on the appraisal date, a Sept. 1 appraisal can benefit a property owner who has lower inventory levels in September than in January. Sept. 1 inventory is not available for a dealer's special inventory described above.

## Ownership issues

An affected person may protest the appraisal district's determination of a property's ownership.<sup>362</sup> Jan. 1 is the date for determining ownership and tax liability for a tax year. The person who owns property on Jan. 1 is liable for the year's taxes.<sup>363</sup>

Administrative policy regarding recording property transfers and ownership interests after Jan. 1 varies among appraisal districts. Some appraisal districts "freeze" the ownership records as of Jan. 1 and maintain a separate file of subsequent transfers for the next Jan. 1. Others continue to update ownership changes on the appraisal records until the ARB receives them. The term "property owner" in Tax Code Chapters 41 and 42 may include the Jan. 1 owner, the new owner or both.

## Other adverse actions

A chief appraiser may take other actions that adversely affect the property owner, such as canceling an exemption, back assessment or appraising a property or imposing a penalty for late agricultural or timberland appraisal application. The property owner has a right to be notified of these actions and to protest them before the ARB.<sup>364</sup>

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<sup>361</sup> Tex. Tax Code §23.12

<sup>362</sup> Tex. Tax Code §41.41(a)(7)

<sup>363</sup> Tex. Tax Code §§23.01, 32.01 and 32.07

<sup>364</sup> Tex. Tax Code §41.41(a)(9)

# Chapter 6

## Evidence and Burdens of Proof

### Types of evidence

Evidence is all the information – in whatever form – that parties present under oath to the ARB at the hearing in support of their side of the case. Evidence may be in the form of oral testimony, documents or paper writings, electronic presentations or physical objects. Testimony is any oral sworn statement from a witness during the hearing. Documentary evidence includes affidavits (which are written statements signed by the witness under oath), an appraiser’s work papers or report, photographs, data sets, schedules, formulas or some other type of paper writing. Electronic presentations may include PowerPoint presentations or a visit to the Google Earth website. Physical objects may include samples of the building materials used or the soil found on a property.

### Exchange of evidence

Either before or immediately after the hearing begins, the protesting party and the appraisal district must provide each other with a copy of all of the written materials – documentary evidence – as well as any material preserved on any portable device designed to maintain a reproduction of a document or image – electronic files – that each intends to submit to the ARB as evidence during the hearing.<sup>365</sup> The law prohibits the ARB from considering appraisal district information unless the evidence is presented at the protest hearing.<sup>366</sup> If the property owner requests the information the appraisal district will use or offer at the hearing, the information must be delivered at least 14 days before hearing in order to be used as evidence in the hearing; this concerns documents, argument or testimony.<sup>367</sup> This subsection does not apply to rebuttal evidence or argument presented at the hearing by the protesting parties or their agents.

At a protest hearing, the chief appraiser cannot offer evidence or argument in support of modifying or denying an

exemption or special appraisal application other than a reason stated in the notice of same delivered to the applicant, unless the chief appraiser:

- provides written notice to the property owner of the additional reason for modifying or denying the application not later than the 14th day before the date of the hearing; and
- establishes that the additional reason was not known to the chief appraiser at the time the chief appraiser delivered the notice of modification or denial to the applicant.<sup>368</sup>

### The three Rs of evidence evaluation

What evidence should the ARB consider? One legal text summarizes in three words a sound approach to evaluating evidence that is worthy of consideration – relevance, reliability and rightness – the three Rs.<sup>369</sup> Each of these three concepts will be discussed briefly below. A good understanding of each will enable ARB members to competently evaluate whether the evidence presented during a protest hearing is worthy of consideration in resolving protests.

#### Relevance

Under Texas Rules of Evidence Rule 401, evidence is relevant if: “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” In a property tax protest, for example, homeowners may bring in multiple listing service (MLS) sheets of recent sales of similar homes in their neighborhood at \$225,000 to \$250,000 to show that the appraisal district’s value of \$300,000 for their home is too high. This is relevant evidence. Another example of relevant evidence is photographs showing the foundation of the property owner’s home is sinking or cracked to support a downward adjustment of the appraised value by reference to the

<sup>365</sup> Tex. Tax Code §41.45(h)

<sup>366</sup> Tex. Tax Code §41.66(e)

<sup>367</sup> Tex. Tax Code §41.67(d)

<sup>368</sup> Tex. Tax Code §41.67(e)

<sup>369</sup> Thomas A. Mauet and Warren D. Wolfson, *Trial Evidence*, p. 2 (5th Ed. 2012)

comparable properties without this condition. A homeowner's testimony that the taxes on his or her property simply are too high is not relevant. It has no tendency to make any fact in the protest more or less probable and is of no consequence in determining the action. If evidence is not relevant, it is not worthy of ARB consideration in resolving the protest.

## Reliability

One legal text summarized the importance of reliable evidence:

There is general agreement that fact resolvers should not base decisions on unreliable evidence. The stakes are too high. Basic fairness is at risk. While steadfast consistency and, certainly, perfection are not attainable in trials, standards of reliability create a way of resolving disputes that has some measure of predictability, order, and rectitude.<sup>370</sup>

Property tax protests often involve a battle of the experts. For example, the appraisal district's staff member offers his or her expert opinion as to the market value of the property and the equality of the appraisal. Property owners offer their own expert appraisal opinions on these same issues. The opinions or conclusions of the two sides are very different. The discussion below should provide some guidance for ARB members to use evaluating each side's option testimony.

## Witness qualifications

In the typical protest case, two types of witnesses testify: property owners and appraisal professionals. Expert appraisal testimony usually is provided by individuals with the following professional credentials. A registered professional appraiser (RPA) is licensed under Occupations Code Chapter 1151, Property Taxation Professional Certification Act, and works for the appraisal district performing appraisal work for property tax purposes under Tax Code Chapters 23 or 25.<sup>371</sup> Appraisers hired by property owners (fee appraisers) may be licensed under Occupations Code Chapter 1103, Texas Appraiser Licensing and Certification Act (TALCA), or they may hold a national designation, such as the Appraisal Institute's MAI. It is expected that the work of all appraisal professionals conforms with USPAP. Occupations Code Section 1103.405 requires that appraisers licensed under TALCA comply with the most current edition of USPAP or other standards provided by rule that are at least as stringent.<sup>372</sup>

Fee appraisers licensed under TALCA may hold dual licensure as property tax consultants or property tax professionals under Occupations Code Chapters 1152 and 1151, respectively. TALCA Rule 155.2, *Work Relating to Property Tax Protest*, imposes certain requirements on these TALCA licensees with dual licensure performing appraisal work in unequal appraisal cases (**Exhibit 19**).<sup>373</sup> In that situation, if the TALCA licensee is performing in his or her capacity as a property tax consultant – and not under the individual's TALCA license – a written disclaimer in boldface type must be provided advising of this fact and that the appraisal work may not comply with USPAP.<sup>374</sup>

It is important for the ARB to understand not only the credentials that a testifying appraisal witness holds, but also the capacity in which the witness is testifying.

Not only appraisal professionals, but also property owners may testify on appraisal issues at a protest hearing. The Tax Code grants property owners the right to testify in certain cases. Tax Code Section 23.01(g) provides that “property owners representing themselves are entitled to offer an opinion of and present argument and evidence related to the market and appraised value or the inequality of appraisal of the owner's property.”<sup>375</sup> Whether the witness is a property owner or an appraisal professional, the ARB is to assess the credibility of the person testifying. To that end, the ARB may ask the witness those questions that will assist the ARB in its evaluation.

In addition to assessing each party's credentials, the ARB is to evaluate each side's opinion by reference to the foundation upon which each opinion rests. As the Texas Supreme Court pointed out in the landmark case on evaluating the reliability of expert testimony, *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995):

There is a difference between the reliability of the underlying theory or technique and the credibility of the witness who proposes to testify about it. An expert witness may be very believable, but his or her conclusions may be based upon unreliable methodology. As DuPont points out, a person with a degree should not be allowed to testify that the world is flat, that the moon is made of green cheese, or that the Earth is the center of the solar system.<sup>376</sup>

<sup>370</sup> Thomas A. Mauet and Warren D. Wolfson, *Trial Evidence*, p. 3 (5th Ed. 2012)

<sup>371</sup> Tex. Occupation Code §1151.002(1)

<sup>372</sup> Tex. Occupations Code §1103.405

<sup>373</sup> 22 Tex. Admin. Code §155.2

<sup>374</sup> 22 Tex. Admin. Code §155.2

<sup>375</sup> Tex. Tax Code §23.01(g)

<sup>376</sup> *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995)

EXHIBIT 19  
**Texas Administrative Code Section 155.2**

## Texas Administrative Code

<b><u>TITLE 22</u></b>	EXAMINING BOARDS
<b><u>PART 8</u></b>	TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD
<b><u>CHAPTER 155</u></b>	RULES RELATING TO STANDARDS OF PRACTICE
<b>RULE §155.2</b>	<b>Work Relating to Property Tax Protests</b>

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- (a) The preparation of a report or other work performed for an appraisal district or as part of any property tax consulting services on behalf of another person, that is used to develop, support, or protest an unequal appraisal under Chapter 41, Subchapter C or Chapter 42, Subchapter B of the Tax Code, is considered an appraisal or appraisal practice for the purposes of §155.1 of this chapter (relating to Standards of Practice) and must conform with Uniform Standards of Professional Appraisal Practice (USPAP), if the person preparing the report or other work presents it as the product of a person licensed, certified, registered, or approved under the Texas Appraiser Licensing and Certification Act.
- (b) A person licensed, certified, registered, or approved under the Texas Appraiser Licensing and Certification Act who is also certified as a property tax professional under Chapter 1151 of the Occupations Code or as a property tax consultant under Chapter 1152 of the Occupations Code, must include the USPAP disclaimer set out in subsection (c) of this section whenever that person prepares a report or other work used to develop, support, or protest an unequal appraisal under Chapter 41, Subchapter C or Chapter 42, Subchapter B of the Tax Code, solely under the authority of a property tax professional or consultant certification.
- (c) The USPAP disclaimer required under this section must:
- (1) be located directly above the preparer's signature;
  - (2) be in at least 10-point boldface type; and
  - (3) read as follows: **USPAP DISCLAIMER: I AM LICENSED OR CERTIFIED AS A REAL PROPERTY APPRAISER AND A PROPERTY TAX PROFESSIONAL OR CONSULTANT. THIS REPORT WAS PREPARED IN MY CAPACITY AS A PROPERTY TAX PROFESSIONAL OR CONSULTANT AND MAY NOT COMPLY WITH THE REQUIREMENTS FOR DEVELOPMENT OF A REAL PROPERTY APPRAISAL CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OF THE APPRAISAL STANDARDS BOARD OF THE APPRAISAL FOUNDATION.**

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**Source Note:** The provisions of this §155.2 adopted to be effective March 14, 2013, 38 TexReg 1681; amended to be effective December 22, 2013, 38 TexReg 9050; amended to be effective September 7, 2015, 40 TexReg 5789

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## Professional standards applied

Texas law provides a standard of reliability that the ARB is to apply in evaluating appraisal testimony. Tax Code Section 23.01(b) requires the market value of property to be determined by the application of “generally accepted appraisal methods and techniques.”<sup>377</sup> Tax Code Section 23.01(f) provides that the “selection of comparable properties and the application of appropriate adjustments for the determination of an appraised value of property by any person” in an unequal appraisal protest “must be based on the application of generally accepted appraisal methods and techniques.”<sup>378</sup> Under Texas law, therefore, an opinion or conclusion reached without any basis, or by failing to recognize and apply the appropriate professional standards, is not worthy of ARB consideration. It is unreliable evidence.

