

The seal of the Texas Comptroller of Public Accounts is visible in the background. It features a central five-pointed star surrounded by a wreath of olive and oak branches. The words "THE COMPTROLLER" are arched above the star, and "TEXAS" is arched below it.

**Glenn Hegar**

Texas Comptroller of Public Accounts

# Continuing Education Training Manual for Appraisal Review Board Members

January 2024

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**Austin, TX 78711-3528**

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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 property owner liaison officer concerning a complaint filed under Section 6.052.

Tax Code Section 5.041 (a)(4) authorizes the Comptroller 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:

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

The Comptroller's office may communicate with the ARB chair 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.

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# Introduction

The Comptroller’s office publishes the *Appraisal Review Board Training Manual*, a reference guide for ARB members. The Comptroller’s Property Tax Assistance Division (PTAD) used the *Appraisal Review Board Training Manual* for many years when providing training to new ARB members. The Legislature’s desire, however, was that ARB member training and education continue throughout a member’s ARB service, and now includes continuing education in the following areas:

- cost, income and market data comparison appraisal methods;
- business personal property appraisal;
- determination of capitalization rates for property appraisal purposes;
- ARB duties;
- requirements regarding the ARB’s independence from the board of directors, chief appraiser and other appraisal district employees;
- prohibitions against ex parte communications applicable to ARB members;
- Uniform Standards of Professional Appraisal Practice (USPAP);
- the appraisal district’s duty to substantiate its determination of a property’s value;
- requirements regarding equal and uniform property appraisal;
- right of a property owner to protest the property’s appraisal as provided by Tax Code Chapter 41; and
- a detailed explanation of each of the actions described by Tax Code sections 25.25, 41.41(a), 41.411, 41.412, 41.413, 41.42 and 41.43, so that ARB members are fully aware of each of the grounds on which a property appraisal can be appealed.<sup>1</sup>

This publication — which represents a more detailed treatment of the material included in the *Appraisal Review Board Training Manual* — is intended as a continuing education course for ARB members to complete during their second

year of service and any additional terms. A person may not participate in a hearing conducted by the ARB, vote on a protest determination or be reappointed to an additional ARB term until the person has completed this continuing education course and received a certificate of course completion. ARB members reappointed to additional terms must successfully complete this course in each year they continue to serve.<sup>2</sup>

The material in this manual, though comprehensive, is not exhaustive. Property tax law is complex and constantly changing, whether by actions of the Legislature or by interpretation by the courts or the attorney general. ARB members should consult legal counsel in matters that are beyond the scope of this manual or subject to legal interpretation.

## Impact of Recent Legislation

The Legislature recently enacted Senate Bill (SB) 2, 88th Legislature, Second Called Session, 2023, known as the Property Tax Relief Act. The Property Tax Relief Act made several changes affecting property tax administration and appraisal, including amendments to Tax Code sections 6.41, 6.42 and 6.425 related to the ARB appointment process.

From January through June 2024, the local administrative district judge will appoint all ARB members.<sup>3</sup>

Beginning on July 1, 2024, the ARB appointment process is based on the population of the county in which the appraisal district is established. A county with a population of less than 75,000 is considered a less populous county and the local administrative district judge will continue to appoint ARB members.<sup>4</sup> A county with a population of 75,000 or more is considered a populous county and the appraisal district board of directors will appoint ARB members.<sup>5</sup>

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

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

<sup>3</sup> Tex. Tax Code §6.41(d)

<sup>4</sup> Tex. Tax Code §§6.03(a) and 6.41(d) as amended by Acts 2023, 88th Leg. 2nd C.S., Ch. 1 (S.B. 2), Sec. 5.09, effective July 1, 2024

<sup>5</sup> Tex. Tax Code §§6.0301(a) and 6.41(d) as amended by Acts 2023, 88th Leg. 2nd C.S., Ch. 1 (S.B. 2), Sec. 5.09, effective July 1, 2024

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During the month of July, most ARB members have been appointed, completed the required trainings and are taking part in hearings on property owner protests and taxing unit challenges. Changes to ARB membership after July 1, 2024, including removal of ARB members and appointment of new ARB members, should be done with the advice and guidance of legal counsel.

To ensure that ARB members are aware of the new appointment process that will begin in July 2024, this training manual has been updated to reflect those changes. For consistency, this training manual will refer to the local administrative district judge or the appraisal district board of directors as the applicable appointing authority.

## CHAPTER 1

## Legal Issues

This chapter addresses various provisions of law relating to ARBs. The intent of this chapter is to provide ARB members with information regarding statutory provisions governing taxpayer protests.

### Introduction to ARB Responsibilities

An ARB fulfills a vital and integral function in the property tax system. Because exaction of a tax constitutes a deprivation of property, the State must provide procedural safeguards against unlawful exactions in order to satisfy the commands of the Due Process Clause of the U.S. Constitution.<sup>6</sup> In the context of property taxation in Texas, ARB hearings provide that all-important due process protection.<sup>7</sup>

### Statutory Duties

The Tax Code sets forth ARB powers and duties consisting of both procedural and substantive responsibilities. The basic substantive duties are listed in Tax Code Section 41.01(a) and include the following:

- determining property owner protests;
- determining taxing unit challenges;
- correcting clerical errors in the appraisal records and the appraisal rolls;
- acting on motions to correct appraisal rolls;
- determining whether an exemption or a partial exemption is improperly granted;
- determining whether land is improperly granted appraisal for agricultural and timberland as provided by Tax Code Chapter 23, Subchapters C, D, E, or H; and
- taking any other action or making any other determination specifically authorized or required by the Tax Code.

<sup>6</sup> *McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18, 35-36, 110 S. Ct. 2238, 110 L. Ed. 2d 17 (1990)

<sup>7</sup> Tex. Tax Code §§41.01-41.71

### Independence of the ARB

When it enacted the Tax Code, the Texas Legislature created appraisal districts as political subdivisions and ARBs as appointed boards with specific statutory responsibilities.<sup>8</sup> Texas courts have recognized this legislative separation — directly acknowledging that the appraisal district and the ARB are separate and distinct bodies.<sup>9</sup> An ARB may use appraisal office staff for clerical assistance, however, the ARB maintains independence from the appraisal district's board of directors and appraisal district staff, including the chief appraiser.<sup>10</sup>

Provisions enacted by the Legislature to ensure an ARB's independence include the following:

An individual is ineligible to serve on an ARB if the individual is a member of the appraisal district's board of directors, an appraisal district officer or employee, a Comptroller's office employee or a member of the governing body, officer, or employee of a taxing unit.<sup>11</sup>

An individual is ineligible to serve on an ARB if the individual has served all or part of three previous terms as an ARB member whether auxiliary or regular, in a county with a population of 120,000 or greater.<sup>12</sup>

An individual is ineligible to serve on an ARB if the individual is related within the second degree of consanguinity or affinity to an individual who is engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or of representing property owners

<sup>8</sup> Tex. Tax Code §§6.01(c), 6.41(a), and 41.01

<sup>9</sup> *Program Centers of Grace Union Presbytery, Inc. v. Earle*, 726 S.W.2d 628, 630 (Tex. App. — Fort Worth 1987, no writ); *Towne Square Assocs. v. Angelina County Appraisal Dist.*, 709 S.W.2d 776, 778 (Tex. App. — Beaumont 1985, no writ); *Corchine Partnership v. Dallas County Appraisal Dist. and Dallas County Appraisal Review Board*, 695 S.W.2d 734, 735 (Tex. App. — Dallas 1985, writ ref'd n.r.e.)

<sup>10</sup> Tex. Tax Code §§6.41 and 6.43

<sup>11</sup> Tex. Tax Code §6.412(c) and (d)

<sup>12</sup> Tex. Tax Code §6.412(d)

for compensation in proceedings under the Tax Code in the appraisal district for which the ARB is established.<sup>13</sup>

An individual is ineligible to serve on an ARB if the individual is related within the third degree of consanguinity or within the second degree of affinity to a member of the ARB or the appraisal district’s board of directors.<sup>14</sup>

An individual is not eligible to be appointed or to serve on an ARB if the individual or a business entity in which the individual has a substantial interest is a party to a contract with the appraisal district or with a taxing unit that participates in the appraisal district.<sup>15</sup>

An appraisal district may not enter into a contract with a member of the ARB established for the appraisal district or with a business entity in which an ARB member has a substantial interest.<sup>16</sup>

A taxing unit may not enter into a contract with a member of the ARB established for an appraisal district in which the taxing unit participates or with a business entity in which an ARB member has a substantial interest.<sup>17</sup>

ARBs are appointed to act independently of the appraisal district and to make fair and impartial determinations.

**Exhibit 1** shows population requirements, term limits and who appoints ARB members, special panel members and ARB commissioners. ARB members in all counties serve two-year staggered terms; approximately half the members’ terms expire each year. Terms 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 applicable appointing authority or the judge’s designee, if the appointing authority is the local administrative district judge, indicates which members will serve one-year terms to comply with required staggered term provisions.<sup>18</sup>

## Exhibit 1 ARB Appointment

Members or Commissioners	County Population	Appointed By	Term
ARB members	Less than 75,000	Local administrative district judge	2 years
ARB members	75,000 or more	Appraisal district board of directors	2 years
ARB commissioners	Less than 75,000	Local administrative district judge	2 years
ARB special panel members	1 million or more	ARB chair	2 years

### Removal of ARB Chair

A property owner or chief appraiser can file a complaint with the taxpayer liaison officer (TLO) against the ARB alleging that the ARB hearing procedures were not followed or that the adopted ARB hearing procedures do not incorporate the Comptroller’s model hearing procedures. The TLO investigates the claim and reports the findings to the appraisal district board of directors. The board of directors directs the ARB chair to take remedial action if the complaint allegations are valid. If the ARB fails to comply with the remedial action, the board of directors may recommend the local administrative district judge remove the ARB chair. If the judge agrees with the board, the judge must remove the chair from office and appoint a replacement.<sup>19</sup>

### ARB Special Panels

An appraisal district’s board of directors in a county with a population of 1.2 million or more must increase the number of ARB members to hear certain complex property issues referred to special panels.<sup>20</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 an 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>21</sup>

<sup>13</sup> Tex. Tax Code §6.412(a)(1)

<sup>14</sup> Tex. Tax Code §6.412(a)(3)

<sup>15</sup> Tex. Tax Code §6.413(a)

<sup>16</sup> Tex. Tax Code §6.413(b)

<sup>17</sup> Tex. Tax Code §6.413(c)

<sup>18</sup> Tex. Tax Code §6.41(e)

<sup>19</sup> Tex. Tax Code §41.66(q)

<sup>20</sup> Tex. Tax Code §6.41(b-2)

<sup>21</sup> Tex. Tax Code §6.425(d)



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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>22</sup>

### **Ex Parte Communications**

According to Tax Code Section 41.66(f), an ARB member may not communicate with another person concerning the following:

- the evidence, argument, facts, merits or any other matters related to a property owner's protest, except during the protest hearing; or
- a property that is the subject of a protest, except during a hearing on another protest or other proceeding before the ARB at which the property is compared to other property or used in a sample of properties.

This prohibition, as stated, includes all communications with any other person outside the hearing.<sup>23</sup> Thus, the prohibition includes, but is not limited to, communications with the property owner, the property owner's authorized representative, appraisal district board of directors members, the chief appraiser, appraisal district staff, and even communications with the ARB member's family. A communication could be an in-person conversation, a telephone call, an email, a letter, a videoconference, or any other medium used for conveying information.

An ARB member commits a Class A misdemeanor if the member communicates with the chief appraiser, another appraisal district employee or an appraisal district board of directors member for which the ARB is established in violation of Tax Code Section 41.66(f).<sup>24</sup> Under Penal Code Section 12.21, a Class A misdemeanor may be punished by a fine of up to \$4,000, confinement in jail for up to one year, or both.

Tax Code Section 6.411(b) provides that a chief appraiser or another appraisal district employee, an appraisal district board of directors member, or a property tax consultant or attorney representing a party to a proceeding before the ARB commits a Class A misdemeanor if the person communicates with an ARB member established for the appraisal district with the intent to influence a decision by the member in the member's capacity as an ARB member. The prohibitions of Tax Code Section 6.411 do not apply to communications

between the ARB and its legal counsel or to communications with an ARB member by the chief appraiser or another employee or appraisal district board of directors member, or a property tax consultant or attorney representing a party to a proceeding before the ARB:

- during a hearing or other proceeding before the ARB;
- that constitute social conversation;
- that are specifically limited to and involve administrative, clerical or logistical matters related to the scheduling and operation of hearings, the processing of documents, the issuance of orders, notices and subpoenas and the operation of the ARB; or
- that are necessary and appropriate to enable the appraisal district board of directors to determine whether to appoint, reappoint or remove an ARB member.<sup>25</sup>

Except during a hearing or other proceeding or as provided by Tax Code Section 5.041(h) authorizing the training by a licensed appraiser and Tax Code Section 6.411(c-1) discussed in the preceding paragraph, the following persons may not communicate with an ARB member about a course provided by the Comptroller's office or any matter presented or discussed during the course:

- the chief appraiser of the appraisal district for which the ARB is established;
- another employee of the appraisal district for which the ARB is established;
- a member of the board of directors of the appraisal district for which the ARB is established;
- an officer or employee of a taxing unit that participates in the appraisal district for which the ARB is established; and
- an attorney who represents or whose law firm represents the appraisal district or a taxing unit that participates in the appraisal district for which the ARB is established.<sup>26</sup>

At the beginning of a protest hearing, each ARB member hearing the protest must sign an affidavit stating that he or she has not communicated with another person in violation of Tax Code Section 41.66(f).<sup>27</sup> At the conclusion of a protest hearing, the ARB provides the property owner or their

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<sup>22</sup> Tex. Tax Code §6.425(e)

<sup>23</sup> Tex. Tax Code §41.66(f)

<sup>24</sup> Tex. Tax Code §6.411(a) and (d)

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<sup>25</sup> Tex. Tax Code §6.411(b), (c), (c-1) and (d)

<sup>26</sup> Tex. Tax Code §5.041(g)

<sup>27</sup> Tex. Tax Code §41.66(g)

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authorized representative documents indicating that the panel members signed the required affidavit.<sup>28</sup>

## Taxpayer Protests

Under Tax Code Section 41.41(a) and (c), property owners have the right to protest the following actions before the ARB:

- the property's appraised value or, in the case of land appraised as agricultural or timberland, determination of its appraised or market value;
- unequal property appraisal;
- the property's inclusion on the appraisal records;
- denial in whole or in part of a partial exemption;
- determination that the circuit breaker limitation on appraised value for non-homestead real property was denied, modified or cancelled;
- the denial, modification or assessment rating of a property qualified for a temporary exemption due to damage by disaster;
- determination that land does not qualify for agricultural or timberland appraisal;
- identification of the taxing units in which the property is taxable in the case of the appraisal district's appraisal roll;
- determination of the property's ownership;
- determination that a change in use of land appraised as agricultural or timberland has occurred; or
- any other action of the chief appraiser, appraisal district or ARB that applies to and adversely affects the property owner.

Tax Code Section 25.25 provides property owners with additional rights to correct the appraisal roll. The ARB determines protests brought pursuant to Tax Code Section 41.41(a) and (c) and motions to correct the appraisal roll filed pursuant to Tax Code Section 25.25.<sup>29</sup>

## Grounds for Right of Protest (Tax Code Section 41.41(a) and (c))

As outlined above, Tax Code Section 41.41(a) and (c) sets forth the grounds for protest. A property owner's protest might be based on one of the grounds provided, or it might be based on multiple grounds.<sup>30</sup>

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<sup>28</sup> Tex. Tax Code §41.66(p)

<sup>29</sup> Tex. Tax Code §41.01(a)

<sup>30</sup> Tex. Tax Code §41.41(a) and (c)

The Comptroller's *Notice of Protest* forms include a single box that can be used to indicate the most common protest reasons: excessive or unequal appraisal, or both. This option on the form was legislatively mandated with the hope of easing the protest filing process for property owners that are unsure of which level of dissatisfaction to indicate, often times presenting evidence that was not appropriate for the reason(s) they indicated on their protest forms.<sup>31</sup>

### Determination of the Appraised or Market Value

Texas Constitution, Article VIII, Section 1(b) provides that all real and tangible personal property in Texas, unless exempt as permitted by the Constitution, shall be taxed in proportion to its value as ascertained by law. Tax Code Section 23.01(a) provides that, except as otherwise provided by Tax Code Chapter 23, all taxable property is appraised at its market value as of January 1. Tax Code Chapter 23, addresses appraisal methods generally or market valuation methods.<sup>32</sup> This chapter also addresses special appraisal provisions for<sup>33</sup>

- land designated for agricultural use;<sup>34</sup>
- open-space land;<sup>35</sup>
- timberland;<sup>36</sup>
- restricted-use timberland;<sup>37</sup>
- recreational, park, and scenic land;<sup>38</sup> and
- public access airport property.<sup>39</sup>

The Tax Code defines market value as the price at which a property would transfer for cash or its equivalent under prevailing market conditions if exposed for sale in the open market with a reasonable time for the seller to find a purchaser; both the seller and the 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 both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.<sup>40</sup>

Pursuant to Tax Code Section 41.41(a)(1), a property owner may protest their property's appraised value. Under this same

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<sup>31</sup> Tex. Tax Code §41.44(d)

<sup>32</sup> Tex. Tax Code §§23.01 – 23.03

<sup>33</sup> Tex. Tax Code §§23.11 – 23.26

<sup>34</sup> Tex. Tax Code §§23.41 – 23.48

<sup>35</sup> Tex. Tax Code §§23.51 – 23.60

<sup>36</sup> Tex. Tax Code §§23.71 – 23.79

<sup>37</sup> Tex. Tax Code §§23.9801 – 23.9807

<sup>38</sup> Tex. Tax Code §§23.81 – 23.87

<sup>39</sup> Tex. Tax Code §§23.91 – 23.97

<sup>40</sup> Tex. Tax Code §1.04(7)

provision, either the market value or the appraised value of land may be protested as provided by Tax Code Chapter 23, Subchapters C, D, E and H. Subchapter C pertains to the appraisal of land designated for agricultural use;<sup>41</sup> Subchapter D pertains to open-space land appraisal;<sup>42</sup> Subchapter E pertains to timberland appraisal;<sup>43</sup> and Subchapter H pertains to restricted-use timberland appraisal.<sup>44</sup>

### Unequal Appraisal

Texas Constitution, Article VIII, Section 1(a) provides that taxation shall be equal and uniform. Pursuant to Tax Code Section 41.41(a)(2), a property owner may protest their property's unequal appraisal. In 2001, the 14th Court of Appeals in Houston held that “[i]f a conflict exists between taxation at market value and equal and uniform taxation, equal and uniform taxation must prevail.”<sup>45</sup> Thus a property owner may have a right to have the value changed even if the property is appraised at its market value.

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>46</sup> The Texas Legislature set standards to govern unequal appraisal cases that are similar to the standards for market value cases in Tax Code Section 23.01(f):<sup>47</sup>

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>48</sup>

An unequal appraisal case can be broken down into five separate elements or parts. If the evidence shows that the appraisal district met the following standard, the ARB must determine the protest in its favor: the subject property's appraised value is **equal to or less than** the median appraised

value of a reasonable number of comparable properties that are appropriately adjusted.<sup>49</sup>

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

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:

- Is the **number** of properties selected for the sample **reasonable**?
- Are each of the properties in the sample comparable to the subject property?
- Was each comparable property's **value appropriately adjusted** by reference to the subject property?

Below are the type of questions the ARB may ask about the expert's evidence to determine these key issues.

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

- How did the appraiser pick the number of comparable properties?
- What selection method or system was used and why?
- Was the selection random?
- What was the appraiser's reasoning in arriving at that sample number?
- 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

<sup>41</sup> Tex. Tax Code §§23.41 – 23.48

<sup>42</sup> Tex. Tax Code §§23.51 – 23.60

<sup>43</sup> Tex. Tax Code §§23.71 – 23.79

<sup>44</sup> Tex. Tax Code §§23.9801 – 23.9807

<sup>45</sup> *Harris County Appraisal District v. United Investors*, 47 S.W.3d 648, 654 (Tex. App. — Houston [14th Dist.] 2001, no writ).

<sup>46</sup> Tex. Tax Code §41.43(b)(3)

<sup>47</sup> Tex. H.B. 2083, 84th Leg., Reg. Sess. (2015), amending Tex. Tax Code §23.01

<sup>48</sup> Tex. Tax Code §23.01(f)

<sup>49</sup> Tex. Tax Code §41.43(b)(3)

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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 which 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 each comparable property's **value** 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; and

- the percentage adjustment for each characteristic of the comparable properties was subjective.

At the same time the Legislature set the generally accepted appraisal methods and techniques standard for expert testimony, it also granted a right to testify to particular property owners in certain protest 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.

### ***Inclusion of the Owner's Property on the Appraisal Records***

Pursuant to Tax Code Section 41.41(a)(3), a property owner may protest their property's inclusion on the appraisal records. Thus, if property is included in the appraisal records that a property owner asserts should not be included, the property owner is entitled to protest. For example, a property owner might protest inclusion on the appraisal records of an improvement to real property and assert that the listed improvement does not exist.

### ***Denial to Property Owner in Whole or in Part of a Partial Exemption***

Tax Code Section 41.41(a)(4) provides a property owner the right to protest denial in whole or in part of a partial exemption. Common partial exemptions include those permitted for residence homesteads.<sup>50</sup> Tax Code Chapter 11 includes numerous exemptions permitted by law as well as provisions relating to exemption administration. As stated in Tax Code Section 11.01(a), all real and tangible personal property that the state of Texas has jurisdiction to tax is taxable unless exempt by law.

Exemptions are strictly construed, as stated by the Texas Supreme Court:

[E]xemptions from taxation are not favored by the law and will not be favorably construed. Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally. Accordingly, the burden of proof of clearly

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<sup>50</sup> Tex. Tax Code §11.13

showing that the [claimant] falls within the statutory exemption is on the claimant.<sup>51</sup>

### Temporary Circuit Breaker Limitations on Real Property

The circuit breaker limitation under Tax Code Section 23.231 provides that a qualifying real property’s appraised value for a tax year cannot exceed 20 percent of the previous tax year’s appraised value.<sup>52</sup> To qualify for the circuit breaker limitation, the real property’s appraised value must be \$5 million or less in the year in which the circuit breaker limitation takes effect.<sup>53</sup>

Property receiving a residence homestead exemption or special appraisal under Tax Code Chapter 23, Subchapters C, D, E, F, G or H is not eligible for the circuit breaker limitation.<sup>54</sup> If there are any new improvements to the property, the market value of these improvements is to be included in the appraised value for the subsequent tax year as new value and are not subject to the 20 percent limitation.<sup>55</sup>

The circuit breaker limitation takes effect on Jan. 1 of the tax year following the first tax year in which the owner owned the property on Jan. 1. A person who acquired real property before the 2023 tax year is considered to have acquired it on January 1, 2023. The limitation expires on January 1 of the tax year following the tax year in which the owner ceases to own the property.<sup>56</sup>

Improvements to the real property that are replacement structures after being considered uninhabitable or unusable by casualty, wind or water damage are not treated as new improvements for appraisal purposes. The replacement structures are considered new improvements if the square footage exceeds that of the replaced structure or if the exterior is of higher quality composition than it was previously.<sup>57</sup>

The circuit breaker limitation expires on December 31, 2026.<sup>58</sup>

### Temporary Exemptions Due to Damage by Disaster

Tax Code Section 11.35 provides for temporary exemptions 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 the help of 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. A property owner may protest the determination of the appropriate damage assessment rating for property qualifying for a temporary disaster exemption. The temporary disaster area exemption expires on Jan. 1 of the first tax year in which the property is reappraised.

An exemption granted under this subsection must specify the disaster to which it pertains and be adopted not later than the 60th day after the governor first declares the disaster area.

**Exhibit 2** illustrates that the level of property damage determines the exemption percentage.

**Exhibit 2**  
**Exemption Percentage**

Level	Damage Assessment	Damage Description	Exemption
Level I	15%<30%	Minimal, may continue to be used as intended	15%
Level II	30%<60%	Nonstructural damage and waterline <18" off floor	30%
Level III	60%<100%	Significant structural damage & waterline 18"+	60%
Level IV	100%	Total loss; repair is not feasible	100%

Property owners must apply for this exemption and can be granted extensions based on good cause. Chief appraisers will deliver notices to the property owner of the approval, denial or modification of the disaster exemption rating along with procedures on how to protest the findings.

### Determination that Owner’s Land Does Not Qualify for Agricultural, Open-space or Timber Land Appraisal

Tax Code Section 41.41(a)(5) provides a property owner the right to protest a determination that the owner’s land does not qualify for appraisal as provided by Tax Code Chapter 23, Subchapter C, D, E or H. As noted above, Tax Code Chapter 23, Subchapters C, D, E and H pertain to land designated for agricultural use,<sup>59</sup> open-space land,<sup>60</sup> timberland<sup>61</sup> and restricted-use timberland,<sup>62</sup> respectively.

<sup>59</sup> Tex. Tax Code §§23.41 – 23.48

<sup>60</sup> Tex. Tax Code §§23.51 – 23.60

<sup>61</sup> Tex. Tax Code §§23.71 – 23.79

<sup>62</sup> Tex. Tax Code §§23.9801 – 23.9807

<sup>51</sup> *North Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991) (citations omitted)

<sup>52</sup> Tex. Tax Code §23.231(d)

<sup>53</sup> Tex. Tax Code §23.231(b) and (j)

<sup>54</sup> Tex. Tax Code §23.231(c)

<sup>55</sup> Tex. Tax Code §23.231(d)(2)(C)

<sup>56</sup> Tex. Tax Code §23.231(f)

<sup>57</sup> Tex. Tax Code §23.231(h) and (i)

<sup>58</sup> Tex. Tax Code § 23.231(k)



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### **Identification of Taxing Units in Which Owner's Property is Taxable**

Pursuant to Tax Code Section 41.41(a)(6), a property owner may protest identification of the taxing units in which the owner's property is taxable. One example of a protest that might be pursued under this provision would be a property owner's protest alleging that the property at issue is in a different school district than that reflected on the appraisal district's roll.

### **Determination that Property Owner is the Owner of Property**

Tax Code Section 41.41(a)(7) provides a property owner the right to protest a determination that the property owner is the owner of the property identified. A property owner, thus, might bring a protest under Tax Code Section 41.41(a)(7) to assert non-ownership of any property the appraisal district has listed as being owned by the property owner.

### **Determination that Change in Use of Land Appraised as Agricultural, Open-space or Timberland has Occurred**

Pursuant to Tax Code Section 41.41(a)(8), a property owner may protest a determination that a change of use of land appraised under Tax Code Chapter 23, Subchapter C, D, E or H has occurred. Again, Tax Code Chapter 23, Subchapters C, D, E and H pertain to land designated for agricultural use,<sup>63</sup> open-space land,<sup>64</sup> timberland<sup>65</sup> and restricted-use timberland,<sup>66</sup> respectively.

If there is a change of use of property appraised pursuant to Subchapters C, D, E or H, additional taxes and interest may be imposed.<sup>67</sup> The appraisal district must notify a property owner of a determination that a change of use has occurred.<sup>68</sup> A property owner must protest the determination not later than the 30th day after the date the notice of the determination is delivered to the property owner.<sup>69</sup>

### **Any Other Action**

Tax Code Section 41.41(a)(9) provides a property owner the right to protest any other action of the chief appraiser, appraisal district or ARB that applies to and adversely affects the property owner. By its terms, this provision is not limited. Therefore,

an ARB might be presented with any number of specific protest grounds under Tax Code Section 41.41(a)(9).

### **Protest for Failure to Give Notice (Tax Code Section 41.411)**

Tax Code Section 41.411(a) provides that a property owner is entitled to protest before the ARB the failure of the chief appraiser or the ARB to provide or deliver any notice to which the property owner is entitled. If failure to provide or deliver the notice is established, the ARB must determine a protest made by the property owner on any other protest grounds authorized by the Tax Code relating to the property to which the notice applies.<sup>70</sup> However, a property owner who protests under Tax Code Section 41.411 must comply with the tax payment requirements of Tax Code Section 41.4115 or the property owner forfeits the right to a final determination of the protest.<sup>71</sup>

The pendency of a protest under Tax Code Section 41.411 does not affect the delinquency date for the taxes on the property subject to the protest. However, the delinquency date applies only to the amount of taxes that are not in dispute and is postponed to the 125th day after the date one or more taxing units first delivered written notice of the taxes due. If the property owner complies with this provision and pays the taxes not in dispute, the delinquency date for any additional taxes finally determined to be due on the property is determined under Tax Code Section 42.42(c) and that additional amount is not delinquent before that date.<sup>72</sup>

A property owner who files a protest under Tax Code Section 41.411 is required to pay, before the delinquency date, the amount of taxes due on the portion of the taxable value of the property subject to the protest that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final protest determination. The ARB may excuse this requirement based on an oath of inability to pay.<sup>73</sup>

A property owner who pays an amount of taxes greater than required does not forfeit the right to a final protest determination by making the payment. If the property owner files a timely protest under Tax Code Section 41.411, taxes are considered to have been paid under protest, even if paid before the protest is filed.<sup>74</sup>

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<sup>63</sup> Tex. Tax Code §§23.41 – 23.48

<sup>64</sup> Tex. Tax Code §§23.51 – 23.60

<sup>65</sup> Tex. Tax Code §§23.71 – 23.79

<sup>66</sup> Tex. Tax Code §§23.9801 – 23.9807

<sup>67</sup> Tex. Tax Code §§23.46, 23.55, 23.76 and 23.9807

<sup>68</sup> Tex. Tax Code §§23.46(c), 23.55(e), 23.76(e) and 23.9807(f)

<sup>69</sup> Tex. Tax Code §41.44(a)(4)

<sup>70</sup> Tex. Tax Code §41.411(b)

<sup>71</sup> Tex. Tax Code §41.411(c)

<sup>72</sup> Tex. Tax Code §41.4115(a)

<sup>73</sup> Tex. Tax Code §41.4115(b) and (d)

<sup>74</sup> Tex. Tax Code §41.4115(c)

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On the motion of a party, the ARB is required to hold a hearing to review and determine compliance with these payment requirements. The ARB may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. If the ARB determines that the property owner has not substantially complied with the payment requirements, it is required to dismiss the pending protest. If the ARB determines that the property owner substantially but not fully complied, it is required to dismiss the pending protest unless the property owner fully complies with its determination within 30 days.<sup>75</sup>