## What are generally accepted appraisal methods and techniques?

Generally accepted appraisal methods and techniques are those that are recognized in prominent publications of respected professional appraisal organizations and include information relating to mass appraisal. Among the most prominent of these organizations are The Appraisal Foundation, the Appraisal Institute and the International Association of Assessing Officers (IAAO).

The Appraisal Foundation is authorized by Congress as the source of appraisal standards and appraiser qualifications. It publishes USPAP – the generally accepted standards of the appraisal profession. Copies of USPAP are available from The Appraisal Foundation at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

The Appraisal Institute publishes *The Appraisal of Real Estate* (now in its 14th edition), the quarterly, peer-reviewed *Appraisal Journal* and the *Dictionary of Real Estate Appraisal*. The IAAO publishes the *Property Appraisal and Assessment Administration* (also known as the red book) and *IAAO Technical Standards*. These are just a few of the most prominent appraisal sources. When testifying as to their professional opinions, experts are expected to be able to demonstrate that the methods and techniques they applied are generally accepted by reference to publications of professionally recognized appraisal organizations. If the witness cannot do so, the opinion would appear to be unreliable.

A focus during the hearing on the logic of the witness’s explanation – by reference to the professional standards or methods applied – will permit the ARB to assess the reliability of the appraisal testimony. The bottom line in evaluating any and all testimony can be stated simply: Does the testimony make sense?

## Rightness

Whether it is right to consider evidence – when it is both relevant and reliable – at a protest hearing goes to considerations of unfair prejudice and efficiency. For example, an ARB may decide that it would be a waste of time for several people to testify about the same condition of the same property; one witness is enough. Another example of rightness is the ARB’s setting of time limits for protest hearings. To hear every protest in a short period of time each year, jurisdictions with thousands of protests would not be able to complete the protest process if reasonable time limits were not imposed.

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## Burdens of proof

### Preponderance of the evidence

In a protest on appraised or market value and a protest for unequal appraisal, the appraisal district has the burden of establishing the property’s value by a preponderance of the evidence.<sup>379</sup> If the appraisal district fails to meet that standard, the protest must be determined in favor of the property owner.<sup>380</sup> A preponderance of the evidence and proof by the greater weight of the evidence mean the same thing. The ARB is to consider the evidence – not only the quantity, but more importantly, the quality, provided by each party and weigh it. Theoretically, if each party’s evidence was placed opposite each other on a set of balance scales, the party whose evidence is heavier – even if only by a very tiny bit – prevails. If the evidence on both sides weighs the same, the property owner prevails.

Appraised values are not presumed to be correct in protest hearings. The appraisal district must present evidence to support the market or appraised value of the property subject to a protest. The evidence may be offered through testimony or documents and must be sufficient to meet the district’s burden of proof. If the protest concerns unequal appraisal,

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<sup>377</sup> Tex. Tax Code §23.01(b)

<sup>378</sup> Tex. Tax Code §23.01(f)

<sup>379</sup> Tex. Tax Code §41.43(a)

<sup>380</sup> Tex. Tax Code §41.43(a)

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the district must present evidence to support equality and uniformity of appraisal in the manner required by law.<sup>381</sup>

Under certain circumstances and for certain protests, the appraisal district has the burden of establishing the property's value by clear and convincing evidence.<sup>382</sup> The property owner has the burden of proof by a preponderance of the evidence concerning protests on other matters such as ownership and exemptions.<sup>383</sup>

### ***Clear and convincing evidence***

In a protest on a property with a market or appraised value of \$1 million or less, the appraisal district has the burden of establishing the value of the property by clear and convincing evidence, as opposed to the weight or preponderance of the evidence, when the following conditions are present:

- The property owner or agent delivers an appraisal report to the chief appraiser at least 14 days before the hearing;
- The appraisal must have been performed not later than the 180th day before the date of the first day of the hearing;
- The appraiser is certified under Occupations Code Chapter 1103;
- The appraisal supports the appraised or market value asserted by the property owner;
- The appraisal is attested before an officer authorized to administer oaths; and
- The appraisal includes the certified appraiser's name and address, the property description and statements that the appraised or market value, as applicable, was as of Jan. 1, was determined using appraisal methods authorized or required by Tax Code Chapter 23, and that the appraisal was performed in accordance with USPAP.<sup>384</sup>

Additionally, in a protest on appraised or market value or unequal appraisal, the appraisal district has the burden of establishing the value of the property by clear and convincing evidence if:

- the appraised value of the property was lowered in the preceding tax year in a protest or appeal;
- the appraised value of the property in the preceding tax year was not established as a result of a written

agreement between the property owner or owner's agent and the appraisal district; and

- the property owner files with the ARB and chief appraiser, at least 14 days before the hearing, information that is sufficient to allow for a determination of the appraised or market value or that the property was appraised unequally.<sup>385</sup>

Regarding a property owner's information on file with the ARB at least 14 days before a hearing, any discussions outside the hearing itself regarding these materials are prohibited under Tax Code Section 41.66(f) as ex parte communications.

If a required rendition – a property report or information requested by the chief appraiser – is not delivered prior to the date of an ARB hearing, the property owner has the burden to prove the property's value to the ARB rather than the appraisal district. The property owner has the burden of proof by a preponderance of evidence under this circumstance and if the owner fails to meet its burden, the ARB must determine the protest in favor of the appraisal district.<sup>386</sup>

ARBs must also consider the issue of clear and convincing evidence when a protest is brought concerning certain value increases. Clear and convincing evidence means having a measure or degree of proof that produces a firm belief or conviction of the truth of the proposition. The chief appraiser is prohibited from increasing the appraised value of property in the next tax year in which the property is appraised following a final determination of value resulting from a protest before the ARB, a lawsuit or binding arbitration, unless the increase is reasonably supported by clear and convincing evidence. The clear and convincing evidence “must be based on all of the reliable and probative evidence in the record considered as a whole.” If an ARB or a court makes a determination of value based on unequal appraisal claims, this clear and convincing evidence requirement may be met by presenting evidence showing that the inequality has been corrected with regard to the properties that were considered to be comparable in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under these circumstances.<sup>387</sup>

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<sup>381</sup> Tex. Tax Code §41.43(b)

<sup>382</sup> Tex. Tax Code §41.43(a-1) and (a-3)

<sup>383</sup> Tex. Tax Code §41.43(d)

<sup>384</sup> Tex. Tax Code §41.43(a-1) and (a-2)

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<sup>385</sup> Tex. Tax Code §41.43(a-3)

<sup>386</sup> Tex. Tax Code §41.43(d)

<sup>387</sup> Tex. Tax Code §23.01(e)

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## Official notice

Generally, the ARB must make its decision only on the evidence brought by the parties. The ARB may also consider certain kinds of basic facts that neither side presents as evidence. This is called taking official notice of a fact.<sup>388</sup>

The ARB, like a judge, may take official notice of any fact that is reasonably certain, either because it is generally known in the community or capable of being easily confirmed by sources whose accuracy cannot reasonably be questioned.<sup>389</sup> For example, an ARB may take official notice that a house is located near a landfill, a fact which may affect its property value. If it takes official notice of a fact, the ARB must inform both parties and give them an opportunity to argue against this action. The ARB should be careful not to appear as an advocate for either party.

## Subpoenas and records

The ARB and the parties involved in a hearing should gather all evidence relevant to the case. The property owner or a challenging taxing unit has a right to know the basis of the appraisal district's determinations. Similarly, the appraisal district has a right to know relevant facts in the property owner's possession.

To ensure these rights, the Tax Code gives the ARB the power to:

- subpoena witnesses, books, records or other documents; and
- inspect the records or other materials of the appraisal office that are not made confidential under the Tax Code.<sup>390</sup>

The ARB may subpoena witnesses, books, records or other documents if the ARB determines it is reasonably necessary. Upon the written request of a party to a protest, the ARB shall issue a subpoena only after holding a hearing to determine whether the requesting party has shown good cause for issuing the subpoena and deposited a sum sufficient to insure payment of the estimated costs of the issuance and service of the subpoena and compensation to any persons to whom the subpoena is issued. A subpoena for books, records or other documents may only be issued if a property is under protest and may be issued only to a party to the protest. The ARB may not subpoena books, records or documents that belong to persons other than the property owner or the appraisal district involved in the protest.<sup>391</sup>

## Weighing the evidence

At the conclusion of the hearing, the ARB weighs the evidence to reach its decision. The ARB members evaluate the strength, value and believability of the evidence presented at the hearing by one side as compared to the evidence presented by the other side. In weighing the evidence, the ARB determination will reflect whether the party with the burden of proof that applies in the case has met that burden, typically by a preponderance of the evidence.<sup>392</sup>

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<sup>388</sup> Tex. Tax Code §41.67(c)

<sup>389</sup> Tex. Tax Code §41.67(c)

<sup>390</sup> Tex. Tax Code §§41.61 and 41.64

<sup>391</sup> Tex. Tax Code §41.61

<sup>392</sup> Tex. Tax Code §41.43



# Chapter 7

## Duties after Records Approval

When the ARB approves the appraisal records for the year, the ARB fulfills most of its responsibilities to change the records.<sup>393</sup> An ARB's duties do not end after it approves the appraisal records. It may need to address other matters throughout the tax year, including late-filed residence homestead exemptions, supplemental records, appraisal roll corrections, failure to deliver notice, cases of substantial error and joint motions on incorrect values.<sup>394</sup>

### Late-filed exemption applications

Property owners may file homestead exemption applications after the May 1 deadline for filing has passed. Homeowners must apply for the exemption no later than two years after the delinquency date for the tax year.<sup>395</sup> Disabled veterans may file an exemption application under Tax Code Section 11.22, but not later than five years after the delinquency date for the taxes on the property.<sup>396</sup> Homeowners age 65 or older or disabled and individuals who are disabled veterans with donated homes may file an application for this homestead exemption up to one year after the date the person turns 65 or becomes disabled.<sup>397</sup> The chief appraiser approves, denies or modifies the exemption as appropriate and submits the proposed change to the records to the ARB.<sup>398</sup>

The Tax Code also provides for late-filed exemption applications for religious organizations, schools, charitable organizations, cotton stored in warehouses, veteran's organizations, disabled veterans and surviving spouses of disabled veterans and freeport exemptions.<sup>399</sup>

If the chief appraiser approves the late filed homestead exemptions after the ARB approves the appraisal records, the

chief appraiser notifies the collector for each taxing unit in which the home is located not later than 30 days after the late exemption is approved. The collector then calculates the new lower tax and sends the person who was the owner of the property on the date the tax was paid a refund no later than 60 days after chief appraiser notification or new bill as appropriate.<sup>400</sup>

### Supplemental records

The chief appraiser often prepares and submits supplemental records to the ARB after approval of the initial appraisal records. Supplemental records list property that the chief appraiser discovers was not included in the initial records submitted to the ARB. These records also include property that was omitted from the appraisal roll in an earlier year.<sup>401</sup>

The ARB reviews and approves supplemental records by the same process used for the original appraisal records. A property owner must file a notice of protest within 30 days after the date notice is delivered as required by Tax Code Section 25.19. The ARB has 30 days after the property owner files the protest to hear and determine it or as soon after that date as possible.<sup>402</sup> After completing its review, the ARB adopts an order approving the supplemental records (**Exhibit 20**).