### **Person Acquiring Property After Jan. 1 (Tax Code Section 41.412)**

Typically, either the person who owned the property Jan. 1 or that person's authorized representative files a protest. However, a property owner who acquires property between Jan. 1 and the protest deadline may file a protest in the same manner as the Jan. 1 property owner.<sup>76</sup> A new owner who acquires the property while a protest regarding the property is pending may, on application to the ARB, proceed with the protest in the same manner as the prior owner who initiated the protest.<sup>77</sup>

### **Protest by Person Leasing Property (Tax Code Section 41.413)**

Certain lessees are also entitled to protest. A person leasing tangible personal property or real property who is contractually obligated to reimburse the property owner for property taxes is entitled to protest before the ARB a determination of the property's appraised value if the property owner does not file a protest on the property.<sup>78</sup> The property owner is required to send to the lessee a copy of any notice of the property's appraised value not later than the 10th day after the property owner receives the notice. This notice requirement does not apply if the 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 property's appraised value. Failure to do so, however, does not affect the lessee's protest deadline for the property in question.<sup>79</sup> The ARB is required to deliver a copy of any notice relating to the protest and the order determining protest to the property owner and the person bringing the protest.<sup>80</sup>

### **Protest of Situs (Tax Code Section 41.42)**

Tax Code Section 41.42 pertains to protests of situs. Tax Code Chapter 21 addresses situs with regards to real property, tangible personal property generally, vessels and other watercraft, railroad rolling stock, commercial aircraft, business aircraft and certain intangible property. Pursuant to Tax Code Section 41.42, the ARB must rule in favor of the protesting party filing a protest against the property's inclusion on the appraisal records for an appraisal district on the grounds that the property does not have taxable situs in that appraisal district if the property owner establishes that the property is subject to appraisal by another appraisal district or that the property is not taxable in Texas. The chief appraiser of the appraisal district in which the property owner prevails in a protest of situs must notify the appraisal office of the district in which the property owner has established situs.<sup>81</sup>

## **Burdens of Proof (Tax Code Section 41.43)**

### ***Duty of the Appraisal District to Substantiate its Determination of Value and Equal Appraisal***

Except in certain circumstances, the appraisal district has the burden of proof at the ARB hearing in a protest brought pursuant to Tax Code Section 41.41(a)(1), relating to determination of value, or Tax Code Section 41.41(a)(2), relating to unequal appraisal.<sup>82</sup> The appraisal district has the duty to substantiate the appraisal district's determination of the property's value. In most of these protests, the appraisal district has the burden of establishing the property's value by a preponderance of the evidence presented at the ARB hearing.<sup>83</sup> However, in some cases, the appraisal district has a higher burden of proof — the burden of establishing the property's value by clear and convincing evidence presented at the ARB hearing.<sup>84</sup> If the appraisal district fails to meet the applicable standard, the ARB must rule in the property owner's favor.<sup>85</sup>

Explanations, descriptions and definitions of preponderance of the evidence and clear and convincing evidence vary. In civil jury trials in Texas, a case is submitted to the jury by written definitions, instructions and questions — collectively referred to as a jury charge. The State Bar of Texas publishes pattern jury charges prepared by committees of judges and attorneys.

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<sup>75</sup> Tex. Tax Code §41.4115(d)

<sup>76</sup> Tex. Tax Code §41.412(a)

<sup>77</sup> Tex. Tax Code §41.412(b)

<sup>78</sup> Tex. Tax Code §41.413

<sup>79</sup> Tex. Tax Code §41.413(d)

<sup>80</sup> Tex. Tax Code §41.413(c)

<sup>81</sup> Tex. Tax Code §41.42

<sup>82</sup> Tex. Tax Code §41.43(a)

<sup>83</sup> Tex. Tax Code §41.43(a)

<sup>84</sup> Tex. Tax Code §41.43(a-1) and (a-3)

<sup>85</sup> Tex. Tax Code §41.43(a),(a-1) and (a-4)

Trial courts routinely rely on the pattern jury charges and the Texas Supreme Court rarely disapproves of them.<sup>86</sup> The following are definitions and instructions included in the Texas pattern jury charges:

The term preponderance of the evidence “means the greater weight of credible evidence presented in this case . . . . A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.”

Clear and convincing evidence means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.<sup>87</sup>

### **Preponderance of the Evidence**

In most Tax Code Section 41.41(a)(1) and 41.41(a)(2) protests, the appraisal district has the burden of proof by a preponderance of the evidence.<sup>88</sup> One exception, in which the appraisal district has a higher standard of proof, involves certain protests relating to property valued at \$1 million or less where the property owner files a valid, certified appraisal with the ARB that supports the property owner’s appraised or market value of the property.<sup>89</sup> If the property owner meets the following requirements, the appraisal district has the burden of establishing the property’s value by clear and convincing evidence presented at the ARB hearing:

- the appraisal must have been performed by an appraiser certified under Occupations Code Chapter 1103;
- the appraisal must have been performed not later than the 180th day before the date of the first day of the hearing;
- the property owner must have delivered a copy of the appraisal to the chief appraiser not later than the 14th day before the date of the first day of the hearing;
- the property owner must have filed a copy of the appraisal with the ARB;
- the appraisal must support the property’s appraised or market value asserted by the property owner; and
- the appraisal must be legally valid.<sup>90</sup>

To be valid, the appraisal filed by the property owner must be attested to before an officer authorized to administer oaths and must include the following:

- the name and business address of the certified appraiser;
- a description of the property that was the subject of the appraisal;
- a statement that the property’s appraised or market value (1) was, as applicable, the property’s appraised or market value as of Jan. 1 of the current tax year, and (2) was determined using an appraisal method authorized or required by Tax Code Chapter 23; and
- a statement that the appraisal was performed in accordance with USPAP.<sup>91</sup>

If the requirements have been met and the appraisal district has the burden of establishing the property’s value by clear and convincing evidence, the protest must be determined in the property owner’s favor if the appraisal district fails to meet that standard.<sup>92</sup>

The appraisal district also has a burden of establishing the property’s value by clear and convincing evidence presented at the hearing on a protest under Tax Code sections 41.41(a)(1) or 41.41(a)(2) if:

- the property’s appraised value was lowered under Tax Code Subtitle F (Subtitle F includes protests filed with the ARB, binding arbitration and lawsuits) in the preceding tax year;
- the property’s appraised value in the preceding tax year was not established as a result of a written agreement between the property owner or the property owner’s authorized representative and the appraisal district under Tax Code Section 1.111(e); and
- not later than the 14th day before the first day of the hearing, the property owner files with the ARB and delivers to the chief appraiser:
  - o information, such as income and expense statements or information regarding comparable sales, that is sufficient to allow for a determination of the property’s appraised or market value if the protest is authorized by Tax Code Section 41.41(a)(1); or
  - o information that is sufficient to allow for a determination of whether the property was appraised unequally if the protest is authorized by Tax Code Section 41.41(a)(2).<sup>93</sup>

<sup>86</sup> See *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 45 (Tex. 2007)

<sup>87</sup> Committee on Pattern Jury Charges of the State Bar of Texas, *Texas Pattern Jury Charges* (2014), pp. 10 and 388

<sup>88</sup> Tex. Tax Code §41.43(a)

<sup>89</sup> Tex. Tax Code §41.43(a-1)

<sup>90</sup> Tex. Tax Code §41.43(a-1) and (a-2)

<sup>91</sup> Tex. Tax Code §41.43(a-2)

<sup>92</sup> Tex. Tax Code §41.43(a-1)

<sup>93</sup> Tex. Tax Code §41.43(a-3)



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With regard to a property owner's information on file with the ARB at least 14 days before a hearing, any discussions outside the hearing regarding these materials are prohibited under Tax Code Section 41.66(f) as ex parte communications. The legal provision regarding delivery of certain information to the ARB and chief appraiser does not impose a duty on the property owner to provide it. The provision is merely a condition as to the applicability of the clear and convincing evidence standard.<sup>94</sup>

### Clear and Convincing Evidence

ARBs are to consider the issue of clear and convincing evidence when a protest is brought concerning certain value increases. The chief appraiser is prohibited from increasing the property's appraised value in the next tax year in which the property is appraised unless the increase is reasonably supported by clear and convincing evidence. Tax Code Subtitle F includes protests filed with the ARB under Tax Code Chapter 41, binding arbitration under Tax Code Chapter 41A, and lawsuits under Tax Code Chapter 42. The clear and convincing evidence must be based on all the reliable and probative evidence in the record considered as a whole. If the final determination was based on a claim of unequal appraisal 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 in determining the subject property's value.<sup>95</sup> The burden of proof is on the chief appraiser to support an increase in the property's appraised value under these circumstances.<sup>96</sup>

### Property Owner has Burden of Proof

Another exception to the general rule that the appraisal district has the burden of proof by a preponderance of the evidence in Tax Code sections 41.41(a)(1) and 41.41(a)(2) involves protests relating to property subject to rendition or reporting requirements under Tax Code Chapter 22.<sup>97</sup> Under this exception, set forth in Tax Code Section 41.43(d), the burden of proof rests on the property owner. If a protesting property owner fails to deliver, before the hearing date, a rendition statement or property report required by Tax Code Chapter 22 or a response to the chief appraiser's request for information under Tax Code Section 22.07(c), the property owner — rather than the appraisal district — has the burden of establishing the property's value by a preponderance of the evidence presented at the hearing. If the property owner fails

to meet that standard, the protest must be determined in the appraisal district's favor.<sup>98</sup>

## Conduct of Hearings

### Before the Hearing

No later than May 15 of each year, the ARB must hold a public hearing to discuss and adopt hearing procedures. The adopted hearing procedures must incorporate the model hearing procedures developed by the Comptroller's office. 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>99</sup>

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 TLO 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>100</sup>

Upon request, which may be included in the owner's notice of protest or made by a separate writing delivered to the ARB on or before the notice of protest filing date, a protesting property owner is entitled to a copy of the hearing procedures. The copy of the hearing procedures must be delivered to the property owner not later than the 10th day before the protest hearing date. To the greatest extent practicable, hearing procedures must be informal. 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.<sup>101</sup>

Generally, ARB hearings are open to the public.<sup>102</sup> However, pursuant to Tax Code Section 41.66(d-1), the ARB must conduct a hearing closed to the public if the property owner or the chief appraiser intends to disclose proprietary or confi-

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<sup>94</sup> Tex. Tax Code §41.43(a-4)

<sup>95</sup> Tex. Tax Code §§23.01(e) and 42.23 (i)

<sup>96</sup> Tex. Tax Code §23.01(e)

<sup>97</sup> Tex. Tax Code §41.43(a) and (d)

<sup>98</sup> Tex. Tax Code §41.43(d)

<sup>99</sup> Tex. Tax Code §§5.103(d), 41.01(c) and 41.66(a)

<sup>100</sup> Tex. Tax Code §41.01(c)(d)(e)

<sup>101</sup> Tex. Tax Code §41.66(b)

<sup>102</sup> Tex. Tax Code §41.66(d)

dential information at the hearing that will assist the ARB in determining the protest. The ARB may hold a closed hearing under Tax Code Section 41.66(d-1) only on a joint motion by the property owner and the chief appraiser. Additionally, the proprietary or confidential information described in Tax Code Section 41.66(d-1) is considered information obtained under Tax Code Section 22.27 (regarding confidential information).<sup>103</sup>

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>104</sup>

### Notice of Hearing

The ARB must deliver a written notice to property owners regarding their hearing not later than the 15th day before its scheduled date. The notice must include the hearing's date, time and place; a description of the hearing's subject matter that identifies the specific action being protested; a statement that entitles property owners to a postponement; and a notice of the local property tax database accessible at [Texas.gov/PropertyTaxes](https://www.texas.gov/PropertyTaxes).<sup>105</sup> The board must also give the chief appraiser advance notice of each protest hearing that includes the date, time, place and subject matter.<sup>106</sup> Notice must be delivered not later than the 15th day before the date of a hearing regarding a motion brought pursuant to Tax Code Section 25.25(c), 25.25(c-1) or 25.25(d) for appraisal roll correction. For such hearings, the ARB must deliver written notice of the hearing's date, time, place and subject matter to the chief appraiser, the property owner or their authorized representative and the presiding officer of the governing body of each taxing unit in which the property is located.<sup>107</sup>

In addition to the notice of protest, ARBs in counties with populations greater than 120,000 must deliver an electronic hearing reminder if the property owner requests email or text message reminder in writing to the ARB. The electronic reminder must state the protest hearing's date, time and place. The property owner must provide a valid email address or phone number where the reminder will be sent not earlier than the seventh 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>108</sup>

### Exchange of Information

After the chief appraiser has submitted the appraisal records to the ARB pursuant to Tax Code Section 25.22(a), a property owner or the owner's authorized representative is entitled to inspect and copy the appraisal records relating to the owner's property, together with supporting data and schedules.<sup>109</sup> On request by the property owner or the owner's authorized representative the chief appraiser must deliver by mail or electronically, as applicable, a copy of the information the property owner is entitled to inspect.<sup>110</sup> The right to inspect other information confidential under Tax Code Section 22.27 is restricted by Tax Code Section 25.195 to owners of residential property or vacant land.<sup>111</sup> Additionally, a property owner or the authorized representative of a property owner whose property has been appraised by a private appraisal firm under contract with an appraisal district has the right to inspect and copy, at the appraisal firm's office, appraisal firm information used or considered in appraising the owner's property. This includes information showing each appraisal method used to determine the property's value and all calculations, personal notes, correspondence and working papers used in appraising the property.<sup>112</sup> On request by the property owner or the owner's authorized representative the appraisal firm must deliver by mail or electronically, as applicable, a copy of the information the property owner is entitled to inspect.<sup>113</sup> The appraisal firm must make the information available for inspection and copying, or provide the information by mail or electronically, as applicable, not later than the 15th day after delivery of a written request to inspect the information, unless a different date is agreed upon.<sup>114</sup> This right does not include information made confidential under Tax Code Section 22.27, except that the property owner or authorized representative is entitled to inspect and copy any information relating to the owner's property, including otherwise confidential information.<sup>115</sup> If a property owner or authorized representative states under oath in a document filed with an ARB in connection with a proceeding initiated under the protest provisions or the correction of appraisal roll provisions of the Tax Code that the appraisal firm has not

<sup>103</sup> Tex. Tax Code §41.66(d-2)

<sup>104</sup> Tex. Tax Code §41.445

<sup>105</sup> Tex. Tax Code §41.46(a)

<sup>106</sup> Tex. Tax Code §41.46(a) and (b)

<sup>107</sup> Tex. Tax Code §25.25(e)

<sup>108</sup> Tex. Tax Code §41.46(f)

<sup>109</sup> Tex. Tax Code §25.195(a)

<sup>110</sup> Tex. Tax Code §25.195(a-1)

<sup>111</sup> Tex. Tax Code §25.195(b)

<sup>112</sup> Tex. Tax Code §25.195(c)

<sup>113</sup> Tex. Tax Code §25.195(c-1)

<sup>114</sup> Tex. Tax Code §25.195(d)

<sup>115</sup> Tex. Tax Code §25.195(c)

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complied with a request for inspection or copying, or provide the information as required by Tax Code Section 25.195(c-1), related to the property that is the subject of the proceeding, the ARB may not conduct a hearing on the merits of any claim relating to the property and may not approve the appraisal records relating to that property until the ARB determines in a hearing that either the appraisal firm has made the information available for inspection and copying or the property owner or authorized representative has withdrawn the motion or protest that initiated the proceeding.<sup>116</sup>

At least 14 days before a protest hearing, the chief appraiser must:

- deliver a copy of the *Taxpayer Assistance Pamphlet* prepared by the Comptroller’s office to the property owner initiating the protest if the property owner is representing themselves or to an authorized representative if requested by the authorized representative;
- inform the property owner that the property owner or authorized representative is entitled on request to a copy of the data, schedules, formulas and all other information the chief appraiser will introduce at the hearing to establish any matter at issue; and
- deliver a copy of the adopted ARB hearing procedures to the property owner.<sup>117</sup>

Tax Code Section 41.461 expressly provides that the chief appraiser shall, at least 14 days before a protest hearing, inform the property owner that the owner or the authorized representative is entitled on request to a copy of the data, schedules, formulas and all other information the chief appraiser will introduce at the hearing to establish any matter at issue.<sup>118</sup> Interpretation of this provision has been the subject of controversy among and between property owners and appraisal districts.

This subsection does not apply to information offered to rebut evidence or argument presented at the hearing by the protesting party or that party’s authorized representative. The Tax Code provides that “information that was previously requested...by the protesting party that was not delivered to the protesting party at least 14 days before the scheduled or postponed hearing may not be used or offered in any form as evidence in the hearing, including as a document or through argument or testimony.”<sup>119</sup>

The Tax Code also provides that the ARB must postpone a protest hearing if the property owner or the authorized representative requests additional time to prepare for the hearing and establishes to the board that the chief appraiser failed to comply with Tax Code Section 41.461.<sup>120</sup> Thus, some property owners or authorized representatives may urge exclusion of evidence; some may request hearing postponements.

ARBs will likely continue to confront disputes on this issue. Each ARB should consult legal counsel to discuss the issue as a preliminary matter and consider how to address such disputes.

In any case, without regard to whether any pre-hearing request has been made, before the protest hearing or immediately after the hearing begins, the chief appraiser and the property owner or the authorized representative must provide the other with a copy of any written material or material preserved on a portable device that the person intends to offer or submit to the ARB at the hearing.<sup>121</sup> 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 authorized representative during the hearing.<sup>122</sup>

Comptroller Rule 9.805, concerning evidence exchange and retention and audiovisual equipment requirements,<sup>123</sup> addresses these issues, including:

- the manner and form, including security requirements, in which a person must 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 the evidence must be retained 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 authorized representative.

The adopted ARB model hearing procedures must comply with Comptroller Rule 9.805.

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<sup>116</sup> Tex. Tax Code §25.195(e)

<sup>117</sup> Tex. Tax Code §41.461(a)

<sup>118</sup> Tex. Tax Code §41.461(a)(2)

<sup>119</sup> Tex. Tax Code §41.67

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<sup>120</sup> Tex. Tax Code §41.66(h)

<sup>121</sup> Tex. Tax Code §41.45(h)

<sup>122</sup> Tex. Tax Code §41.45(o)

<sup>123</sup> Tex. Tax Code §41.45(p)

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## Hearings

When a property owner files a notice of protest, the ARB must schedule a protest hearing.<sup>124</sup> Hearings should be scheduled as soon as practicable but no later than 90 days after appraisal records approval provided by Tax Code Section 41.12.<sup>125</sup> Hearings on Tax Code Section 25.25(c), 25.25(c-1) and 25.25(d) motions to correct the appraisal roll are conducted in the same manner as taxpayer protest hearings.<sup>126</sup> The ARB must provide for protest hearings on weekday evenings to begin prior to 7 p.m. or on Saturdays.<sup>127</sup>

As previously discussed, at the beginning of a protest hearing, each ARB member hearing the protest must sign an affidavit stating that he or she has not communicated with another person in violation of Tax Code Section 41.66(f). Documents indicating that the ARB signed their affidavit will be provided to the property owner or their authorized representative at the end of their protest hearing.<sup>128</sup> If an ARB member has communicated with another person in violation of Tax Code Section 41.66(f), the member must be recused from the proceeding and may not hear, deliberate, or vote on the protest determination. 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 person in violation of Tax Code Section 41.66(f).<sup>129</sup>

A hearing on a protest filed by a property owner or their authorized representative must be set for a time and date certain. If the hearing is not commenced within two hours of the set hearing time, on the request of the property owner or their authorized representative, the ARB must postpone the hearing.<sup>130</sup>

Additionally, on the request of a property owner or their authorized representative, an ARB must schedule hearings on protests concerning up to 20 designated properties to be held consecutively on the same day. A property owner or the authorized representative may file more than one request with the ARB in the same tax year. The designated properties must be identified in the same notice of protest and the notice must contain in boldfaced type the statement “request for same-day protest hearings.” The ARB may schedule protest hearings concerning more than 20 properties filed by the same property

owner or authorized representative to be held consecutively and may use different panels to conduct the hearings based on the ARB’s customary scheduling. The notice must state the date and time of the first hearing, the date of the last hearing and the order in which the hearings will be held. The hearing order listed in the notice cannot be changed without the agreement of the property owner or their authorized representative, chief appraiser and ARB. These hearings cannot be rescheduled to a date earlier than the seventh day after the last hearing was scheduled unless agreed to by the property owner or their authorized representative, chief appraiser and ARB. If all parties agree, the rescheduled hearing notice must be provided to the property owner or their authorized representative not later than the seventh day before the date of the hearing.<sup>131</sup>

Tax Code Section 41.66(j-2) provides for giving priority scheduling to protests filed by property owners who are 65 years or older, disabled, military service members or veterans and spouses of military service members or veterans before scheduling protests filed by authorized representatives.

An ARB decides if a protest was timely filed and whether the protest had the necessary information to constitute a protest. An ARB must make these determinations carefully; otherwise, it may find itself defending a lawsuit to compel the hearing if it denies a hearing to which a property owner was entitled under the law. If the property owner is awarded the hearing by a district court, the district court must order the hearing be held and may award court costs and reasonable attorney fees to the property owner.<sup>132</sup>

An ARB may encounter a variety of protest circumstances — including the filing of multiple protests regarding the same property. If more than one protest is filed relating to the same property, the ARB must schedule a single hearing on all timely filed protests relating to the property. Additionally, a hearing for a property that is owned in undivided or fractional interests, including separate interests in a mineral in place, must be scheduled to provide for participation by all property owners who have timely filed a protest.<sup>133</sup>

If an ARB has more than three members, it may sit in panels of not fewer than three members to conduct protest hearings. If a panel’s recommendation is not accepted by the full ARB, the ARB may refer the matter for rehearing to a panel

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<sup>124</sup> Tex. Tax Code §41.45(a)

<sup>125</sup> Tex. Tax Code §41.45(a)

<sup>126</sup> Tex. Tax Code §25.25(m)

<sup>127</sup> Tex. Tax Code §41.71

<sup>128</sup> Tex. Tax Code §41.66(p)

<sup>129</sup> Tex. Tax Code §41.66(g)

<sup>130</sup> Tex. Tax Code §41.66(i)

<sup>131</sup> Tex. Tax Code §41.66(j)

<sup>132</sup> Tex. Tax Code §41.45(f)

<sup>133</sup> Tex. Tax Code §41.45(a)

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composed of members who did not hear the original protest or, if there are not at least three members who did not hear the original protest, the full ARB may determine the protest.<sup>134</sup>

An ARB will sit in single-member panels to conduct a hearing if the property owner requests that format in writing on either the notice of protest or by written submission to the ARB not later than 10 days before the hearing date.<sup>135</sup> There are no designations or qualifications needed for ARB members to sit in single-member panels. Single-member panels must be available in all counties. If the ARB does not accept the recommendation made by a single-member panel, the ARB may determine the protest or it can send the protest for rehearing to a different single-member that did not hear the original protest.<sup>136</sup>

If an ARB sits in panels to conduct protest hearings, protests must be randomly assigned to panels, except that the ARB may consider the property type subject to the protest or the protest ground for the purpose of using a particular panel's expertise in hearing protests regarding particular property types or based on particular grounds. If a protest is scheduled to be heard by a particular panel, the protest may not be reassigned to another panel without the consent of the property owner or the owner's authorized representative. If the ARB has cause to reassign a protest to another panel, a property owner or the owner's authorized representative may agree to the protest's reassignment or may request that the protest hearing be postponed. The ARB must postpone the hearing on such a 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 reassignment to another panel.<sup>137</sup> An appraisal district or an ARB may not make decisions with regard to panel membership or chairmanship based on a member's voting record in previous protests.<sup>138</sup>

A property owner or authorized representative can request a special ARB panel to hear a complex property protest if in a county with a population of 1.2 million or more. The owner or authorized representative must consent to a special panel reassignment and may request a postponement if they disagree with the reassignment.

The Tax Code includes several provisions addressing protest hearing postponement (in addition to those referenced above).

<sup>134</sup> Tex. Tax Code §41.45(d)

<sup>135</sup> Tex. Tax Code §41.45(b-4)

<sup>136</sup> Tex. Tax Code §41.45(b-5)

<sup>137</sup> Tex. Tax Code §41.66(k)

<sup>138</sup> Tex. Tax Code §41.66(m)

Postponement procedures are included in the Comptroller's model procedures (see Exhibit A). Tax Code provisions regarding hearing postponement vary. Questions regarding applicability and legal requirements of the various provisions should be directed to ARB legal counsel.

### **Subpoenas**

Pursuant to Tax Code Section 41.61, if reasonably necessary in the course of a protest, the ARB, on its own motion or at the written request of a party to the protest, may subpoena witnesses or books, records or other documents of the property owner or appraisal district that relate to the protest.<sup>139</sup> On a protesting party's written request, the ARB must issue a subpoena if the requesting party shows good cause for issuing the subpoena and deposits with the ARB a sum the ARB determines is reasonably sufficient to pay the estimated costs to issue and service the subpoena and for compensation of the individual to whom it is directed.<sup>140</sup> The ARB cannot issue a subpoena under Tax Code Section 41.61 unless it holds a hearing at which the ARB determines that good cause exists for the subpoena's issuance. The ARB conducting a good cause hearing must deliver to the party being subpoenaed and parties to the protest written notice of the date, time and place of the hearing. The ARB must deliver the notice not later than the fifth day before the date of the good cause hearing. The party being subpoenaed must have an opportunity to be heard at the good cause hearing.<sup>141</sup> A sheriff or constable must serve a subpoena issued pursuant to Tax Code Section 41.61.<sup>142</sup> If the person to whom a subpoena is directed fails to comply, the ARB that issued the subpoena or the party requesting the subpoena may bring suit in the district court to enforce the subpoena. If the district court determines that good cause exists for subpoena's issuance, the court, pursuant to the Tax Code, shall order compliance. The district court may modify subpoena requirements it determines are unreasonable. Failure to obey the district court's order is punishable as contempt.<sup>143</sup> The county attorney or, if there is no county attorney, the district attorney must represent the ARB in a suit to enforce a subpoena.<sup>144</sup>

An individual who is not a party to the proceeding and who complies with a subpoena issued by an ARB under Tax Code Section 41.61 is entitled to the reasonable costs of producing the documents, mileage of 15 cents a mile for going to and returning

<sup>139</sup> Tex. Tax Code §41.61(a)

<sup>140</sup> Tex. Tax Code §41.61(b)

<sup>141</sup> Tex. Tax Code §41.61(c)

<sup>142</sup> Tex. Tax Code §41.62(a)

<sup>143</sup> Tex. Tax Code §41.62(b)

<sup>144</sup> Tex. Tax Code §41.62(c)



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from the place of the proceeding, and a fee of \$10 a day for each whole or partial day that the individual is necessarily present at the proceedings.<sup>145</sup> The ARB may, by rule, prescribe greater mileage or a larger fee, but an increase is not effective unless uniformly applicable to all individuals who are entitled to mileage or fee as provided under Tax Code Section 41.63.<sup>146</sup> Under Tax Code Section 41.63, compensation is paid by the appraisal office if the subpoena is issued on the ARB's motion or by the party requesting the subpoena; however, compensation is not payable unless the ARB approves the amount claimed.<sup>147</sup>

### Types of Hearings

A property owner may choose to appear at an ARB protest hearing in one of the following ways:<sup>148</sup>

- in person to offer evidence and argument;
- by telephone or videoconference to offer argument with evidence offered and delivered to the ARB by affidavit before the hearing begins; or
- by written affidavit to offer evidence and argument delivered to the ARB before the hearing begins.

The ARB must conduct a protest hearing by telephone or videoconference if the property owner provides sufficient written notice to the ARB of the owner's intent to appear by telephone or videoconference means 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 hearing date.<sup>149</sup> A property owner who appears by telephone or videoconference must offer any evidence by affidavit submitted to the ARB before the hearing begins.<sup>150</sup>

An ARB hearing by telephone or videoconference must be held in a location with equipment that allows each board member and the other protest parties present at the hearing to hear and/or see the property owner offer argument.<sup>151</sup> The ARB must provide a telephone number or internet location or uniform resource locator (URL) for the property owner to participate in the hearing.<sup>152</sup> A property owner is responsible, however, for providing access

to a telephone or videoconference hearing to another person that the owner invites to participate in the hearing.<sup>153</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>154</sup> Property owners must request videoconference hearings in writing on either the notice of protest or at least 10 days before the scheduled hearing date.<sup>155</sup> The ARB must provide an internet location or 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 hearing type.<sup>156</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 requested by property owners. Denying a property owner the hearing format they request may result in a lawsuit.

### Evidence by Affidavit

To offer evidence and argument for a hearing by affidavit or to offer evidence for a telephone or videoconference hearing, the property owner must attest to the affidavit before an officer authorized to administer oaths and submit the affidavit to the ARB before the hearing begins. On receipt of an affidavit, the ARB must notify the chief appraiser, who may inspect the affidavit and, on request, is entitled to a copy.<sup>157</sup> To be valid, the affidavit must be attested to before an officer authorized to administer oaths and include the protesting property owner's name, the subject property's description, and evidence or argument.<sup>158</sup> For

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<sup>145</sup> Tex. Tax Code §41.63(a)

<sup>146</sup> Tex. Tax Code §41.63(b)

<sup>147</sup> Tex. Tax Code §41.63(c) and (d)

<sup>148</sup> Tex. Tax Code §41.45(b)

<sup>149</sup> Tex. Tax Code §41.45(b-1)

<sup>150</sup> Tex. Tax Code §41.45(b)

<sup>151</sup> Tex. Tax Code §41.45(b-2)(2)

<sup>152</sup> Tex. Tax Code §41.45(b-2)(1)

<sup>153</sup> Tex. Tax Code §41.45(b-3)

<sup>154</sup> Tex. Tax Code §41.45(b-6)

<sup>155</sup> Tex. Tax Code §41.45(b-1)

<sup>156</sup> Tex. Tax Code §41.45(b)

<sup>157</sup> Tex. Tax Code §41.45(b)

<sup>158</sup> Tex. Tax Code §41.45(i)

purposes of the requirement to include evidence or argument, a statement from the property owner that specifies the determination or other action relating to the subject property from which the property owner seeks relief constitutes sufficient argument.<sup>159</sup> The Comptroller's office has created a standard form for an affidavit that appraisal districts must make available to property owners without charge.<sup>160</sup> However, a property owner is not required to use the Comptroller's form.<sup>161</sup>

The Tax Code also provides the following directives regarding a property owner's rights regarding affidavit submission:<sup>162</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;
- the ARB may consider the affidavit only if the property owner does not appear at the protest hearing in person;
- for purposes of scheduling the hearing, the property owner must state in the affidavit that the property owner does not intend to appear at the hearing or that the property owner intends to appear at the hearing in person or by telephone conference call and that the affidavit may be used only if the property owner does not appear at the hearing;
- if the property owner does not state in the affidavit whether the property owner intends to appear at the hearing, and has not elected to appear by telephone conference call, the ARB shall consider the submission of the affidavit as an indication that the property owner does not intend to appear at the hearing; and
- if the property owner states in the affidavit that the property owner does not intend to appear at the hearing or does not state in the affidavit whether the property owner intends to appear at the hearing, and has not elected to appear by telephone conference call, 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.