### Late protest based on failure to deliver notice

A property owner may file a protest after the normal protest deadline alleging failure of the ARB or the chief appraiser to provide or deliver a notice required by law. If the property owner can show that a notice was never delivered, the ARB must hear any protest the property owner wishes to bring on the property affected by the notice. The property owner must file before the delinquency date.<sup>403</sup>

<sup>393</sup> Tex. Tax Code §41.12

<sup>394</sup> Tex. Tax Code §§25.25, 41.01, 41.08, 41.09 and 41.10

<sup>395</sup> Tex. Tax Code §11.431(a)

<sup>396</sup> Tex. Tax Code §11.439

<sup>397</sup> Tex. Tax Code §11.43

<sup>398</sup> Tex. Tax Code §11.45

<sup>399</sup> Tex. Tax Code §§11.431 - 11.4391

<sup>400</sup> Tex. Tax Code §11.431(b)

<sup>401</sup> Tex. Tax Code §25.23

<sup>402</sup> Tex. Tax Code §25.23

<sup>403</sup> Tex. Tax Code §§41.4111 and 41.44(c)

EXHIBIT 20  
**Order Approving Supplemental Records**

Texas Comptroller of Public Accounts

Form  
50-227

## Order Approving Supplemental Appraisal Records

Order Approving Supplemental Appraisal Records  
for \_\_\_\_\_

Appraisal Review Board

\_\_\_\_\_ County, Texas

On \_\_\_\_\_, \_\_\_\_\_, the appraisal review board (ARB) of \_\_\_\_\_  
County, Texas met to approve supplemental appraisal records for tax year \_\_\_\_\_.

The ARB finds that the supplemental records, as corrected by the chief appraiser according to the orders of the ARB, should be approved and added to the appraisal roll for the appraisal district.

The ARB therefore APPROVES the supplemental appraisal records as corrected.

Signed on \_\_\_\_\_, \_\_\_\_\_

**sign  
here** →

\_\_\_\_\_  
Chair, Appraisal Review Board

The Property Tax Assistance Division at the Texas Comptroller of Public Accounts provides property tax information and resources for taxpayers, local taxing entities, appraisal districts and appraisal review boards.

For more information, visit our website:  
[comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)  
50-227 • 11-16/4

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Certain notices are required by law. Failure to deliver one of these notices permits late protests to be considered by the ARB.<sup>404</sup>

A property owner may file a late protest after the normal deadline, but before the delinquency date or no later than the 125th day after the date the property owner claims to have received the tax bill from one or more of the taxing units that tax the property, alleging that the appraisal district or the ARB has not delivered or provided a notice required by law.<sup>405</sup> The owner is entitled to a hearing based solely on whether one or more taxing units timely delivered the tax bill. If the ARB determines that no taxing unit timely delivered a tax bill, the ARB must determine when at least one taxing unit delivered written notice of the taxes. For the purposes of filing the protest and making a tax compliance payment, the delinquency date is postponed to the 125th day after that date.<sup>406</sup>

Delivery in this context means that the appraisal district mailed the notice correctly addressed to the property owner at the last address furnished by the property owner or delivered the notice by another method as permitted in the Tax Code. Delivery is presumed unless the property owner provides evidence that he or she did not receive the notice.<sup>407</sup> In that case, the burden shifts to the appraisal district to show that the notice was properly mailed to the last correct address in its possession or emailed to a confirmed electronic address as requested in writing by the property owner.

If the appraisal district can show proper mailing, then the property owner is not entitled to have the protest heard under this provision. If the property owner claims no receipt and the appraisal district cannot show proper mailing, then the property owner has shown failure of delivery. If the ARB determines that this is the case, the ARB must then hear and determine any and all protests the property owner wishes to make regarding the property that was the subject of the notice. The property owner must comply with tax payment requirements.

## Corrections after approval

The ARB has authority to hear motions to correct appraisal rolls.<sup>408</sup> The chief appraiser also has certain authority to correct errors in approved appraisal records.<sup>409</sup> Correction procedures vary depending on the type of correction. The ARB may correct some errors up to five years after the year of the error and may correct other errors only if the property owner acts before the tax year's delinquency date. The filing deadlines and types of corrections are discussed in the following sections.

A person who acquires a property after Jan. 1 of the tax year in question has the same rights to file a motion to correct the property's record as the Jan. 1 owner had. The new owner must meet the same deadline for filing the motion. In addition, the new owner may continue any motion filed by the Jan. 1 owner.<sup>410</sup>

### Changes by the chief appraiser

The chief appraiser may change the appraisal roll at any time to correct

- a name or address;
- determination of ownership;
- a description of property;
- multiple appraisals of the property
- an erroneous denial or cancellation of a residence homestead exemption if the applicant or recipient is disabled, is 65 or older or is a surviving spouse of a person who qualified for the 65 or older residence homestead exemption;
- an erroneous denial or cancellation of a 100 percent or totally disabled veteran exemption under Tax Code Section 11.131 or a disabled veteran exemption under Tax Code Section 11.22;
- a clerical error; or
- another inaccuracy as prescribed by board rule that does not increase a person's tax liability.<sup>411</sup>

Written rules setting out the circumstances under which the chief appraiser may correct errors that affect a person's tax liability must be adopted by the board. The law is ambiguous, and the ARB should request legal advice about the rules.

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<sup>404</sup> Tex. Tax Code §§41.4111 and 41.44(c)

<sup>405</sup> Tex. Tax Code §41.411

<sup>406</sup> Tex. Tax Code §41.44(c-3)

<sup>407</sup> Tex. Tax Code §1.07

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<sup>408</sup> Tex. Tax Code §25.25

<sup>409</sup> Tex. Tax Code §25.25(b)

<sup>410</sup> Tex. Tax Code §25.25(i) and (j)

<sup>411</sup> Tex. Tax Code §25.25(b)

Each quarter, the chief appraiser will submit a report to the ARB and appraisal district board of directors showing any changes to the appraisal rolls.<sup>412</sup> The report must include the property owner's name and property description and can include the type of clerical error or other inaccuracy that caused an error on the appraisal rolls.

The failure or refusal of a chief appraiser to make a clerical error change to an appraisal roll is not subject to an ARB action or a property owner lawsuit.<sup>413</sup>

### Changes by the ARB

On the motion of the chief appraiser or a property owner, the ARB may order changes to the appraisal roll to correct clerical errors that affect a property owner's liability for a tax, multiple appraisals of a property in a single tax year; the inclusion of property that does not exist in the form or at the location described in the appraisal roll, or an error in ownership.<sup>414</sup> The model order determining these motions to correct is found in **Exhibit 21**.

If the chief appraiser and property owner do not agree on a motion to correct the appraisal records within 15 days after the property owner files the motion, the property owner is entitled to a hearing on the motion if requested. The property owner is entitled to a hearing regardless of whether he or she protested the property value in a prior year. If a hearing request is made on or after Jan. 1 but before Sept. 1, the ARB must schedule the hearing to be held as soon as practicable but not later than 90 days after the date the ARB approves the appraisal records. If the request is made on or after Sept. 1 but before Jan. 1, the ARB must schedule the hearing to be held as soon as practicable but not later than the 90 days after the date the hearing request was made.<sup>415</sup>

At least 15 days before the hearing, the ARB must deliver a written notice with the date, time and place of the hearing to the property owner, chief appraiser and presiding officer of the governing body of each taxing unit in which the property is located. The ARB should conduct these hearings the same way it conducts regular protest hearings. A person forfeits the right to file a motion to correct the appraisal records if taxes are delinquent in a year for which the person seeks a correction.<sup>416</sup>

<sup>412</sup> Tex. Tax Code §25.25(b)

<sup>413</sup> Tex. Tax Code §25.25(o)

<sup>414</sup> Tex. Tax Code §25.25(c)

<sup>415</sup> Tex. Tax Code §25.25(e)

<sup>416</sup> Tex. Tax Code §25.25(e), (l) and (m)

### Before delinquency date

On a motion by the chief appraiser or the property owner, the ARB may order changes to correct certain appraisal errors in the appraisal roll. The deadline for such a motion is before taxes on the property become delinquent.<sup>417</sup>

On joint motion of the property owner and the chief appraiser, the ARB must correct an error that resulted in an incorrect appraised value for the owner's property. The deadline for filing this motion is before the taxes on the property become delinquent.<sup>418</sup>

## Types of corrections

One of the most common motions to correct is called a 25.25(c) motion because of the Tax Code section involved. The following information describes the types of corrections: clerical errors, multiple appraisals, nonexistent property and errors in ownership. Sample motions are found in **Exhibits 22** and **23**.