### Live Testimony

An ARB member may swear witnesses who appear in person to testify. All testimony must be given under oath.<sup>163</sup> 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>164</sup>

Documentary evidence may be admitted in the form of a copy if the ARB determines that the original document is not readily available. A party is entitled to an opportunity to compare a copy with the original document on request.<sup>165</sup>

Official notice may be taken of any fact judicially cognizable; however, a party is entitled to an opportunity to contest facts officially noticed.<sup>166</sup>

A property owner, attorney or authorized representative offering evidence or argument in support of a protest brought under Tax Code Section 41.41(a)(1) or 41.41(a)(2) is not subject to Occupations Code Chapter 1103 (the Texas Appraiser Licensing and Certification Act), unless the person offering the evidence or argument states that the person is offering evidence or argument as a person holding a license or certificate under Occupations Code Chapter 1103.<sup>167</sup> A person holding a license or certificate under Occupations Code Chapter 1103 must state the capacity in which the person is appearing before the ARB.<sup>168</sup>

In considering evidence, the ARB should consider applicable legal requirements. For example, when considering appraisal reports presented as evidence at protest hearings, ARBs must determine for what purpose the appraisals were prepared and if any restrictions exist in their use. Often the law states what is required for an appraisal to be valid. Tax Code Section 41.43(a-2) states that for purposes of establishing the applicable burden of proof, an appraisal report must be attested to before an officer authorized to administer oaths and include certain matters, such as a statement that the appraisal was performed in accordance with the USPAP, if the appraisal is provided to the chief appraiser under Tax Code Section 41.43(a-1).

In addition, Rule 155.2(a) adopted by the Texas Appraiser Licensing and Certification Board (TALCB), states that "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 . . . 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

<sup>159</sup> Tex. Tax Code §41.45(j)

<sup>160</sup> Tex. Tax Code §41.45(k)

<sup>161</sup> Tex. Tax Code §41.45(l)

<sup>162</sup> Tex. Tax Code §41.45(n)

<sup>163</sup> Tex. Tax Code §41.67(a)

<sup>164</sup> Tex. Tax Code §41.66(b)

<sup>165</sup> Tex. Tax Code §41.67(b)

<sup>166</sup> Tex. Tax Code §41.67(c)

<sup>167</sup> Tex. Tax Code §41.66(l)

<sup>168</sup> Tex. Tax Code §41.66(l)

Act.” The rule continues by stating that a person who is both a TALCB-licensed appraiser and certified as a property tax consultant or property tax professional must include the disclaimer provided in the rule that the work or report may not comply with USPAP.<sup>169</sup> Exhibit B contains a copy of the rule.

### Agreements Resolving Protests

An ARB may not review or reject agreements between a property owner or authorized representative and the appraisal district under Tax Code Section 1.111(e).<sup>170</sup> Pursuant to Tax Code Section 1.111(e), an agreement between a property owner or the property owner’s authorized representative and the chief appraiser is final if the agreement relates to a matter that (1) may be protested to the ARB or on which a protest has been filed but not determined by the ARB or (2) which may be corrected under Tax Code Section 25.25 or on which a motion for correction under that section has been filed but not determined by the ARB. These agreements may be reached between the parties before a hearing or during a hearing.

The court of appeals in *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 68-69 (Tex. App. – Houston [14th Dist.] 2007, no pet.), reviewed a case in which, during the course of testimony in a protest hearing before the ARB, the property owner’s authorized representative presented a value and the appraisal district’s representative concurred. The court held that the agreement had become final the moment the appraisal district’s representative concurred and that any subsequent determinations by the ARB regarding value, including the order it entered, were irrelevant. Several appellate court decisions have addressed the same issue and ruled in accordance with the *Sondock* court.<sup>171</sup> As stated by one court, “because an appraisal review board cannot review a section 1.111(e) agreement, it necessarily cannot render an order resolving a protest based on a review of that agreement.”<sup>172</sup>

<sup>169</sup> 22 Tex. Admin. Code §155.2

<sup>170</sup> Tex. Tax Code §41.01(b)

<sup>171</sup> See, e.g., *Kelly v. Harris County Appraisal Dist.*, 01-09-00996-CV, 2011 WL 497032, at \*2 (Tex. App.—Houston [1st Dist.] Feb. 10, 2011, no pet.)(mem. op.); *Loposer v. Harris County Appraisal Dist.*, 14-07-00956-CV, 2009 WL 2146151, at \*1 (Tex. App.—Houston [14th Dist.] July 21, 2009, no pet.)(mem. op.); *Amidei v. Harris County Appraisal Dist.*, 01-08-00833-CV, 2009 WL 2050974, at \*1 (Tex. App.—Houston [1st Dist.] July 16, 2009, no pet.)(mem. op.); *Verm v. Harris County Appraisal Dist.*, 14-06-01046-CV, 2008 WL 2580041, at \*1 (Tex. App.—Houston [14th Dist.] July 1, 2008, no pet.)(mem. op.)

<sup>172</sup> *MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist.*, 249 S.W.3d 68, 83 (Tex. App. – Houston [1st Dist.] 2007, pet. denied)

### Joint Motion for Agreed Order

The chief appraiser and the property owner or their authorized representative may file a joint motion with the ARB notifying the board that they have agreed to the protest’s disposition and request the board to issue an agreed order. The joint motion must contain the terms of the protest’s disposition. The ARB chair shall issue the agreed order not later than the fifth day after the date on which the joint motion is filed with the ARB. If the chair 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 ARB determination under Tax Code Section 41.47.<sup>173</sup>

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

### Determination of Protests

If there is no agreement pursuant to Tax Code Section 1.111(e), the ARB hearing a protest must determine the protest and make its decision by written order.<sup>174</sup>

If the ARB finds that the appraisal records are incorrect in some respect raised by the protest, the ARB by its order must correct the appraisal records by changing the appraised value placed on the protesting property owner’s property or by making the other changes in the appraisal records that are necessary to conform the records to the requirements of law. If the appraised value of a taxable property interest is changed as the result of a protest or challenge, the ARB must change the appraised value of all other interests, other than an interest owned by a public utility or by a cooperative corporation organized to provide utility service, in the same property, including a mineral in place, in proportion to the ownership interests.<sup>175</sup>

An ARB determination of property value on real property must separately state the land’s appraised value and the improvement’s appraised value as allocated by the chief appraiser. The order must include the ARB’s appraised value determination and the value determined by the chief appraiser as stated in the appraisal record.<sup>176</sup>

<sup>173</sup> Tex. Tax Code §41.47(f) and (g)

<sup>174</sup> Tex. Tax Code §41.47(a)

<sup>175</sup> Tex. Tax Code §41.47(b)

<sup>176</sup> Tex. Tax Code §41.41(c)



The ARB must deliver a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser and an ARB survey with instructions for completing and submitting the survey to the property owner.<sup>177</sup> The order must be sent by certified mail or electronically if the property owner or the owner's authorized representative have elected to receive communications electronically under Tax Code Section 1.085.<sup>178</sup>

The notice of the order's issuance must contain a prominently printed statement in uppercase, bold lettering informing the property owner in clear and concise language of his or her right to appeal the ARB's order to district court, describing the deadline prescribed by Tax Code Section 42.06(a) for filing written notice of appeal, and describing the deadline prescribed by Tax Code Section 42.21(a) for filing a petition for review with the district court.<sup>179</sup> An ARB must include with the notice of issuance of certain orders and the copy of the order a notice of the property owner's rights under Tax Code Chapter 41A, relating to appeal through regular binding arbitration (RBA), and a copy of the Comptroller's prescribed form for requesting RBA.<sup>180</sup>

An action remanded from district court to the ARB under Tax Code Section 42.231(b) is considered a timely filed protest under Tax Code Chapter 41, Subchapter C. Tax Code Section 25.25 grants that the ARB shall schedule a hearing on this type of motion. An ARB must also include with the notice of issuance of certain orders and the copy of the order a notice of the property owner's rights under Government Code Chapter 2003, Subchapter Z, relating to appeal to the State Office of Administrative Hearings (SOAH), and a copy of SOAH's prescribed form for notice of appeal under Subchapter Z.<sup>181</sup>

### **Correction of Appraisal Roll (Tax Code Section 25.25)**

The Tax Code states that the appraisal roll may not be changed except as provided by Tax Code Chapter 41 (protests and challenges), Tax Code Chapter 42 (judicial review), and Tax Code Section 25.25 (appraisal roll corrections).<sup>182</sup>

Tax Code Section 25.25 provides rights and requirements for motions to correct the appraisal roll. A person who acquires property after Jan. 1 of the tax year at issue is entitled to file any motion that Tax Code Section 25.25 authorizes the person

who owned the property on Jan. 1 of that year to file, if the deadline for filing the motion has not passed.<sup>183</sup> If during the pendency of a Tax Code Section 25.25 motion the subject property's ownership changes, the new property owner is entitled to proceed with the motion in the same manner as the property owner who filed the motion.<sup>184</sup>

Pursuant to Tax Code Section 25.25(b), chief appraisers may change the appraisal roll at any time to correct the following:

- a name or address;
- an ownership determination;
- a property description;
- multiple appraisals of a property;
- an erroneous denial or cancellation of a residence homestead exemption if the applicant or recipient is:
  - o disabled;
  - o age 65 or older; or
  - o the surviving spouse of a recipient who was 65 or older;
- an erroneous denial or cancellation of:
  - o a disabled veteran exemption;
  - o a 100 percent or totally disabled veteran residence homestead exemption; or
  - o a clerical error or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability.

Before the 10th day after the end of each calendar quarter, the chief appraiser must submit to the ARB and to the appraisal district's board of directors a written report of each change made under Tax Code Section 25.25(b) that decreases a property owner's tax liability. The report must include a description of each property and each property owner's name.<sup>185</sup> The chief appraiser's failure or refusal to change an appraisal roll under Tax Code Section 25.25(b) is not an action that the ARB is authorized to determine under Tax Code Section 25.25; that may be the subject of a suit to compel filed under Tax Code Section 25.25(g); that a property owner is entitled to protest under Tax Code Section 41.41; or that may be appealed under Tax Code Chapter 42.<sup>186</sup>

Pursuant to Tax Code Section 25.25(c), the ARB, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years to correct the following:

<sup>183</sup> Tex. Tax Code §25.25(i)  
<sup>184</sup> Tex. Tax Code §25.25(j)  
<sup>185</sup> Tex. Tax Code §25.25(b)  
<sup>186</sup> Tex. Tax Code §25.25(o)

<sup>177</sup> Tex. Tax Code §41.47(d)

<sup>178</sup> Tex. Tax Code §41.47(d)

<sup>179</sup> Tex. Tax Code §41.47(e)

<sup>180</sup> Tex. Tax Code §41A.02

<sup>181</sup> Tex. Gov't Code §2003.908

<sup>182</sup> Tex. Tax Code §25.25(a)

- clerical errors that affect a property owner's liability for a tax imposed in that tax year;
- multiple appraisals of a property in that 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 which property is shown as owned by a person who did not own the property on Jan. 1 of that tax year.

The meaning of clerical error was interpreted by case law. In *Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist.*, 13-10-500-CV, 2011 WL 2475843, at \*1 (Tex. App.—Corpus Christi June 23, 2011, pet. denied), Hidalgo County Appraisal District (HCAD) appraised Lack's inventory for tax years 2003, 2004 and 2005. For each tax year, the property owner filed ARB protests and subsequently negotiated settlements on the protested accounts. In 2008, the property owner filed a motion claiming clerical errors in 2003, 2004 and 2005, for failure to apply appropriate depreciation to the inventory. The ARB determined that no clerical errors were committed during the tax years at issue and Lack's filed suit.

The Court of Appeals found that failure to account for depreciation is outside the scope intended by the definition of clerical error in Tax Code Section 1.04(18). The appraisal district's alleged failure to appraise the property according to appropriate methodology, procedure or computation was not a clerical error. Tax Code Section 25.25(c) does not make available to the taxpayer the opportunity to challenge the substantive re-evaluation of a property's market value. Rather, such claims must be brought through the appeals process set forth in Tax Code Chapter 41.<sup>187</sup>

A motion may be filed pursuant to Tax Code Section 25.25(c) regardless of whether, for a tax year to which the motion relates, the property owner protested under Tax Code Chapter 41 an action relating to the property's value that is the subject of the motion.<sup>188</sup>

Pursuant to Tax Code Section 25.25(d), at any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the ARB to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value

that exceeds by more than one-fourth the correct appraised value of a qualified residence homestead or more than one-third the correct appraised value of a non-residence homestead. If the appraisal roll is changed under Tax Code Section 25.25(d), the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated based on the corrected appraised value. Payment of the late-correction penalty is secured by a lien that attaches to the property and is subject to enforced collection.<sup>189</sup> The roll may not be changed under Tax Code Section 25.25(d) under these conditions:

- the property was the subject of a protest brought by the property owner under Tax Code Chapter 41, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the ARB determined the protest on the merits; or
- the property's appraised value was established by written agreement between the property owner or the property owner's authorized representative and the appraisal district.<sup>190</sup>

A property owner who files a motion under Tax Code sections 25.25(c), 25.25(c-1) or 25.25(d) must comply with the tax payment requirements of Tax Code Section 25.26 or forfeit the right to a final determination of the motion.<sup>191</sup>

Tax Code Section 25.25(f) gives ARBs authority to order an appraisal roll correction based on the motion filed by the property owner if the chief appraiser refuses to combine parcels or tracts or refuses to separate them under a motion to correct or a protest filed under Tax Code Chapter 41.<sup>192</sup>

On the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, the ARB must, by written order correct an error that resulted in an incorrect appraised value for the owner's property.<sup>193</sup>

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. However, the delinquency date applies only to the amount of taxes required to be paid (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

<sup>187</sup> *Lack's Valley Stores, Ltd. v. Hidalgo County Appraisal Dist.*, 2011 Tex. App. LEXIS 4752, at \*5 (Tex. App. - Corpus Christi, June 23, 2011, pet. denied)

<sup>188</sup> Tex. Tax Code §25.25(l)

<sup>189</sup> Tex. Tax Code §25.25(d)

<sup>190</sup> Tex. Tax Code §25.25(d)

<sup>191</sup> Tex. Tax Code §25.25(e)

<sup>192</sup> Tex. Tax Code §25.25(f)

<sup>193</sup> Tex. Tax Code §25.25(h)

Code Section 42.42(c) and that additional amount is not delinquent before that date.<sup>194</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. 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>195</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 is filed.<sup>196</sup>

## Limited Binding Arbitration (LBA)

LBA is a process outlined in Tax Code Section 41A.015 that allows property owners who meet certain qualifications to request arbitration to compel the appraisal district or ARB to comply with procedural requirements. There are specific notice requirements and filing deadlines unique to LBA.<sup>197</sup> Only arbitrators who are licensed attorneys are eligible to hear LBA cases.<sup>198</sup> Exhibit 3 provides a visual representation of the LBA process, which begins after a property owner files a protest under Tax Code Chapter 41. An arbitrator who accepts an arbitration appointment must conduct each arbitration proceeding according to the terms of Tax Code Chapter 41A and Comptroller rules.