A clerical error is defined by law as an error caused by a mistake in writing, copying, transcribing, computer data entry or retrieval or a mathematical error or an error that prevents the appraisal or tax roll from correctly showing what the chief appraiser, ARB or tax assessor said or did.<sup>419</sup> A clerical error is not a mistake in reasoning or judgment in making a finding or determination. Corrections can be made in appraisal rolls for five prior years.<sup>420</sup>

A multiple appraisal occurs when a property is listed in the appraisal records more than once for the same year. On the timely motion of the chief appraiser or of the property owner, the ARB may order a correction to the appraisal roll for a multiple appraisal. The five-year filing deadline applies.<sup>421</sup> Taxes may not be delinquent for the years corrected.<sup>422</sup>

Non-existent property included on the appraisal roll is property that does not exist in the form or at the location described in the appraisal roll. On the motion of the chief appraiser or the property owner, the ARB may correct, before the end of five years after Jan. 1 of the tax year, any errors

<sup>417</sup> Tex. Tax Code §25.25

<sup>418</sup> Tex. Tax Code §25.25(h)

<sup>419</sup> Tex. Tax Code §1.04(18)

<sup>420</sup> Tex. Tax Code §25.25(c)(1)

<sup>421</sup> Tex. Tax Code §25.25(c)(2)

<sup>422</sup> Tex. Tax Code §25.26

involving non-existent property.<sup>423</sup> Again, taxes may not be delinquent for the years corrected.<sup>424</sup>

An error in ownership is an error in which the property is shown as owned by a person who did not own the property on Jan. 1 of that year. The correction to the appraisal roll regarding an error in ownership can be made for any of the five preceding years.<sup>425</sup>

### Combining and Separating Parcels

If a chief appraiser refuses to combine or separate parcels or tracts at the property owner's request, the ARB can order the requested change on a motion to correct filed by the property owner.<sup>426</sup>

### Tangible Personal Property

The ARB, on motion of the chief appraiser or property owner, can direct changes in the appraisal records to correct an inaccuracy that is a result of an error or omission of tangible personal property on a rendition or property report. The written order can be applicable for the current tax year or either of the two preceding tax years. The correction cannot be ordered if the:

- property owner failed to timely file the rendition statement or property report;
- the property was subject to an ARB protest and order;
- a motion was previously filed to which the parties agreed or the ARB made a determination; or
- the property's appraised value was established by agreement between the chief appraiser and property owner.<sup>427</sup>

### One-fourth over-appraisal error for residence homesteads

Prior to the date that taxes become delinquent, the chief appraiser or property owner may file a motion to correct an appraisal error that results in an incorrect value (**Exhibit 24**). The error may be corrected if it results in the appraised value exceeding the correct value of an owner's residence homestead by more than one-fourth.<sup>428</sup> The calculation method used by the ARB to determine the correct value should be reviewed by its legal counsel and included

in its administrative procedures. By way of example, the ARB may include one of the following calculation methods in its procedures:

$(\text{Corrected Value} \times 1/4 \text{ or } 0.25) + (\text{Corrected Value}) = \text{Threshold for Current Appraised Value for Residence Homesteads}$

### One-third over-appraisal error for non-residence homesteads

The chief appraiser or a property owner can file a motion to correct an appraisal error that results in a wrongly appraised value for the owner's non-residence homestead property (**Exhibit 25**).<sup>429</sup>

**This error may be corrected if the appraised value exceeds the correct value by more than one-third and does not qualify as the owner's residence homestead. The ARB should determine the correct value. It may wish to include its calculation method for the one-third difference in its administrative procedures.** By way of example, the ARB may include the following calculation methods in its procedures:

$(\text{Corrected Value} \times 1/3 \text{ or } 33.33\%) + (\text{Corrected Value}) = \text{Threshold for Current Appraised Value}$

Legal advice should be sought regarding the calculation methods that are ultimately used.

The correction motion must be brought before taxes on the property become delinquent. The ARB may correct the value if the property was not the subject of a protest or a written agreement. The ARB may not make a requested appraisal roll correction if the owner's property was the subject of an ARB hearing in which the owner appeared and offered evidence or argument and the ARB made a determination on the merits; or the appraised value was the result of a written agreement between the owner or owner's agent and the appraisal district.<sup>430</sup>

The property owner must pay a late-correction penalty if the ARB makes a change. The amount of the penalty is 10 percent of the taxes due on the new value. The 10 percent penalty must be paid to each taxing unit affected by the change.<sup>431</sup>

<sup>423</sup> Tex. Tax Code §25.25(c)(3)

<sup>424</sup> Tex. Tax Code §25.26

<sup>425</sup> Tex. Tax Code §25.25(c)(4)

<sup>426</sup> Tex. Tax Code §25.25(f)

<sup>427</sup> Tex. Tax Code §25.25(c-1)

<sup>428</sup> Tex. Tax Code §25.25(d)

<sup>429</sup> Tex. Tax Code §25.25(d)

<sup>430</sup> Tex. Tax Code §25.25(d-1)

<sup>431</sup> Tex. Tax Code §25.25(d-1)

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If the chief appraiser and property owner do not agree on a motion to correct the appraisal records within 15 days after the property owner files the motion, the property owner is entitled to a hearing on the motion if requested.<sup>432</sup>

After a motion is filed and a hearing granted, the ARB must deliver a 15-day notice of the time, date and place of the hearing to the chief appraiser, the property owner and presiding officer of the governing body of each taxing unit in which the property is located (**Exhibit 26**).

Each party is entitled to present evidence and argument at the hearing and to receive written notice of the ARB's determination. The property owner or the chief appraiser may file a suit to compel the ARB to make a change required by law.

### **Joint motion on incorrect value**

The ARB – on a joint motion by the property owner and the chief appraiser – must correct an error that resulted in an incorrect appraised value for the owner's property.<sup>433</sup> The deadline for filing this joint motion is before the delinquency date (**Exhibit 27**).

An agreement between the property owner or the owner's agent and the appraisal district is final. The ARB may not review or reject the agreement.<sup>434</sup>

### **Forfeiture of remedy for nonpayment of taxes**

The pendency of a motion filed under Tax Code Section 25.25 does not affect the delinquency date for the taxes on the property that is the subject of the motion. The delinquency date applies only to the amount of taxes required to be paid (meaning those that are not in dispute). If the property owner pays the taxes not in dispute, the delinquency date for any additional amount of taxes due on the property is determined by Tax Code Section 42.42(c) and that additional amount is not delinquent before that date.<sup>435</sup>

A property owner who files a motion under Tax Code Section 25.25 is required, before the delinquency date, to pay the amount of taxes due on the portion of the taxable value of the property that is the subject of the motion and that is not in dispute or forfeit the right to proceed to a final determination.

The ARB may excuse the requirement based on an oath of inability to pay<sup>436</sup>. On a motion of a party, the ARB is required to determine compliance with these provisions in the same manner and by the same procedure as provided by Tax Code Section 41.4115(d) and may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.<sup>437</sup>

A property owner who pays an amount of taxes greater than required does not forfeit the right to a final determination of the motion by making the payment. If the property owner makes a timely motion under Tax Code Section 25.25, taxes paid on the property are considered paid under protest, even if paid before the motion if filed.<sup>438</sup>

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<sup>432</sup> Tex. Tax Code §25.26(e)

<sup>433</sup> Tex. Tax Code §25.25(h)

<sup>434</sup> Tex. Tax Code §§1.111(e) and 41.01(b)

<sup>435</sup> Tex. Tax Code §25.26(a) and (b)

<sup>436</sup> Tex. Tax Code §41.4115(d)

<sup>437</sup> Tex. Tax Code §25.26(b) and (d)

<sup>438</sup> Tex. Tax Code §25.26(c)

EXHIBIT 21  
Order Determining Motion to Correct Appraisal Roll

Order Determining Motion to Correct Appraisal Roll

Form 50-812

Appraisal Review Board of \_\_\_\_\_ County, Texas.

Case Number: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Property Account Number: \_\_\_\_\_

Property Legal Description:

\_\_\_\_\_

On \_\_\_\_\_ Month, \_\_\_\_\_ Day, \_\_\_\_\_ Year, the Appraisal Review Board of \_\_\_\_\_ County, Texas,

heard the motion of \_\_\_\_\_ Name \_\_\_\_\_ concerning the appraisal records for tax year \_\_\_\_\_.

The appraisal review board (ARB) delivered proper notice of the date, time and place of the hearing. The property owner or agent and the chief appraiser of the appraisal district were given the opportunity to testify and to present evidence. After considering the evidence and arguments presented at the hearing, the ARB has determined that the motion concerned the following action(s) permitted by Tax Code Section 25.25 to correct:

- A clerical error for tax year(s) \_\_\_\_\_
- Multiple appraisals for tax year(s) \_\_\_\_\_
- Inclusion of the property in the form or at the location shown on the appraisal roll for tax year(s) \_\_\_\_\_
- Ownership on Jan. 1 of tax year \_\_\_\_\_
- An appraisal error resulting in an appraised value that exceeds by one-fourth the correct appraised value of a residence homestead for tax year(s) \_\_\_\_\_
- An appraisal error resulting in an appraised value that exceeds by one-third the correct appraised value of a non-residence homestead for tax year(s) \_\_\_\_\_
- An incorrect appraised value based on a joint motion from the property owner and the chief appraiser
- An error of omission of tangible personal property in a rendition statement or property report for tax year(s) \_\_\_\_\_

Based on the evidence, the ARB makes the following determination(s) as indicated by a check mark and hereby issues the following as its ORDER DETERMINING MOTION OR ORDER OF DISMISSAL:

- The ARB lacks jurisdiction to determine the motion and hereby dismisses the motion.
- The appraisal roll has a clerical error that should be changed to reflect a value of \$ \_\_\_\_\_ from the appraisal district value of \$ \_\_\_\_\_ for tax year(s) \_\_\_\_\_.
- The appraisal roll has multiple appraisals and account number \_\_\_\_\_ should be removed from the appraisal roll for tax year(s) \_\_\_\_\_.
- The appraisal roll contains the inclusion of property that does not exist in the form or at the location described in the appraisal roll for tax year(s) \_\_\_\_\_ and should be removed from the appraisal roll(s).
- The appraisal roll will change the owner's name as of Jan. 1 for tax year \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_ (or unknown).
- The residence homestead property has an error that exceeds by one-fourth the correct value and the appraisal roll should be changed to \$ \_\_\_\_\_ from the appraisal district value of \$ \_\_\_\_\_ for tax year \_\_\_\_\_.
- The non-residence homestead property has a substantial error that exceeds by one-third the correct value and the appraisal roll should be changed to \$ \_\_\_\_\_ from the appraisal district value of \$ \_\_\_\_\_ for tax year \_\_\_\_\_.
- Based on a joint motion of the property owner and the chief appraiser, the appraised value shall be corrected to \$ \_\_\_\_\_ from the appraisal district value of \$ \_\_\_\_\_ for tax year \_\_\_\_\_.
- The property owner's motion concerning other matters permitted by Tax Code Section 25.25 is upheld, and the appraisal records should be changed to reflect the following change(s):

\_\_\_\_\_

- The property owner's motion concerning matters permitted by Tax Code Section 25.25 is denied and the appraisal records should not be changed.

sign here →

\_\_\_\_\_  
Chair, Appraisal Review Board

\_\_\_\_\_  
Date

Chief Appraiser's (Sample) Motion for Correction of Appraisal Roll

Chief Appraiser's Motion for Correction of Appraisal Roll

Form 50-770

In the County of \_\_\_\_\_  
State of Texas

\_\_\_\_\_ County  
Appraisal Review Board

Movant is \_\_\_\_\_, Chief Appraiser for the \_\_\_\_\_ Appraisal District.