A property owner can request LBA to compel the ARB or chief appraiser, as appropriate, to:

- comply with the ARB's adopted hearing procedures and rescind the ARB's adopted procedural rules that are not in compliance with the model hearing procedures prepared by the Comptroller;<sup>199</sup>

- schedule a hearing on a protest as required by law;<sup>200</sup>
- deliver a copy of the *Taxpayer Assistance Pamphlet* publication, the ARB hearing procedures or information on a property owner's right to request evidence the chief appraiser will introduce at the ARB hearing at least 14 days before the scheduled hearing;<sup>201</sup>
- allow the property owner to offer evidence, examine or cross-examine witnesses or other parties, and present arguments during a hearing;<sup>202</sup>
- set a hearing for a time and date certain and postpone a hearing that does not begin within two hours of the scheduled time;<sup>203</sup>
- schedule protest hearings 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 authorized representative;<sup>204</sup> or
- refrain from using or offering as evidence information requested by the property owner that was not delivered to the property owner at least 14 days before the hearing.<sup>205</sup>

Each of these statutory or procedural requirements relate to the ARB protest process.

### Request for LBA

Not later than May 15, or the 30th day after the date a notice of appraised value is delivered to the property owner, whichever is later, a property owner may file an ARB protest for the reasons listed in Tax Code Section 41.41.<sup>206</sup> A protest under Tax Code Chapter 41 must have been filed for a property owner to be eligible to file for LBA.<sup>207</sup>

<sup>194</sup> Tex. Tax Code §25.26(a)

<sup>195</sup> Tex. Tax Code §25.26(b) and (d)

<sup>196</sup> Tex. Tax Code §25.26(c)

<sup>197</sup> Tex. Tax Code §41A.015

<sup>198</sup> Tex. Tax Code §41A.015(p)(1)

<sup>199</sup> Tex. Tax Code §41A.015(a)(1)

<sup>200</sup> Tex. Tax Code §41A.015(a)(2)

<sup>201</sup> Tex. Tax Code §41A.015(a)(3)

<sup>202</sup> Tex. Tax Code §41A.015(a)(4)

<sup>203</sup> Tex. Tax Code §41A.015(a)(5)

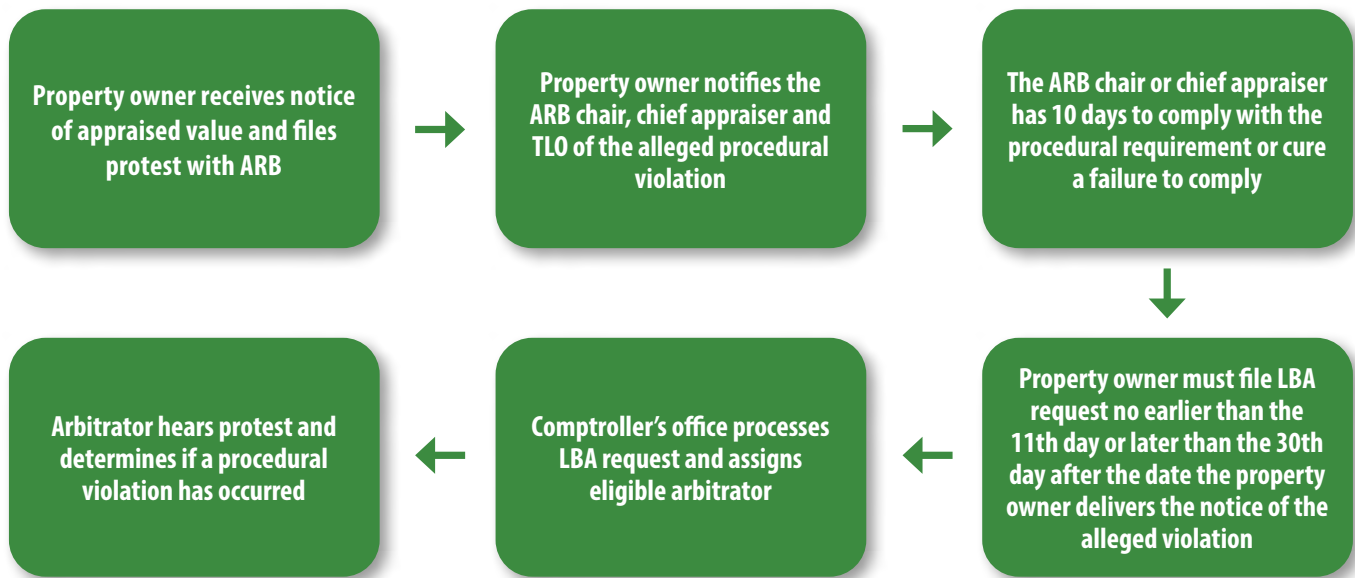
<sup>204</sup> Tex. Tax Code §41A.015(a)(6)

<sup>205</sup> Tex. Tax Code §41A.015(a)(8)

<sup>206</sup> Tex. Tax Code §41.44(a)(1)

<sup>207</sup> Tex. Tax Code §41A.015(a)

EXHIBIT 3  
**LBA Process Overview**



Before a property owner can file for LBA, they must first notify the chief appraiser, ARB chair and TLO of the alleged procedural violation on or before the fifth business day after the date the ARB or chief appraiser was required to comply with the requirement.<sup>208</sup> The ARB chair or chief appraiser then has 10 days to deliver a written statement confirming they will comply with the procedural requirement or cure a failure to comply.<sup>209</sup> If the ARB chair or chief appraiser does not comply or cure a failure to comply within 10 days of the notice, the property owner can file an LBA request.

The property owner cannot file the LBA request sooner than 11 days or later than 30 days from the date the property owner delivered the required notice.<sup>210</sup> The LBA request is filed directly with the Comptroller's office. A property owner can request a single LBA for more than one property, more than one protest hearing that occurred in the same tax year or more than one procedural violation as long the notice and filing requirements are met for each alleged violation.<sup>211</sup>

A property owner must complete the Comptroller's *Request for Limited Binding Arbitration* (Form AP-241), attach a copy of the appraisal district's notice of appraised value for the property subject to LBA and include a check or money

order payable to the Comptroller of Public Accounts for the required deposit amount. The request form requires the property owner to:

- make a statement indicating that he or she has provided the written notice to the chief appraiser, ARB chair and TLO;<sup>212</sup>
- make a statement indicating the request includes the required deposit;<sup>213</sup>
- identify the procedural requirement with which the chief appraiser or ARB allegedly failed to comply;<sup>214</sup>
- describe the action taken or not taken by the chief appraiser or ARB regarding the procedural requirement;<sup>215</sup>
- provide a description of the property to which the award will apply;<sup>216</sup> and
- any other information reasonably necessary for the Comptroller to appoint an arbitrator.<sup>217</sup>

A property owner who files suit under Tax Code Chapter 42 regarding the same issues for the same properties in the same tax year waives his or her right to request LBA and the arbitrator must dismiss the arbitration proceeding. A property

<sup>208</sup> Tex. Tax Code §41A.015(b)(1)

<sup>209</sup> Tex. Tax Code §41A.015(b)(2)

<sup>210</sup> Tex. Tax Code §41A.015(d)

<sup>211</sup> Tex. Tax Code §41A.015(o)

<sup>212</sup> Tex. Tax Code §41A.015(f)(1)

<sup>213</sup> Tex. Tax Code §41A.015(f)(2)

<sup>214</sup> Tex. Tax Code §41A.015(f)(3)

<sup>215</sup> Tex. Tax Code §41A.015(f)(4)

<sup>216</sup> Tex. Tax Code §41A.015(f)(5)

<sup>217</sup> Tex. Tax Code §41A.015(f)(6)

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owner must decide between filing an appeal in district court and requesting LBA.

### **Dismissal with Prejudice**

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

- A protest was not filed under Tax Code Chapter 41 for the subject property.
- 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.
- The owner or authorized representative has not delivered written notice to the ARB chair, chief appraiser and TLO for the applicable appraisal district as required by Tax Code Section 41A.015(b)(1).
- 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, chief appraiser and TLO for the applicable appraisal district.
- The ARB or chief appraiser complied with the procedural requirement that was the subject of the LBA request.

### **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>218</sup>

The arbitrator will hear and evaluate the evidence, make an arbitration determination and deliver an electronic copy of the determination to the property owner, ARB chair, chief appraiser and Comptroller's office.<sup>219</sup>

### **LBA Determination**

After hearing both sides, the arbitrator must render a decision and complete Form 50-890. The arbitrator must send the completed form to the Comptroller's office and copies to the property owner and the appraisal district by email. The arbitrator's decision must include a determination of whether the

ARB or chief appraiser failed to comply with a procedural requirement as alleged in the LBA request. If the arbitrator determines that the ARB or chief appraiser failed to comply with a procedural requirement as the request alleged, the arbitrator must direct the ARB or chief appraiser to comply with the procedural requirement, or, if the protest hearing has been held and the ARB has issued an order determining the protest, 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, except as permitted under Civil Practice and Remedies Code Section 171.088.

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>220</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>221</sup> The ARB or chief appraiser, as soon as practicable after receiving notice of a determination, must take any action required to comply with the determination.<sup>222</sup>

An LBA determination 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>223</sup>

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<sup>218</sup> Tex. Tax Code §41A.015(h)

<sup>219</sup> Tex. Tax Code §41A.015(i)

<sup>220</sup> Tex. Tax Code §41A.015(l)(1)

<sup>221</sup> Tex. Tax Code §41A.015(k)

<sup>222</sup> Tex. Tax Code §41A.015(m)

<sup>223</sup> Tex. Tax Code §41A.015(n)



## CHAPTER 2

# Methods of Appraising Property

This chapter covers the methods used by appraisers in appraising property for tax purposes. It is not intended to teach ARB members how to appraise property. However, it provides extensive methodology to give ARB members a better understanding about how property is appraised so that they may be better prepared to ask the right questions and assess the evidence presented by the parties. This part of the manual provides explanations of the law, standards, methods and language used in property appraisal.

ARB members will learn the basic procedures involved in carrying out property tax appraisals for various property types. At the conclusion of the chapter, participants will have a better understanding of how appraised value is properly developed and have a deeper understanding of the appraisal process so that they can better weigh evidence at protest hearings.

## What is an Appraisal?

An appraisal is an unbiased opinion of value; it is not a statement of fact. No one can forecast a property's exact selling price. Appraisers, however, cannot randomly assign property values; they must base their opinion of value on market conditions. The appraiser must avoid bias at all costs; they must base the opinion of value on data, not on personal opinion.

Texas law requires that a property's market value be established by using generally accepted appraisal methods and techniques.<sup>224</sup> This means that appraisal districts have a statutory requirement to follow a set of professionally recognized procedures to develop a market value estimate. The accepted appraisal methods and techniques to be used can be found in the Appraisal Institute's *Appraisal of Real Estate* and *The Dictionary of Real Estate Appraisal*, The Appraisal Foundation's *Uniform Standards of Professional Appraisal Practice* (USPAP) and any publication that includes information on

mass appraisal.<sup>225</sup> USPAP defines an appraisal as "the act or process of developing an opinion of value; an opinion of value."<sup>226</sup> Additionally, the comment to this definition provides that an appraisal must be numerically expressed as a specific amount, as a range of numbers or as a relationship to a previous value opinion or numerical benchmark.<sup>227</sup>

Following industry standards eliminates the potential for appraiser bias and provides methods to independently test and objectively defend the market value estimate. While in the end an appraisal is an opinion, it is one that is based on professionally recognized processes and objective data, not mere guesswork.

Basic definitions involving value, which can take different forms in the appraisal and taxation process, are as follows:

- **Market value** means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if the following elements are present:
  - o exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
  - o both the seller and the 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
  - o both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.<sup>228</sup>
- **Appraised value** means the value determined as provided by Tax Code Chapter 23.<sup>229</sup>

<sup>225</sup> Tex. Tax Code §23.01(h)

<sup>226</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 3

<sup>227</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 3

<sup>228</sup> Tex. Tax Code §1.04(7)

<sup>229</sup> Tex. Tax Code §1.04(8)

<sup>224</sup> Tex. Tax Code §23.01(b)

- **Taxable value** is the amount determined by deducting from assessed value any applicable exemptions.<sup>230</sup>

The Tax Code defines the following three distinct property types:

- **Real property** means land; an improvement; a mine or quarry; a mineral in place; standing timber; or an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated herein. An improvement is a building, structure, fixture or fence erected on or affixed to land; a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily; or subdivision of land by plat; installation of water, sewer or drainage lines; or paving of undeveloped land.<sup>231</sup>
- **Tangible personal property** means personal property (property that is not real property) that can be seen, weighed, measured, felt or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim or right and has negligible or no intrinsic value.<sup>232</sup>
- **Intangible personal property** means a claim, interest (other than an interest in tangible property), right or other thing that has value but cannot be seen, felt, weighed, measured or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract and goodwill.<sup>233</sup>

Property can change from real to personal property and from personal to real property. Minerals in place, for example, have not been removed from the ground.<sup>234</sup> When they are mined, these minerals convert to personal property. A manufactured home is considered real property if the property owner designates it as such on the statement of ownership and location for

the home issued under Occupations Code Section 1201.207 and files a certified copy of the statement of ownership and location in the real property records in the county in which the home is located; otherwise, it is personal property.<sup>235</sup>

Appraisers distinguish between improvements, including buildings, structures, fixtures or fences and improvements-to-land, such as sidewalks, curbs, retaining walls and stock tanks. Improvements include such things as houses, barns and other buildings. Appraisers usually include the value of improvements-to-land with their opinion of land value, not their opinion of improvement value. Appraisers often use the term site to refer to the raw land and the improvements-to-land.

Mineral leases are an example of real property that falls under the category any other ownership interest. A person or company that purchases mineral rights in a property must pay property taxes on the value of that ownership interest. However, an ownership interest held by a mortgage lender or a contractor who has a lien on a property is not taxable. A lien enables the holder to take over property ownership or force its sale if the property owner does not pay a debt he or she owes the lien holder. The lien holders cannot be taxed on the lien's value unless they use it and gain possession of the property. Borrowers are liable for the property taxes as long as they retain ownership of the property.

All property that is not real property is personal property.<sup>236</sup> Personal property can be further described as either tangible or intangible.<sup>237</sup> If one can feel, see or touch personal property, it is tangible.<sup>238</sup> If one cannot see the property itself, it is intangible. Stock in a corporation is intangible. Even though one can see the share of stock as a piece of paper, the corporation itself or the ownership interest in it cannot be seen.<sup>239</sup>

Usually, ARBs do not have to be concerned with intangible property. In some instances, such property is taxable, such as the intangible property of insurance companies and savings and loans, but in most cases, it is exempt.<sup>240</sup> It is also possible that a taxpayer could argue that part of a real estate value be attributed to an intangible personal property, such as a franchise name hotel.