Movant brings this motion for a hearing to correct the appraisal roll regarding the following property on the appraisal roll certified by this appraisal review board on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_:

Property description: \_\_\_\_\_

Property location: \_\_\_\_\_

Appraisal district property identification number(s): \_\_\_\_\_

This motion is to correct the following:

- clerical error that affects a property owner's liability for a tax imposed in tax year(s) \_\_\_\_\_;
- multiple appraisals of a property in tax year(s) \_\_\_\_\_;
- inclusion of property that does not exist in the form or at the location described in the appraisal roll for tax year(s) \_\_\_\_\_.
- an error of ownership of a property for tax year(s) \_\_\_\_\_; or
- an error or omission of tangible personal property in a rendition statement or property report for tax year(s) \_\_\_\_\_;

Movant states that the property described above is located within the \_\_\_\_\_ Appraisal District and within the following taxing units:

[Empty box for listing taxing units]

Movant states the specific error(s) this motion seeks to correct is or are:

[Empty box for describing specific errors]

Movant makes this motion pursuant to Tax Code Section 25.25(c) or (c-1) and requests that the appraisal review board schedule a hearing to determine whether to correct the error(s) identified above. Movant requests that the appraisal review board send notice of the time, date and place fixed for the hearing to movant, the property owner and the presiding officer of the governing body of each taxing unit where the property is located not later than 15 days before the scheduled hearing.

Respectfully submitted,

\_\_\_\_\_  
Signature of Movant

\_\_\_\_\_  
Date

A chief appraiser may use this motion to correct, for any of the five preceding years: (1) clerical errors that affect a property owner's liability for a tax imposed in that tax year; (2) multiple appraisals of a property in that tax year; (3) inclusion of property that does not exist in the form or at the location described in the appraisal roll; or (4) an error in ownership. Errors of omission of tangible personal property in a rendition statement or property report may be corrected for the current tax year and either of the preceding two tax years if criteria in 25.25(c-1) is met. Tax Code Section 1.04(18) defines clerical error as an error: (A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing or calculating; or (B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board or the assessor; however, clerical error does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination.



EXHIBIT 23  
Property Owner's (Sample) Motion for Correction of Appraisal Roll

Property Owner's Motion for Correction of Appraisal Roll

Form 50-771

In the County of \_\_\_\_\_ State of Texas \_\_\_\_\_ County Appraisal Review Board

Movant, \_\_\_\_\_, is owner of the following property:

Property description: \_\_\_\_\_

Property location: \_\_\_\_\_

Appraisal district property identification number(s): \_\_\_\_\_

Movant brings this motion for a hearing to correct the appraisal roll regarding Movant's above-referenced property on the appraisal roll certified by this appraisal review board on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This motion is to correct the following:

- clerical error that affects Movant's liability for a tax imposed in tax year(s) \_\_\_\_\_;
- multiple appraisals of a property in tax year(s) \_\_\_\_\_;
- inclusion of property that does not exist in the form or at the location described in the appraisal roll for tax year(s) \_\_\_\_\_;
- an error of ownership of a property for tax year(s) \_\_\_\_\_; or
- an error or omission of tangible personal property in a rendition statement or property report for tax year(s) \_\_\_\_\_.

Movant hereby certifies compliance with the provisions of Tax Code Section 25.26.

Movant states that the property described above is located within the \_\_\_\_\_ Appraisal District and within the following taxing units:

\_\_\_\_\_

Movant states the specific error(s) this motion seeks to correct is or are:

\_\_\_\_\_

Movant makes this motion pursuant to Tax Code Section 25.25(c) or (c-1) and requests that the appraisal review board schedule a hearing to determine whether to correct the error(s) identified above. Movant requests that the appraisal review board send notice of the time, date and place fixed for the hearing, not later than 15 days before the scheduled hearing, to movant, the chief appraiser and the presiding officer of the governing body of each taxing unit where the property is located.

Respectfully submitted,

**sign here** ▶

Signature of Movant or Authorized Agent\*

Date

\* A property owner may designate an agent; however, the designation does not take effect with respect to an appraisal district or taxing unit until a copy of the designation form is filed with the appraisal district. The designation form is prescribed by the Comptroller's office and is available at the appraisal district and on the Comptroller's website.

Contact information:

Printed Name of Movant or Authorized Agent

Phone (area code and number)

Current Mailing Address (number and street)

City, State, Zip Code

A property owner may use this motion to correct, for any of the five preceding years: (1) clerical errors that affect a property owner's liability for a tax imposed in that tax year; (2) multiple appraisals of a property in that tax year; (3) inclusion of property that does not exist in the form or at the location described in the appraisal roll; or (4) an error of ownership. Errors of omission of tangible personal property in a rendition statement or property report may be corrected for the current tax year and either of the preceding two tax years if criteria in 25.25(c-1) is met. Tax Code Section 1.04(18) defines clerical error as an error: (A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing or calculating; or (B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board or the assessor; however, clerical error does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination.

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

50-771 • 1-22/8

Motion for Hearing to Correct One-Fourth Over-Appraisal Error of Residence Homestead

Motion for Hearing to Correct One-Fourth Over-Appraisal Error of Residence Homestead

Form 50-869

In the County of \_\_\_\_\_ County
State of Texas Appraisal Review Board

Motion to Correct One-Fourth Over-Appraisal Error

Movant \_\_\_\_\_, Chief Appraiser for the \_\_\_\_\_ Appraisal District,
or \_\_\_\_\_, owner of property described as \_\_\_\_\_,
parcel number \_\_\_\_\_, brings this motion for a hearing to correct a one-fourth over-appraisal error regarding the described
homestead residence property on the appraisal roll certified by this appraisal review board on \_\_\_\_\_, \_\_\_\_\_.

Movant states that the property described above is movant's residence homestead.

Movant states that the property taxes due for the \_\_\_\_\_ tax year have not become delinquent, and the movant property owner has complied with
the provisions of Tax Code Section 25.26 and has not forfeited the right to appeal for non-payment of taxes.

Movant states that the property described above is located within the \_\_\_\_\_ Appraisal District. Further, movant states
that the property described above is located within the taxing units listed below.

[Empty box for listing taxing units]

Movant states the one-fourth over-appraisal error is as follows:

[Empty box for describing the appraisal error]

Movant makes this motion pursuant to Tax Code Section 25.25(d)(1) and (e) and requests that the appraisal review board schedule a hearing to determine whether
to correct the error. Movant requests that the appraisal review board send notice of the time, date and place fixed for the hearing, to the presiding officer of the
governing body of each taxing unit where the property is located, not later than 15 days before the scheduled hearing.

Respectfully submitted,

sign here

Signature of Movant

Date

Contact information:

Printed Name of Movant or Authorized Agent

Phone (area code and number)

Current Mailing Address (number and street)

City, State, Zip Code

The property owner, owner's agent designated under Tax Code Section 1.111 or chief appraiser may use this motion to correct an appraisal error that results in a value one-
fourth over the appraised value of a residence homestead.

If this motion changes the appraisal roll, the property owner must pay each affected taxing unit a late-correction penalty equal to 10 percent of the tax amount calculated
on the corrected appraised value under Tax Code Section 25.25(d-1).

EXHIBIT 25  
**Motion for Hearing to Correct One-Third Over-Appraisal Error**

## Motion for Hearing to Correct One-Third Over-Appraisal Error of Non-Residence Homestead Property

Form 50-230

In the County of \_\_\_\_\_ County  
State of Texas \_\_\_\_\_ Appraisal Review Board

### MOTION TO CORRECT ONE-THIRD OVER-APPRAISAL ERROR

Movant \_\_\_\_\_, Chief Appraiser for the \_\_\_\_\_ County Appraisal District, or  
\_\_\_\_\_, owner of property described as \_\_\_\_\_,  
parcel number \_\_\_\_\_, brings this motion for a hearing to correct a one-third over-appraisal error regarding the described non-residence  
homestead property on the appraisal roll certified by this appraisal review board on \_\_\_\_\_, \_\_\_\_\_.

Movant states that the property taxes due for the \_\_\_\_\_ tax year have not become delinquent, and the movant property owner has complied with the provisions of Tax  
Code Section 25.26 and has not forfeited the right to appeal for non-payment of taxes.

Movant states that the property described above is located within the \_\_\_\_\_ County Appraisal District. Further, movant states that the property  
described above is located within the taxing units listed below.

Movant states the one-third over-appraisal error is as follows:

Movant makes this motion pursuant to Tax Code Section 25.25(d)(2) and (e) and requests that the appraisal review board schedule a hearing to determine whether to correct the  
error. Movant requests that the appraisal review board send notice of the time, date and place fixed for the hearing, to the presiding officer of the governing body of each taxing  
unit where the property is located, not later than 15 days before the scheduled hearing.

Respectfully submitted,

**sign  
here** ➔

\_\_\_\_\_  
Signature of Movant

\_\_\_\_\_  
Date

Contact information:

\_\_\_\_\_  
Printed Name of Movant or Authorized Agent

\_\_\_\_\_  
Phone (area code and number)

\_\_\_\_\_  
Current Mailing Address (number and street)

\_\_\_\_\_  
City, State, Zip Code

*The property owner, owner's agent designated under Tax Code Section 1.111 or chief appraiser may use this motion to correct an appraisal error that results in a value one-third over the appraised value of a non-residence homestead property.*

*If this motion changes the appraisal roll, the property owner must pay each affected taxing unit a late-correction penalty equal to 10 percent of the tax amount calculated on the corrected appraised value under Tax Code Section 25.25(d-1).*

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

For additional copies, visit: [comptroller.texas.gov/taxes/property-tax](http://comptroller.texas.gov/taxes/property-tax)

50-230 • 11-21/8

EXHIBIT 26  
**Notice of Hearing**

Notice of Hearing

Form 50-231

This form may be used as notification for a hearing scheduled by the appraisal review board (ARB) to determine the merits of a motion to correct the appraisal roll under Tax Code Section 25.25(c) or (d).

If the chief appraiser and the property owner do not agree to a correction pursuant to Tax Code Section 25.25(c) or (d) before the 15th day after the date the motion is filed, a party bringing a motion is entitled on request to a hearing on and a determination of the motion by the ARB. The ARB shall deliver written notice of the date, time and place of the hearing to the chief appraiser, the property owner and the presiding officer of the governing body of each taxing unit in which the property is located not later than 15 days before the date of the hearing.

County of \_\_\_\_\_  
State of Texas

**NOTICE OF HEARING**

The \_\_\_\_\_ County Appraisal Review Board has scheduled a hearing pursuant to Tax

Code Section 25.25 to determine a correction on the appraisal roll for \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ .m.  
(month) (day) (year) (time) (am/pm)

The hearing will be held at \_\_\_\_\_ .  
(place)

This hearing concerns property described as follows:

\_\_\_\_\_,  
(address)

parcel number \_\_\_\_\_.