<sup>230</sup> Tex. Tax Code §1.04(10)

<sup>231</sup> Tex. Tax Code §1.04(2) and (3)

<sup>232</sup> Tex. Tax Code §1.04(4) and (5)

<sup>233</sup> Tex. Tax Code §1.04(6)

<sup>234</sup> Tex. Tax Code §1.04(2)(D)

<sup>235</sup> Tex. Tax Code §25.08(e)

<sup>236</sup> Tex. Tax Code §1.04(4)

<sup>237</sup> Tex. Tax Code §1.04(5) and (6)

<sup>238</sup> Tex. Tax Code §1.04(5)

<sup>239</sup> Tex. Tax Code §1.04(6)

<sup>240</sup> Tex. Tax Code §11.02

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## Uniform Standards of Professional Appraisal Practice (USPAP)

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Texas law requires that a property's market value be determined as of Jan. 1 by the application of generally accepted appraisal methods and techniques. If an appraisal district uses mass appraisal methods to determine a property's appraised value — which most do — it must comply with USPAP.<sup>241</sup> The Appraisal Foundation, authorized by the U.S. Congress to set appraisal standards and appraiser qualifications, developed USPAP which is the generally recognized ethical and performance standards for the appraisal profession in the United States. USPAP is updated every two years.<sup>242</sup> Appraisers are responsible for complying with current USPAP standards in effect at the time each appraisal is conducted.

The purpose of USPAP is to provide the public with a level of confidence in appraisal work. By setting the standards for the work appraisers perform, as well as the qualifications for appraisers, USPAP helps ensure that appraisal work is reliable, fair and uniform. In addition to the appraisal standards, The Appraisal Foundation sets out the ethical and competency requirements that appraisers must observe and maintain.

USPAP addresses appraisers' ethical and performance obligations through definitions, rules, standards and statements. The rules specifically address ethics, record keeping, competency, scope of work and jurisdictional exceptions.<sup>243</sup> USPAP provides the following standards used in appraising real, personal and business property:

- Standard 1:** Real Property Appraisal, Development;
- Standard 2:** Real Property Appraisal, Reporting;
- Standard 3:** Appraisal Review, Development;
- Standard 4:** Appraisal Review, Reporting;
- Standard 5:** Mass Appraisal, Development;
- Standard 6:** Mass Appraisal, Reporting;
- Standard 7:** Personal Property Appraisal, Development;
- Standard 8:** Personal Property Appraisal, Reporting;
- Standard 9:** Business Appraisal, Development; and
- Standard 10:** Business Appraisal, Reporting.<sup>244</sup>

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<sup>241</sup> Tex. Tax Code §23.01(a) and (b)

<sup>242</sup> The Appraisal Foundation, website accessed Feb. 8, 2021 at [https://www.appraisalfoundation.org/imis/TAF/About\\_Us/TAF/About\\_Us.aspx](https://www.appraisalfoundation.org/imis/TAF/About_Us/TAF/About_Us.aspx)

<sup>243</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, page v

<sup>244</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, page v

Most appraisal districts use mass appraisal and will be concerned with Standards 5 and 6; however, if a property owner brings in an independent appraisal, it too must comply with USPAP. For real property (single-family, commercial, land, etc.), Standard 1 must be followed in developing the appraisal and Standard 2 in reporting the appraisal; for personal property, Standard 7 applies in the development and Standard 8 in the reporting; and for business property, Standards 9 and 10 must be observed.<sup>245</sup>

According to the comment to USPAP Standard 5, a mass appraisal includes the following elements:

- identifying properties appraised;
- defining market area of consistent behavior that applies to properties;
- identifying characteristics (supply and demand) that affect the creation of value in that market area;
- developing a model structure that reflects the relationship among the characteristics affecting value in the market area;
- calibrating the model structure to determine the contribution of the individual characteristics affecting value;
- applying the conclusions reflected in the model to the characteristics of the property being appraised; and
- reviewing the mass appraisal results.<sup>246</sup>

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## Mass Appraisal

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An appraisal district must estimate the value of thousands of properties. The appraisal district has neither the time nor money to repeat the full appraisal process for each individual property. Instead, it uses mass appraisal. The Appraisal Foundation defines mass appraisal 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>247</sup> The definition includes basic appraising elements used to appraise individual pieces of property, such as standard methodology and common data. Appraising properties in mass, however, requires an additional component—the use of statistical testing.

In general, property appraisal is made up of a set of procedures designed to ensure that appraisers base opinions of value on a

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<sup>245</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, page v

<sup>246</sup> For a complete discussion of Standard 5 see Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, Appraisal Standards Board, pp. 32-37

<sup>247</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 5



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disciplined interpretation of facts. The appraiser submits market information to a series of examinations that enable him or her to develop an opinion of a single property's value. The following four areas comprise the essential elements of a mass appraisal system:

- discovery of all taxable property;
- inspection of all taxable property;
- construction of system to record and maintain records of taxable property; and
- estimation of fair and uniform value of all taxable property.

No matter how small the appraisal district, no appraiser can carry out these steps for every property. Maintenance of the system's integrity requires independent verification and methods to perform quality checks on data gathered, analyzed and recorded. This requires involvement of more than one individual. It is the chief appraiser's responsibility to assign and coordinate these tasks to ensure data quality. One staff appraiser may spend the majority of his or her time collecting ownership information, a second may concentrate on inspecting existing property, a third may focus on inspecting new property and a clerk may enter the data into the appraisal recordkeeping system.

Because mass appraisers must work with large numbers of properties, appraisers must alter their discipline accordingly. Mass appraisers attempt to find the value of a typical property of a given type and then use that typical value to estimate the value of specific properties. Since every appraisal district has a variety of different property types, the first step in mass appraisal is to classify properties and determine what kinds of properties are typical in the appraisal district.

Mass appraisers then devise a value schedule for each property type included in the appraisal district's classification system. The set of improvement schedules, for example, include at least one schedule for single-family residences, one for commercial properties and one for multi-family residences. The market in the appraisal district determines the kinds of schedules necessary.

The process of building a value schedule involves the following basic steps:

- Step 1** Developing a classification system.
- Step 2** Collecting sales information.
- Step 3** Posting sales to the appropriate category.

**Step 4** Calculating appropriate time adjustments and applying them to sale prices.

**Step 5** Adjusting sale prices of individual properties to eliminate any features that are not typical of their category.

**Step 6** Selecting the value from each category that best represents the typical value per unit of measure.

**Step 7** Calculating adjustments with which to tailor typical values to specific properties.

Step 5 distinguishes mass appraisal most clearly from single-property appraisal. Since mass appraisal aims to deal quickly with large numbers of properties, it devises values for categories. To find those values for categories, appraisers must eliminate all unique features of the individual properties within the group. They must then adjust sales information so that it will reflect the market value not of the specific property sold, but of a typical property that lacks any unique features. At Step 7, appraisers produce adjustment figures which enable the schedule to work. These adjustments allow them to convert typical values back into values appropriate for specific properties.

In practice, mass appraisal does not progress as methodically as the seven-step process suggests. An appraisal district can construct a preliminary classification system but must modify it as information on sales is collected. Obviously, sales cannot be posted until the appraisal district has perfected its classification scheme. The classification system might, for example, separate classes of single-family houses according to number of bedrooms.

All value schedules are different because all markets are different. Deciding what types of properties are typical can present tremendous difficulties, but that effort to classify properties is at the heart of mass appraisal. A value schedule cannot be any better than the classification system on which it is based.

Although it is possible to build a value schedule for land in the same way as a schedule for improvements, those steps are not necessary. Location, topography and use all tend to go together. Locations are also identified by use of residential areas, central business districts, warehouse districts, industrial parks and other categories. The appraisal district must develop adjustments to apply to properties identified as non-typical. Nonetheless, compared with the adjustments

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improvements require, the total number of adjustments to land prices should be small.

The International Association of Assessing Officers (IAAO) describes the purpose of mass appraisal as “the equitable and efficient appraisal of all property in a jurisdiction for ad valorem tax purposes.”<sup>248</sup> The IAAO provides that the “central idea of mass appraisal” is “the development of appraisal models that are then applied to groups of properties in a cadastral database . . . to produce estimates of the value of all properties in the group.”<sup>249</sup> It goes on to explain this concept further:

Mass appraisal, unlike single-property appraisal, requires the development of a valuation model capable of replicating the forces of supply and demand over a large area. Appraisal judgments relate to groups of properties rather than to single properties. The assessor must be able to develop, support, and explain standardized adjustments in a valuation model among use classes, construction types, neighborhoods, and other property groups.<sup>250</sup>

The IAAO also explains mass appraisal models:

A model is a representation of how something works. Models are designed by researchers, scientists, and analysts to test theories and predict the outcome of events. . .

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>251</sup>

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<sup>248</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 303 (1990)(IAAO publication)

<sup>249</sup> Robert J. Gloudemans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 5 (2011) (IAAO publication)

<sup>250</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 303 (1990) (IAAO publication)

<sup>251</sup> Robert J. Gloudemans, Richard R. Almy, *Fundamentals of Mass Appraisal*, p. 249 (2011) (IAAO publication)

USPAP Standard 5 applies to all real or personal property mass appraisals and includes rules appraisers must consider in appraising property under this method.<sup>252</sup> In mass appraisal, the following is true:

. . . perfection is impossible to obtain . . . However, an appraiser must not render appraisal services in a careless and negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.<sup>253</sup>

### **Characteristics of Mass Appraisal**

What is the difference between mass appraisal and single-property appraisal? The IAAO explains the differences this way:

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>254</sup>

Quality control, the IAAO explains, is handled “in a fundamentally different way in the two methods.”<sup>255</sup>

In single-property appraisal, with the focus on the individual parcel, the reliability of valuations can usually be judged by the depth of the research and analysis or by a comparison with sales of comparable properties. In mass appraisal, statistical methods are used to gauge the accuracy and consistency of valuations.<sup>256</sup>

The mass appraisal process has a number of general characteristics that distinguish it from single-property appraisal. One such characteristic is centralization of authority. While a sole and independent contractor may appraise a single property, the mass appraisal process is more than a single individual can

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<sup>252</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 32

<sup>253</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 11

<sup>254</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 88 (1990) (IAAO publication)

<sup>255</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 303 (1990) (IAAO publication)

<sup>256</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 303 (1990) (IAAO publication)

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undertake. Typically, tasks are divided among administrators and field appraisers.

A second characteristic is standardization of appraisal procedures. Not only must a large number of properties be appraised, they must be appraised in a manner that conforms to law and does not discriminate. This means that a great deal of the art of appraisal is replaced by standard operating procedures designed to minimize the difference in the treatment of properties and to make the treatment of properties routine.

A third characteristic is synchronization of tasks. When one person performs all the tasks in an appraisal, the tasks are performed in a proper order. Where, however, one person directs, a second develops valuation tools, a third collects data, a fourth uses the tools and the data to appraise and a fifth draws on the work of the other four in producing an appraisal roll, it is essential that the work of the five be synchronized so that one does not wait on another so that the roll is produced on time.

Maximization, the fourth characteristic, is a commitment to getting the most value for the dollar spent. The mass appraisal balances cost per parcel, time involved per appraisal and appraisal accuracy in producing a product that meets the requirements of the jurisdiction.

A fifth characteristic is repetition. Many of the tasks performed in a mass appraisal are highly repetitive — from taking measurements to collecting data to filing. The mass appraisal system typically provides for repetitive tasks to be handled in a routine manner.

Division of labor concerns all the above characteristics. It means that rather than having each person perform all the tasks required, the appraisal district employs specialists who perform a limited range of tasks over and over. These six characteristics — centralization, standardization, synchronization, maximization, repetition and division of labor — are essential elements of mass appraisal.

### **Jurisdictional Exceptions**

USPAP provides exceptions to its general standards. The jurisdictional exception rule may apply to Standard 5, mass appraisal, “because ad valorem tax administration is subject to various state, county and municipal laws.”<sup>257</sup>

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<sup>257</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 32

Jurisdictional exception is defined as an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.<sup>258</sup> If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment. The purpose of the rule is to provide a saving or severability clause if one or more parts of USPAP is contrary to a state or local law. Law, in this context, means a body of rules with binding legal force established by a controlling governmental authority. It includes federal and state constitutions, statutes, case law, administrative rules and local ordinances and regulations.<sup>259</sup>

There are numerous jurisdictional exceptions in the Tax Code which require deviations from USPAP standards. Compliance with these laws is required and doing so does not violate USPAP. Examples include, but are not limited to, the following special appraisal requirements found in Tax Code Chapter 23:

- productivity value of agricultural land;<sup>260</sup>
- productivity value of timberland;<sup>261</sup>
- consideration of governmental taking of property;<sup>262</sup>
- inventory appraisal of real or personal property as a unit;<sup>263</sup>
- dealer inventory appraisals;<sup>264</sup>
- appraisal of mineral interests not being produced;<sup>265</sup>
- appraisal of oil and gas interests;<sup>266</sup> and
- nominal valuation of property owned by non-profit homeowner organizations.<sup>267</sup>

### **Highest and Best Use**

Highest and best use is a fundamental appraisal concept that requires understanding 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. 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

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<sup>258</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 4

<sup>259</sup> Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, p. 15

<sup>260</sup> Tex. Tax Code §23.52

<sup>261</sup> Tex. Tax Code §23.73

<sup>262</sup> Tex. Tax Code §23.11

<sup>263</sup> Tex. Tax Code §23.12

<sup>264</sup> Tex. Tax Code §§23.121-23.128

<sup>265</sup> Tex. Tax Code §23.17

<sup>266</sup> Tex. Tax Code §23.175

<sup>267</sup> Tex. Tax Code §23.18

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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>268</sup>

### **Mass Appraisal and the Three Approaches to Value**

An appraisal district using mass appraisal cannot use the three approaches to value in the same way that a single property appraiser does because of the number of taxable properties in the appraisal district and the limited time within which the appraisal district must complete its work. Instead, appraisal districts develop property categories based on market analysis and use elements of these approaches to convert market data into value schedules. The three approaches to value are incorporated into the mass appraisal process.

## **Three Approaches to Value**

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The law requires that in determining a property's market value, the chief appraiser must consider the cost, income and market data (or sales) comparison appraisal methods and use the most appropriate.<sup>269</sup> These methods, however, are not exclusive; the chief appraiser may use other methods or a combination of methods so long as they produce defensible market value.

The market data (or sales) comparison approach focuses on the sale of comparable properties and requires an active market. The cost approach estimates the cost of replacing an improvement and requires the appraiser to estimate replacement cost and accrued depreciation. Appraisers using the cost approach must also use the market or income approach to estimate land value. The income approach examines the income stream a property produces and requires that the subject property be able to produce income and that the appraiser have enough information to develop a capitalization rate. The capitalization rate expresses in numbers the relationship between a property's income potential and its present value.

In appraising single properties, all three approaches are used whenever possible, checking the results of one method against the others before estimating the final value. In mass appraisal, an appraisal district combines techniques from the three separate approaches.

### **Market Data (or Sales) Comparison Approach**

Since appraisers are aiming to determine market value, they generally consider the market data comparison approach as the most accurate appraisal method. The Appraisal Institute identifies this technique as the sales comparison approach. These two techniques are synonymous. Appraisers use this approach whenever possible because it focuses directly on the actions of buyers and sellers in the marketplace and, therefore, usually produces the best results. The market data (or sales) comparison approach works best when the subject property is not so unique that few comparable properties ever sell. Oil refineries, for example, can differ widely, depending on when they were built and what kinds of refining processes they use.