**sign  
here** ➔

\_\_\_\_\_  
County Appraisal Review Board

EXHIBIT 27  
**Joint Motion to Correct Incorrect Appraised Value**

## Joint Motion to Correct Incorrect Appraised Value

Form 50-249

In the County of \_\_\_\_\_ County  
State of Texas Appraisal Review Board

### Motion to Correct Incorrect Appraised Value

Movants \_\_\_\_\_, Chief Appraiser for the \_\_\_\_\_ County Appraisal District, and \_\_\_\_\_, owner of property described as \_\_\_\_\_, parcel number \_\_\_\_\_, bring this joint motion to correct the value on the described property on the appraisal roll approved by this appraisal review board on \_\_\_\_\_, \_\_\_\_\_, and certified to the taxing units on \_\_\_\_\_, \_\_\_\_\_.

Movants state that the property taxes due for the \_\_\_\_\_ tax year have not become delinquent, and the movant property owner has complied with the provisions of Tax Code Section 25.26 and has not forfeited the right to appeal for non-payment of taxes.

Movants state that the property described above is located within the \_\_\_\_\_ County Appraisal District. Further, movants state that the property described above is located within the taxing units listed below:

Movants state the incorrect value is as follows:

Movants makes this motion pursuant to Tax Code Section 25.25(h) – (j) and request that the appraisal review board correct the value.

Respectfully submitted,

**sign here** ▶

\_\_\_\_\_  
Movant Property Owner

\_\_\_\_\_  
Date

**sign here** ▶

\_\_\_\_\_  
Appraisal District Representative

\_\_\_\_\_  
Date

**sign here** ▶

\_\_\_\_\_  
Agent's Signature if on Behalf of Property Owner

\_\_\_\_\_  
Date



# Chapter 8

## Post-ARB Review

### Review in state district court

Taxing units and property owners may take their appeals to district court. If a property owner has submitted a protest or a motion to correct the ARB order, district court may allow property owners to cure their appeal as a timely filed protest.<sup>439</sup> In addition, a property owner who appeals an ARB decision has a right to court approved, non-binding arbitration. Binding arbitration is required if the appraisal district joins in the motion or consents to the court-approved arbitration.<sup>440</sup>

A property owner may appeal an ARB order determining a protest, including an ARB determination that the property owner forfeited the right to a final determination under Tax Code Section 25.25, forfeiture of protest for failure to pay delinquent taxes, the ARB's decision that it lacks jurisdiction to make the determination, and refund of prepayment of fleet transaction taxes on heavy equipment.<sup>441</sup> The chief appraiser may appeal an ARB order determining a property owner protest if he or she has the written approval of the appraisal district board of directors and the appraised or market value of the protested property is \$1 million or more.<sup>442</sup> The chief appraiser may appeal an ARB order on property valued at less than \$1 million only when the board of directors has given written permission and the chief appraiser alleges the property owner or agent committed fraud or made material misrepresentations at the protest hearing.<sup>443</sup>

The court is entitled to make a final determination of a protest under Chapter 41, Subchapter C, or a motion to correct under Section 25.25, if the property owner can establish that the ARB had jurisdiction to make a final decision the ARB had determined it lacked jurisdiction to make. The final

determination made by the court under this subsection can be on any ground of protest, regardless of whether property owners indicated it in their notice of protest or not.<sup>444</sup>

If a plea to the jurisdiction of the district court is filed on the basis that a property owner failed to exhaust his or her administrative remedies in an appeal by a property owner of an ARB order determining a protest under Chapter 41, Subchapter C or a Section 25.25 motion, then the district court may, in lieu of dismissing the appeal for lack of jurisdiction, remand the action to the ARB with instruction to allow the property owner an opportunity to cure the property owner's failure to exhaust administrative remedies. However, with the agreement of both parties to the appeal and approval of the court, the court may determine the outcome of the appeal.

A lessee – who is contractually obligated to reimburse the lessor (property owner) for property taxes – can appeal to an ARB order to district court. If the lessee appeals the order, the lessee is considered the owner of the property for appeal purposes. The chief appraiser must send any written notice concerning the appeal to the person bringing the appeal.<sup>445</sup>

To appeal, a party other than a property owner must file written notice within 15 days after receiving the notice of an order that the ARB issued. Taxing units must file this notice with the chief appraiser. The chief appraiser must file the notice with the ARB.<sup>446</sup>

If the chief appraiser or a taxing unit initiates an appeal, the chief appraiser must deliver a copy of the notice to the property owner involved within 10 days after the chief appraiser or taxing unit files the notice.<sup>447</sup>

<sup>439</sup> Tex. Tax Code Chapter 42

<sup>440</sup> Tex. Tax Code §42.225

<sup>441</sup> Tex. Tax Code §42.01

<sup>442</sup> Tex. Tax Code §42.02(a)

<sup>443</sup> Tex. Tax Code §42.02(c)

<sup>444</sup> Tex. Tax Code §42.01 (c)

<sup>445</sup> Tex. Tax Code §42.015

<sup>446</sup> Tex. Tax Code §42.06

<sup>447</sup> Tex. Tax Code §42.06

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The party initiating the appeal then files a petition for review with the district court no more than 60 days after receiving the notice of the ARB's order. A petition filed after the time limit bars district court appeal. These lawsuits are brought against the appraisal district. A petition for review cannot be brought against the ARB. If a petition is brought against the ARB, the appraisal district's attorney may represent the ARB only to file an answer and seek a dismissal of the suit.<sup>448</sup>

A person may intervene in a property tax appeal to the district court, if the property that is the subject of the appeal was also the subject of a protest hearing and the person:

- owned the property at the time during the tax year at issue;
- leased the property at any time during the tax year at issue and the person filed the protest that resulted in the issuance of the order under appeal; or
- is shown on the appraisal roll as the owner of the property or as a lessee authorized to file a protest and the person filed the protest that resulted in the issuance of the order under appeal.<sup>449</sup>

## Binding arbitration

The Tax Code provides an alternative to filing an appeal in district court.<sup>450</sup> A property owner has the right to appeal ARB decisions through binding arbitration outside of the judicial system. A property owner may seek binding arbitration of an ARB order of determination of a protest on the appraised or market value or unequal appraisal of a residence homestead, or other property as determined by the order that is valued at \$5 million or less.<sup>451</sup>

An ARB that delivers to a property owner an order determining a protest concerning a person's residence homestead or property that qualifies for binding arbitration must include with the order a notice of the property owner's right to binding arbitration and a copy of the form to request arbitration.<sup>452</sup>

Within 60 days of receiving the notice of determination from the ARB, the property owner must file a request for binding arbitration with the appraisal district and include a deposit

based on the type and value of the property. A property owner of contiguous land that has two or more ARB orders of determination only needs to pay a single arbitration deposit.<sup>453</sup> The appraisal district will forward the deposit and application for arbitration to the Comptroller's office.<sup>454</sup> The Comptroller's office will select the arbitrator based on the property owner's request for either an arbitrator who resides in the county in which the property is located or an arbitrator who resides outside the county in which the property is located. If there are no available arbitrators for a specified county, the Comptroller's office will appoint a substitute. Property owners cannot request the appointment of a specific individual as their arbitrator.<sup>455</sup>

If the arbitrator's value decision is closer to the value the property owner claims to be correct, then most of the deposit is returned to the property owner and the appraisal district pays the arbitrator's fee. The Comptroller's office will retain \$50 of the deposit to cover administrative costs. If the arbitrator's value decision is closer to the value the ARB decided on the order determining protest, then the arbitrator's fee is paid from the owner's deposit and any balance is refunded to the property owner.<sup>456</sup>

Comptroller rules address the administration of this process.

## Appeal to State Office of Administrative Hearings (SOAH)

A property owner in any county may appeal an ARB order of determination to SOAH. To qualify, a property owner must be appealing an ARB order of determination brought under Tax Code Section 41.41(a)(1) or (2) if the appraised or market value is more than \$1 million. The program is applicable to a determination of the appraised or market value made by an ARB in connection with real or personal property other than industrial property. A property owner wishing to appeal an ARB determination in connection with minerals may do so to SOAH.<sup>457</sup>

Upon determining a protest, the ARB is required to deliver notice of the determination to the property owner along with

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<sup>448</sup> Tex. Tax Code §42.21

<sup>449</sup> Tex. Tax Code §42.016

<sup>450</sup> Tex. Tax Code Chapter 41A

<sup>451</sup> Tex. Tax Code §41A.01

<sup>452</sup> Tex. Tax Code §41A.02

<sup>453</sup> Tex. Tax Code §41A.03

<sup>454</sup> Tex. Tax Code §41A.05

<sup>455</sup> Tex. Tax Code §41A.07

<sup>456</sup> Tex. Tax Code §§41A.05(b) and 41A.09

<sup>457</sup> Tex. Gov't Code Chapter 2003, Subchapter Z



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an explanation of the property owner's rights and a copy of the notice of appeal to SOAH.<sup>458</sup>

To appeal an ARB order to SOAH, a property owner must file with the chief appraiser of the appraisal district not later than the 30th day after the date the property owner receives notice of the order a completed notice of appeal to SOAH in the form prescribed and file within 90 days after receiving the ARB order a \$1,500 filing fee payable to SOAH. The chief administrative law judge will prescribe the form of notice of appeal. The form must require the property owner to provide a copy of the order of the ARB; a brief statement that explains the basis for the property owner's appeal of the order; and a statement of the property owner's opinion of the appraised or market value, as applicable, of the property that is the subject of the appeal.<sup>459</sup>

As soon as practicable after receipt of a notice of appeal, the chief appraiser for the appraisal district must indicate, where appropriate, those entries in the records that are subject to the appeal, submit the notice of appeal and filing fee to SOAH, and request the appointment of a qualified administrative law judge to hear the appeal.<sup>460</sup>

Once a judge has been selected to hear the appeal, the administrative law judge will set the location for the hearing. Appeals will only be heard in the cities of Amarillo, Austin, Beaumont, Corpus Christi, El Paso, Fort Worth, Houston, Lubbock, Lufkin, McAllen, Midland, San Antonio, Tyler and Wichita Falls. If a property is in all or part of one of the municipalities listed, the appeal will be heard in that location. If no part of the property is in a municipality listed, the appeal will be heard in the municipality that is nearest to the subject property.<sup>461</sup>

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<sup>458</sup> Tex. Gov't Code §2003.908

<sup>459</sup> Tex. Gov't Code §§2003.906 and 2003.907

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<sup>460</sup> Tex. Gov't Code § 2003.906

<sup>461</sup> Tex. Gov't Code §§ 2003.902 and 2003.909

EXHIBIT 28  
**Model Hearing Procedures**



**Model Hearing Procedures for  
Appraisal Review Boards**

**I. ARB Membership**

[Tax Code Section 5.103(b)(12), (15), and (16)]

1. Administration of ARB Appointments

ARB members have no statutory role in the process for the administration of applications or requests for appointment for membership on the ARB. If an individual is contacted by an ARB member regarding requesting an appointment to the ARB, the member must direct the individual to the person designated to receive applications or requests for ARB appointment.

2. Conflicts of Interest

Each ARB member must ensure that he or she does not have any conflict of interest that results in ineligibility to serve on the ARB or that restricts or prohibits the ARB member's participation in ARB activities, such as participation in the determination of a taxpayer protest. An ARB member must promptly report any conflict of interest to the ARB chair in addition to any other individual or entity as required by law. The chair must ensure prompt notification of reported conflicts of interest to the appropriate individuals.

If an ARB member discovers before or during a protest hearing that a conflict of interest exists, the member cannot participate in a protest hearing. If the conflict exists due to the provisions of the Local Government Code Chapter 171, the member must file an affidavit with the ARB secretary. The ARB member must file the affidavit as soon as the conflict is identified, even if it requires a delay in the conduct of the hearing. If the conflict arises from Tax Code Section 41.69, the ARB member does not have to file an affidavit but must recuse himself or herself immediately from the hearing and report the conflict to the ARB chair or secretary.

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

ARB members must remember that while Local Government Code Chapter 171 addresses matters of “substantial interest,” Tax Code Section 41.69 applies to any protest in which an ARB member has interest (i.e. Tax Code Section 41.69 does not require the interest to be substantial). While a conflict of interest under Local Government Code Chapter 171 may not prohibit an ARB member from participation in a protest, Tax Code Section 41.69 may still prohibit participation. If an ARB member has a question as to whether he or she has a conflict of interest that might prohibit his or her involvement, the member must immediately contact the ARB chair to address the matter.

In the recusal process, the ARB member cannot hear the protest, deliberate on the protest or vote on the matter that is the subject of the protest.

3. Ex Parte and Other Prohibited Communications

ARB members must not engage in prohibited ex parte or other communications. If one or more individuals approach the ARB member and appear to engage or attempt to engage in a prohibited communication, the ARB member must immediately remove himself or herself from the conversation.

**II. ARB Duties**

**[Tax Code Section 5.103(b) (1), (5), and (6)]**

1. Statutory Duties of an ARB

Each ARB member must ensure that he or she understands the statutory duties of the ARB and complies with all statutory requirements in performing statutory duties as an ARB member.

2. Notices Required under the Property Tax Code

Each ARB member must obtain and maintain familiarity with notices required under the Property Tax Code. If an ARB member believes that any required notice is not being provided or does not meet the requirements of applicable law, the ARB member must promptly notify the ARB chair. The ARB chair must investigate each report and take appropriate action to correct all verified problems.

3. Determination of Good Cause under Tax Code Section 41.44(b)

“Good cause” for filing late protests is not defined in Tax Code Section 41.44(b). Claims of good cause for late-filed protests must carefully considered. The standards in making determinations of good cause under Tax Code Section 41.44(b) must uniformly applied. The ARB should give due consideration to good cause claims in a manner that properly respects the rights of property owners and their agents while not undermining or

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

contravening laws related to filing deadlines or the orderly and expeditious fulfillment of ARB duties.

**III. ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff)**

**[Tax Code Section 5.103(b)(3), (4), (7), and (14)]**

1. Scheduling Hearings Generally

The ARB must schedule a hearing when a timely notice of protest is filed and, in doing so, the appraisal district can provide the ARB with clerical assistance.

A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the ARB the appraised value of the property if the property owner does not file a protest relating to the property. Under Tax Code Section 41.413, the lessee can designate another person to act as an agent with the same authority and limitations as an agent designated under Tax Code Section 1.111. Designated agents have the same authority and are subject to the same limitations as agents designated by property owners.

2. Scheduling Hearings for Property Owners, Agents and Qualifying Lessees

Pursuant to Tax Code Section 41.66(i), the ARB must schedule hearing requests filed by property owners or their designated agents under Tax Code Section 1.111 for a specific time and date. The ARB can schedule more than one protest hearing at the same time and date; however, the property owner or agent can request to postpone a hearing if it is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the 7th day after the date of receipt of the request.

3. Scheduling Hearings for Multiple Accounts

If requested by a property owner or the designated agent, the ARB must schedule consecutive hearings on the same day on protests concerning up to 20 designated properties. The request must meet all requirements of Tax Code Section 41.66(j), including the required statement in boldfaced type: “request for same-day protest hearings.” A property owner or designated agent can file more than one such request in the same tax year. Also pursuant to Tax Code Section 41.66(j), the ARB may schedule protest hearings concerning more than 20 properties filed by the same property owner or designated agent and may use different panels to conduct the hearings based on the

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

ARB's customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under Section 41.66(j).

4. ARB Panel Assignments [**Tax Code Section 41.66 (k)(k-1) and 41.45(d)(d-1)**]

Pursuant to Tax Code Section 41.66(k) and (k-1), if an ARB sits in panels as authorized by Tax Code Section 41.45(d) and (d-1), it must randomly assign protests. Except for panels established under Tax Code Section 6.425, the ARB, with or without clerical assistance from the appraisal district staff, may consider the property type or the protest grounds in order to assign the protest to a panel with members who have particular expertise.

Tax Code Section 41.45(b-4) allows a property owner to request that a single-member panel conduct the protest hearing. The property owner must submit the request not later than the 10th day before the hearing date in writing on the notice of protest or by a written submission. If the ARB does not accept the recommendations made by the single-panel member, the ARB can determine the protest or refer it for rehearing to a single-member panel composed of someone who did not hear the original protest.

Tax Code Section 41.66(k-1) allows a property owner or agent to request a special ARB panel to hear a complex property protest if in a county with a population of one million or more. The owner or agent must consent to a special panel reassignment and may request a postponement if they disagree with the reassignment.

Once a protest is scheduled for a specific panel, the ARB cannot reassign it to another panel without the consent of the property owner or a designated agent. If the ARB reassigns a protest to another panel, the owner or designated agent may agree to the reassignment or request a postponement of the hearing. The ARB must postpone the hearing if requested in this situation. Pursuant to Tax Code Section 41.66(k), “[a] change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel.”

5. Postponements Under Tax Code Section 41.45(e)

A property owner who is not represented by an agent under Tax Code Section 1.111 is entitled to one postponement of a hearing without showing cause. The property owner must request the postponement before the hearing date in writing, including by facsimile, email, telephone or in person to the ARB, an ARB panel or the ARB chair. If the requested hearing postponement is scheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative may act on the request for postponement without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the ARB cannot postpone the hearing to a date

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

Without limit, the ARB must postpone a hearing if the property owner or the designated agent shows good cause, as defined in Tax Code Section 41.45(e-2). The property owner or designated agent must request the postponement in writing, including by facsimile, email, telephone or in person to the ARB, an ARB panel or the ARB chair. If the postponed hearing is rescheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative can act on the postponement request without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the ARB cannot postpone the hearing to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

Without limit, the ARB must postpone a hearing if the chief appraiser consents to the postponement. The chief appraiser must request the postponement in writing, including by facsimile, email, telephone or in person to the ARB, an ARB panel or the ARB chair. If the postponed hearing is rescheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative can act on the postponement request without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the ARB cannot postpone a hearing to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the 7th day after the date of receipt of the request.

6. Postponements Under Tax Code Section 41.45(e-1)

A property owner or owner's agent who fails to appear at the hearing is entitled to a new hearing if the property owner or owner's agent file, not later than the fourth day after the date the hearing occurred, a written statement with the ARB showing good cause, as defined in Tax Code Section 41.45(e-2), for the failure to appear and requesting a new hearing.

The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the 7th day after the date of receipt of the request.

7. Postponements Under Tax Code Section 41.45(g)

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

The ARB must postpone a hearing to a later date if:

- (1) the property owner or the owner's agent is also scheduled to appear at an ARB protest hearing in another appraisal district;
- (2) the other scheduled ARB protest hearing is scheduled to occur on the same date as the hearing set by this ARB;
- (3) the hearing notice delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the hearing notice delivered by this ARB or, if the postmark date is identical, the property owner or agent has not requested a postponement of the other hearing; and
- (4) the property owner or the owner's agent includes with the postponement request a copy of the hearing notice delivered to the property owner or the owner's agent by the other ARB.

8. Postponements Under Tax Code Section 41.66(h)

The ARB must postpone a hearing (one time only) if the property owner or the designated agent requests additional time to prepare for the hearing and establishes that the chief appraiser failed to comply with Tax Code Section 41.461. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the 7th day after the date of receipt of the request.

9. Postponements Under Tax Code Section 41.66(i)

The ARB must schedule protest hearings filed by property owners or their designated agents under Tax Code Section 1.111 for a specific time and date. The ARB can schedule more than one protest hearing at the same time and date; however, a property owner or agent can request to postpone a hearing if it is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the 7th day after the date of receipt of the request.

10. Postponements Under Tax Code Section 41.66(k)(k-1)

Once the ARB schedules a hearing by a specific panel, the ARB can reassign it to another panel without the consent of the property owner or designated agent. If the ARB reassigns a protest to another panel, a property owner or designated agent may agree to reassignment or request that a hearing postponement. The ARB must postpone the hearing on that request. A change of panel members because of a conflict of interest, illness or inability to continue participating in hearings for the remainder of the day does not constitute panel reassignment.

A property owner or agent must consent to a special panel ARB hearing reassignment or

6

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

request a postponement if they disagree with the reassignment. A change of special panel members because of a conflict of interest, illness or inability to continue participating in hearings for the remainder of the day does not constitute a special panel hearing reassignment.

The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the 7th day after the date of receipt of the request.

**IV. Conduct of ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff)**

**[Tax Code Section 5.103(b)(2), (9), and (10)]**

1. Conducting Hearings Open to the Public

This introductory statement must read at the beginning of each hearing:

We are the appraisal review [board or panel] that will hear your protest today. We are not employees of the appraisal district. We are appointed to perform an independent review of your protest. You can complete a survey regarding your experience today [provide instructions on how to fill out the survey]. The survey is voluntary. You also have the right to appeal our decision. We will provide the appeal information to you with our determination.

The ARB or ARB panel does not have to read the statement above if the owner or agent has previously appeared before the ARB or any ARB panel for the ARB for that county that same day.

ARBs should conduct most protest hearings in the following order:

- a. Commence the hearing and announce the assigned protest number, property location, property owner and other identifying information.
- b. Announce that, in accordance with Tax Code Section 41.45(h), the parties must provide all written and electronic material that has not been provided.
- c. State that the ARB members who are considering the protest have not communicated with anyone about the protest and have signed affidavits to that effect.
- d. Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
- e. Ask if any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board and if the witness is appearing in that capacity.
- f. Inform witnesses that they must give all testimony under oath and swear-in

7



EXHIBIT 28 (continued)  
**Model Hearing Procedures**

- all witnesses who plan to testify.
- g. Ask the property owner to decide if he/she wishes to present his/her evidence and argument before or after the appraisal district.
  - h. If the property owner or agent presents his/her case first, he/she will present evidence (documents and/or testimony). If witnesses are present, the property owner or agent can examine the witnesses as part of the presentation of evidence. At the end of the presentation, the property owner or agent must state an opinion of the property's value (if applicable).
  - i. Next, the appraisal district representative may cross-examine the property owner, the agent or representative and/or witnesses.
  - j. If the property owner or agent presented his/her case first, the appraisal district representative will present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative can examine the witnesses as part of the presentation of evidence. At the end of the presentation, the appraisal district representative must state an opinion of the property's value (if applicable).
  - k. Then, the property owner or agent can cross-examine the appraisal district representative and/or witnesses.
  - l. The parties cannot examine or cross-examine the ARB members.
  - m. The party presenting its case first can offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
  - n. The other party can then offer rebuttal evidence.
  - o. The party presenting its case first must make its closing argument and state the ARB determination being sought.
  - p. The party presenting its case second must make its closing argument and state the ARB determination being sought.
  - q. The ARB or panel chair must state that the hearing is closed.
  - r. The ARB or panel must deliberate orally. No notes, text messages, or other forms of written communication are permitted.
  - s. The ARB or panel chairman must ask for a separate motion for each matter that was the subject of the protest hearing. The motion should include the exact value or issue protested. The ARB must take a vote and a designated appraisal district staff person or ARB member must record it. The parties must make separate motions and the ARB must make separate determinations for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).

Single-member panels must make a recommendation on each motion submitted under protest, however, the ARB will ultimately accept the panel's determination, make its own determination on the protest, or refer the matter for rehearing to a single-member panel composed of someone who did not hear the original protest.

Special panels appointed in certain counties must make a recommendation on each motion submitted under protest, however, the ARB will ultimately accept the panel's determination or refer the matter

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

- for rehearing to a another special panel composed of members who did not hear the original protest. If ARB does not have at least three other special panel members available, the ARB may make the determination.
- t. Thank the parties for their participation and announce the ARB determination(s) and that an order determining protest will be sent by certified mail or email in counties with populations greater than 120,000 where property owners can submit a written request for email delivery of the notice of determination. Provide the property owner or agent documents indicating that the members of the board hearing the protest signed the required affidavit.

If the ARB members use computer screens during ARB hearings for reviewing evidence and other information, the ARB must make computer screens available to property owners and agents at the hearings to view the same information that is presented to the ARB members by the appraisal district staff. This requirement is met if the property owner or agent can see all information displayed on at least one computer screen in the hearing location (there is no requirement that the ARB provide the property owner or agent with a separate screen).

If a chief appraiser uses audiovisual equipment at a protest hearing, the appraisal office must provide equipment of the same general type, kind and character for the use of the property owner or agent during the hearing. See section VI, Other Issues, for more information regarding audiovisual equipment requirements.

The property owner or agent and the appraisal district representative are prohibited from debating each other. The parties must direct all communications to the ARB members, except for examination or cross-examination during testimony of witnesses or parties testifying at the hearing.

For taxing unit challenges, motions to correct appraisal records, protests regarding exemptions, or other matters that may be the subject of ARB hearings, the ARB should follow the order of conducting hearings above but may make exceptions for the type of hearing.

Tax Code Section 41.68 and Comptroller Rule 9.803 require that the ARB keep records for each ARB proceeding. This includes the ARB retaining evidence offered or submitted by the parties as required by Tax Code Section 41.45 and Comptroller Rules 9.803 and 9.805. The ARB secretary is responsible for ensuring proper record keeping, maintenance and retention.

## 2. Conducting Hearings by Telephone or Videoconference Call

Tax Code Section 41.45(n) allows a property owner initiating a protest can offer evidence or argument by affidavit without physically. Tax Code Section 41.45(b-1) requires a property owner to notify the ARB by written request not later than the 10th

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

day before the date of the hearing if the property intends to appear remotely.. To offer evidence or argument at a hearing conducted remotely, a property owner must submit a written affidavit of any evidence before the hearing begins. A property owner is responsible for providing access to a hearing conducted remotely to another person the owner invites to participate in the hearing.

Tax Code Section 41.45(b-2) requires the ARB to provide the telephone number for conducting the teleconference call or the URL address for conducting the videoconference (if offered in that county). The ARB must hold the hearing in a location with equipment that allows all ARB members and parties to the protest in attendance to hear and see the property owner's argument.

3. Conducting Hearings Closed to the Public [Tax Code Section 41.66(d), (d-1)]

The chief appraiser and the property owner must file a joint motion to request that a closed hearing due to intent to disclose proprietary or confidential information that will assist the ARB in determining the protest.

The ARB or panel chair must convene the hearing as an open meeting and then announce the closed meeting as permitted by Tax Code Section 41.66(d) and (d-1). Only the parties to the protest, their witnesses and the ARB members are permitted to stay in the hearing room. The ARB must follow the same order of proceedings as for hearings open to the public.

The ARB secretary must keep a separate tape recording or written summary of testimony for the closed meeting in accordance with Comptroller Rule 9.803, generally. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is confidential according to Tax Code Section 22.27. The ARB must mark as "confidential" and maintain it as confidential in the ARB records for proper handling. At the conclusion of the hearing, the ARB panel must confirm with the parties that all proprietary and confidential information has been appropriately identified by the ARB. The ARB members must maintain the confidentiality of the information and disclose only as provided by law.

After deliberation, the ARB must reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting. The ARB and parties cannot mention of the proprietary or confidential information during the open meeting.

4. Right to Examine and Cross-Examine Witnesses or Other Parties

Tax Code Section 41.66(b) states that "each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing." The ARB cannot prohibit this entitlement in any way; however, it may enforce time limits and dictate the order of ARB hearings for

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

witness examination and cross-examination. To the extent possible, the ARB should advise the parties in advance of any time limitations that the ARB intends to impose regarding the presentation of evidence.

5. Party's Right to Appear by an Agent

A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on the property can file a protest if the property owner does not and to designate, under Tax Code Section 41.413, another person to act as his/her agent with the same authority and limitations as an agent designated under Tax Code Section 1.111.

**V. Evidence Considerations**

**[Tax Code Section 5.103(8), (11), and (13)]**

1. A Party's Right to Offer Evidence and Argument

The ARB cannot prohibit a party's right to offer evidence and argument but may enforce time limits and dictate the order of ARB hearings. To the extent possible, the ARB should advise the parties in advance of any time limitations the ARB intends to impose regarding the presentation of evidence and argument. The ARB should, schedule permitting, provide as much time as possible to each party to a hearing to fully present evidence and offer argument.

2. Prohibition of Consideration of Information Not Provided at the ARB Hearing  
**[Tax Code Section 41.66(e)]**

In a protest hearing, the ARB cannot consider any appraisal district information on a protest that was not presented to the ARB during the protest hearing. In order for the ARB to consider any appraisal district record (i.e., appraisal roll history, appraisal cards), one of the parties must present it as evidence (e.g. chief appraiser, appraisal district representative, property owner, agent or witness) at the protest hearing.

3. Exclusion of Evidence Required by Tax Code Section 41.67(d), (e)

If it is established during a protest hearing that the protesting party previously requested information under Tax Code Section 41.461 and that the opposing party did not deliver the information to the protesting party at least 14 days before the scheduled or postponed hearing, the opposing party cannot use or offer the requested information not made available in any form as evidence in the hearing. The ARB must exclude evidence under Tax Code Section 41.67(d) only if evidence presented at the hearing establishes that:

- 1) the information sought to be excluded as evidence was not delivered at least 14

EXHIBIT 28 (continued)  
**Model Hearing Procedures**

- days before the hearing; and
- 2) the information sought to be excluded as evidence was previously requested by the protesting party.

Tax Code Section 41.67(e) prohibits the chief appraiser from offering evidence at a hearing in support of a modification or denial of an exemption or application unless:

- 1) the chief appraiser provided the reasoning for the modification or denial to the property owner in writing no later than the 14th day before the hearing date; and
- 2) evidence establishes that the additional reason was not known by the chief appraiser at the time the chief appraiser delivered the original notice of modification or denial.

**VI. Other Issues**

**[Tax Code Section 5.103(17)]**

1. Compliance with the Law, Integrity, and Impartiality

ARB members must comply with the law and always act in a manner that promotes public confidence in the integrity and impartiality of the ARB.

2. Patience and Courtesy

ARB members must be patient, dignified and courteous to parties appearing before the ARB.

3. Bias or Prejudice

ARB members must perform their ARB duties without bias or prejudice.

4. Confidential Information

ARB members must not disclose or use confidential information acquired in the performance of ARB duties for any purpose unrelated to ARB duties.

5. Required Contents That Vary By ARB

ARB model hearing procedures must comply with Comptroller Rule 9.805 concerning ARB evidence exchange and retention and audiovisual equipment requirements. The rule requires that ARB procedures include specific items that may vary by ARB. The rule addresses:

- the manner and form, including security requirements, in which a person must

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EXHIBIT 28 (concluded)  
**Model Hearing Procedures**

provide the other party with evidentiary materials the person intends to offer or submit to the ARB for consideration at the hearing on a small, portable, electronic device;

- how to retain the evidence as part of the ARB’s hearing record; and
- the audiovisual equipment provided by an appraisal district, if any, for use by a property owner or the property owner’s agent.

This section of the ARB’s hearing procedures must address each item required in Comptroller Rule 9.805.

January 1, 2022  
Property Tax Assistance Division  
Texas Comptroller of Public Accounts

# Statement of Compliance

In compliance with Tax Code Section 5.041, this form must be completed and submitted to the Texas Comptroller of Public Accounts upon completion of the mandatory Appraisal Review Board (ARB) new member training or upon completion of the mandatory continuing education training for returning ARB members. An ARB member may not participate in a hearing conducted by the ARB, vote on a determination of a protest, or be reappointed to an additional term on the ARB unless the person has completed the appropriate ARB training course, has received a certificate of course completion and has completed this statement indicating agreement to comply with the Tax Code in conducting ARB hearings.

I, \_\_\_\_\_,  
Print name

ARB member for the county of \_\_\_\_\_,  
County

successfully completed the Comptroller's ARB new member/continuing education training program on  
\_\_\_\_\_  
Date

Pursuant to Tax Code Section 5.041, I hereby affirm that I will comply with Tax Code requirements governing ARB protest hearing procedures.

Print Here → \_\_\_\_\_  
Print Name

Sign Here → \_\_\_\_\_  
Signature Date

For more information, visit our website:  
**[comptroller.texas.gov/taxes/property-tax](https://comptroller.texas.gov/taxes/property-tax)**

In compliance with the Americans with Disabilities Act,  
this document may be requested in alternative formats  
by calling toll free 800-252-5555.



Sign up to receive email updates on the Comptroller topics of  
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Texas Comptroller of Public Accounts  
Publication 96-308  
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