The market data (or sales) comparison approach has two distinct advantages over the cost and income approaches. First, the market data (or sales) comparison approach can be used for any property type — improved or unimproved and income-producing or not. Second, because it focuses directly on buyers and sellers in the market, it is most likely to produce reasonable valuations. At the same time, the market data (or sales) comparison approach cannot be used if there are not enough comparable sales. Appraisal districts can usually find enough comparable residential sales, but other property types do not sell frequently, and when they do there may be intangible value included in the sale.

Because the market data (or sales) comparison approach derives market value from the sale prices of properties comparable to the subject, appraisers must identify and describe the subject property precisely. Appraisers must determine who owns the various legal rights to the property and discover any limitations (such as easements, covenants or deed restrictions) on that ownership. To select appropriate comparables, appraisers must discover what features add or detract from the subject property's market value.

Comparables must resemble the subject as closely as possible. The more the appraiser knows about the subject property, the more exactly he or she can match comparables to it.

The appraiser should inspect the subject property and comparables as the law requires that an appraiser follow accepted appraisal practices. Measuring and sketching the improvements rather than accepting someone else's figures is very important. Calculating the area and re-checking the math is equally important.

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<sup>268</sup> Tex. Tax Code §23.01(d)

<sup>269</sup> Tex. Tax Code §23.0101

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The market data (or sales) comparison approach requires appraisers to perform the following four steps:

- Step 1** Selecting recently sold properties that are similar to the property being appraised (the subject).
- Step 2** Listing differences between these properties (comparable properties) and the subject.
- Step 3** Calculating adjustments and adjusting the comparables to the subject.
- Step 4** Estimating the subject's value from the adjusted values of the comparables.

### Selecting Comparable Properties

Appraisers do not always find sufficient comparables that closely resemble the subject. The market data (or sales) comparison approach requires gathering the same information on recently sold properties that are similar to it. The subject property determines the type of sales information needed. A single-family residence, for example, does not require collection of information on warehouses. An appraisal office should have sales and property information organized in its files according to a classification system that enables the appraiser to search the files for information on sales of properties similar to the subject by using the description of the subject.

Comparable sales should resemble the subject as closely as possible in the following six features:

- location;
- age;
- improvement size;
- land area;
- architectural style; and
- sale date.

Since the subject has not sold, the appraiser must consider sale date in relation to Jan. 1. The more closely a comparable property resembles the subject, the easier to calculate and the more accurate the appraisal.

All comparables are not created equal. Good comparables require fewer adjustments and ensure a more accurate appraisal. If the appraiser cannot find good comparables, he or she will need to use more properties to ensure accurate adjustments.

### Listing Similarities and Differences

None of the comparable sales will match the subject precisely. The appraiser must develop a way of describing, classifying and evaluating the differences between the subject property and the comparables. Major factors distinguish subjects and comparables, including:

- property rights transferred with the sale;
- financing;
- conditions of sale (motivation);
- expenditures made after the sale;
- market conditions (sale date);
- physical characteristics;
- location;
- use;
- economic characteristics; and
- non-realty components.

The appraiser must know what transferred (property rights) in each sale. Some property sells with the price representing tangible and intangible value. A sale needs to reflect a cash transaction because the premises behind market value require this. The definition of market value requires that the buyer and seller are well-informed, not under duress and are acting in their own best interest. If the sale price reflects abnormal motivation conditions, the price must be adjusted or the comparable excluded. If a property sells needing updates or renovations, the expenditures made after sale will adjust the comparable to market standards reflecting the money for the rehabilitation or renovation costs.

If one comparable sold in January and one in July, and if the effective date of the appraisal is Jan. 1, the appraiser must find a way to account for the different dates. If one comparable sold with a low down payment and a high interest rate and another sold on an assumed mortgage with a low interest rate, the appraiser has to convert both sale prices into values in current dollars. Real estate agents frequently identify location as the single factor that most influences a home's sale price; thus, if comparables from neighborhoods different from the subject's are available, the location's influence on value must be taken into account.

Physical characteristics cover a number of factors, including lot size, the area of the improvements, original construction quality and condition. The appraiser must also consider special features and amenities. Garages, swimming pools, greenhouses, fences, heating and cooling systems and custom



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features all influence the market value of the subject and comparables.

The remaining factors can include economic characteristics, use and non-realty adjustment considerations. The adjustment for economic characteristics reflects differences in ability to generate income, differences in vacancy or expense structures and even differences that could be expressed in different capitalization rates. However, appraisers must take care not to adjust in this category when they have already adjusted for the same difference in another category, such as location. Use factors could include private (deed restrictions) or public use (zoning) restriction differences. Non-realty items are sometimes included in a sale price. If the appraiser is only appraising real property, this must be excluded.

### Adjusting the Comparables

The appraiser must assign a value to each difference between the subject and the comparables and adjust the sale price of each comparable so that it will reflect the price at which the subject should sell. Adjustments fall into one of three categories: those made as of the sale date, a market condition adjustment and those that should be made as of the appraisal date (Jan. 1). Adjustments made at time of sale include property rights conveyed, financing, conditions of sale (motivation) and anticipated expenditures at the sale date. The next adjustment category is market conditions (time), which includes adjustments for changes in market conditions between the comparable's sale date and Jan. 1, and for inflation or deflation. The last category of adjustments is related to differences for location, use, economic characteristics, physical differences and non-realty components. An appraiser must always apply these adjustments to the comparable, not the subject. If the comparable's price is less than the subject, the appraiser adjusts the comparable's price upward. If the comparable's price is higher than the subject, the appraiser adjusts the comparable's price downward to reflect a value for the subject.

### Deriving an Opinion of the Subject's Value

Comparables establish a range of possible values and an appraiser must determine where within that range the subject falls. Deriving this final opinion of the subject's market value requires an appraiser's judgment; it cannot be reduced to a simple mathematical process.

In general, an appraiser looks within the range established by the highest and lowest comparables to see which comparable most closely matches the subject. He or she also looks for

the comparables sold on the dates closest to the appraisal's effective date. Before making a final opinion, the appraiser must identify the comparables with the smallest number of adjustments and the comparables with the amount of total adjustments closest to zero. A decision may be required to reject the comparable with the lowest number of adjustments or with the amount of net adjustments closest to zero because another comparable more adequately reflects the subject. The comparable with the highest or lowest value may provide the best indication of the subject's value. The subject's value may also fall between the values indicated by two comparables.

Only one rule governs the final opinion of value: **the appraiser must not average the indicated values of the comparables to arrive at an opinion of the subject's value.** There is no set of steps to use as a substitute for judgment and experience. The final opinion should not be arbitrary or random, but the appraisal cannot be reduced to a mechanical formula. The appraiser must rely on judgment and experience when examining comparables.

### Appraising Land

The market data (or sales) comparison approach is the preferred method of appraising any property, but it is especially critical to land appraisal. Since land cannot be reproduced, appraisers cannot use the cost approach in valuing it. The income approach is often inappropriate because much land does not produce income. However, the income approach is acceptable if the land is rented, such as with a ground lease, or if the land has income-producing potential. Acceptable land valuation methods include sales comparison, allocation, extraction, ground rent capitalization, land residual and subdivision. Ground rent capitalization is a procedure where land's estimated net market rent is capitalized with a capitalization rate. In most cases, the process of elimination dictates that appraisers employ the sales comparison approach to estimate land value. Whether used on land, improvements or whole properties, the basics of the market data comparison approach remain the same.

### Appraising Improvements

Improvements present an appraiser with a set of problems different from those that land presents. Land does not depreciate, but improvements do. Therefore, an appraiser must develop a way to account for the effects of weather, neglect, changes in architectural style and other forces that can cause a structure to lose value. Moreover, differing construction techniques and materials produce structures that differ in

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quality. Appraisers must recognize and evaluate differences in construction type and construction quality of improvements. Finally, differences in size and amenities also influence the value of improvements and appraisers must know how to interpret their impact on market values.

### Cost Approach

When using the cost approach to determine market value, the chief appraiser must use cost data obtained from generally accepted sources; make appropriate adjustments for physical, functional or external obsolescence; and 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.<sup>270</sup>

The cost approach is usually used when market sales data is not available and works best on newer improvements. Older improvements often contain outdated materials or were constructed using outdated techniques. Estimating the replacement cost and accrued depreciation of older properties is difficult.

A focus on the estimated cost involved in constructing an improvement distinguishes the cost approach from the other approaches to value. Because of this focus, an appraiser using the cost approach must always use a second appraisal approach to determine land value, usually the sales comparison approach.

The cost approach follows the following four basic steps:

- Step 1** Determining land value without any improvements on it and under its highest and best use as though vacant.
- Step 2** Estimating the cost of replacing or reproducing the improvements.
- Step 3** Estimating and subtracting the value lost to accrued depreciation to arrive at the existing improvement's indicated value.
- Step 4** Adding the indicated improvement value to the land value.

Using the cost approach requires good judgment. The cost approach provides the only reasonable way to estimate the value of many special use properties — aircraft hangars, for example, or museums, convention halls, fraternal lodges and other non-income-producing properties for which there are no comparable sales. Knowledge of the cost approach is essential to effective mass appraisal.

### Defining Cost

Replacement cost indicates what a typical builder charges to construct a building of equal utility to the subject. Reproduction cost tells what a typical builder charges to construct an exact replica.

An estimated reproduction cost more reflects the actual improvements than an estimated replacement cost. Reproduction cost estimates are tailored to the specific subject property. To estimate reproduction cost, many details must be examined, including carpeting, bathroom fixtures, attics, ceilings, interior wall coverings and others. These features may influence property value considerably, but property tax appraisers seldom have the opportunity to complete a detailed inspection of a building's interior. For this reason, appraisers often cannot estimate reproduction cost.

The elements of cost include direct and indirect cost and entrepreneurial incentive (profit). Direct costs (hard costs) are materials and labor. Indirect costs include architect fees, attorney fees, appraiser fees, financing fees, construction interest, marketing expenses and other related costs that are not materials or labor. Entrepreneurial incentive is the amount an entrepreneur expects or wants to receive as compensation for expertise and for assuming risks associated with project development. The previous examples relate to the four agents of production: land, labor, capital and coordination.

### Depreciation

Estimating an amount for accrued depreciation is probably the most difficult task in appraisal work. Some elements of depreciation — a broken window, for example — can hardly escape an appraiser's notice; but other elements, such as substandard wiring, are hidden beneath a building's surface. Still others, such as the negative or positive impact of a floor plan, may influence only a few buyers. Still, cost is not the same thing as market value; an appraiser must determine the dollar amount of losses arising from problems with a building's condition, design and surrounding environment. The total of these losses equals accrued depreciation. Subtracting accrued depreciation from the cost to build a new structure leaves the improvement's estimated market value.

Physical depreciation is from normal wear and tear and aging. Functional obsolescence is loss from poor or substandard layout, design, appearance, etc. It can also be caused by a super-adequacy, which is that some aspect of the subject property exceeds market norms. External obsolescence is from

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<sup>270</sup> Tex. Tax Code §23.011

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economic and locational sources. Economic obsolescence is from poor market conditions that cause value loss. Locational external obsolescence is from the property being located adjacent to or near a nuisance or property that causes value loss.

Accrued depreciation can be defined as an improvement's loss of value from all causes relating to the property itself, its use and possible uses and the uses of surrounding properties. Accrued depreciation includes all loss from replacement or reproduction cost as of Jan. 1.

### Cost Approach in Mass Appraisal

Mass appraisers have historically relied on the cost approach more than any other method. Before computers came into widespread use, a cost table provided just about the only way to appraise a large number of properties in a uniform manner. Even now, the mass appraisal process is quite similar to an appraisal using the cost approach: classify and measure the improvement, multiply the size times the appropriate value from the table, estimate and adjust for depreciation and add land value to arrive at total property value.

Basically, the procedures for developing a value schedule based on cost are the same as those for developing one based on market data. The values in a cost schedule reflect typical building costs; the values in a market schedule reflect typical sale prices. Appraisers compile information and build a cost schedule in much the same way that they compile sales information and build a market schedule.

Building a cost-based value schedule and the depreciation table to accompany it has the following eight steps:

- Step 1** Analyzing the market to identify value factors.
- Step 2** Developing profiles of benchmark properties.
- Step 3** Collecting cost information.
- Step 4** Posting cost information to appropriate benchmark properties.
- Step 5** Deriving typical costs for benchmark properties.
- Step 6** Developing field procedures for classifying properties and adjusting preliminary value estimates for specific properties.
- Step 7** Using market data to develop depreciation tables.
- Step 8** Testing the schedule for accuracy and uniformity.

All cost appraisals depend upon an accurate opinion of land value. Land values in the area are used to test a cost schedule.

### Income Approach

Appraisers use the income approach only to appraise properties that generate income or have a definite and predictable prospect of producing income. The income method assumes that potential buyers will base the amount they are willing to pay for a property on the income that the property currently produces and will produce in the future.

Since a property must be capable of generating income before the income approach can be used to appraise it, the income approach is seldom the best choice for appraising single-family residences. Nonetheless, the income approach can be used on single-family residences when the rental market for such properties is active.

Income appraisals are more suitable for commercial property, even if the property is not producing income at the time of the appraisal. The income approach can be used on an unoccupied commercial building because an appraiser can estimate the income that the property produces under typical ownership and management. The income approach can also produce reliable values on industrial property.

The Tax Code requires appraisers to use the income approach on property that qualifies for special valuation, such as agricultural, timber and open-space land.

The income approach follows three basic steps:

- Step 1** Determining the subject property's net annual income.
- Step 2** Determining the capitalization rate.
- Step 3** Dividing net annual income by the capitalization rate to arrive at property value.

Using the income approach requires a considerable amount of information about property sales, interest rates, buyers' expectations, financing terms and property income. In essence, the income approach requires estimating the future benefits of ownership and converting them into an indication of present worth.

The fundamental process involved in any income approach is the conversion of anticipated net income into an estimated value. The traditional income approaches use a single year's income to determine value. The expectation of change and even a future sale of the property are built into the capitalization rate used to convert the single year's income to value.



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Expenses required for maintaining the property's income stream must be subtracted from effective gross income. However, only certain expenses are deducted. Fixed expenses of property taxes and insurance are appropriate deductions from effective gross income. Variable expenses of management, utilities, landscaping, janitorial and other expenses directly related to operating the property are also deducted. The total of these expenses should be consistent with the ratio of like properties in the market.

Inappropriate expenses for the income approach that are not deducted include income taxes, owner's business expenses, capital improvements and other non-operating expenses. To find property value, net operating income is divided by the capitalization rate. This returns the property's net operating income, which is what is capitalized into value.

### Capitalization Rate

After estimating income, appraisers use a capitalization rate to determine value. The simplest method of deriving a market capitalization rate is to divide the net operating income from a comparable property sale by its adjusted sale price. Expressed in a formula, this would read as follows:

$$R = I \div V$$

In the equation, R is the capitalization rate, I is the net operating income and V is the sale price. The net operating income would have to reflect only those expenses normally used by appraisers and recognized in the market. The appraiser must consider how the subject property compares with the comparable property to ensure the sale price of the comparable property meets the conditions of the subject property's market.

Using a capitalization rate derived from highly comparable sales is generally regarded as the most accurate form of income capitalization. If an income-producing property sells and if the net operating income is available, the net operating income can be divided by the sale price to arrive at an overall capitalization rate. The appraiser then estimates a capitalization rate that best represents the subject property. Other methods of determining overall capitalization rates include band of investment analysis, debt coverage analysis, residual techniques and surveys.

For agricultural land and timberland under special appraisal, the law sets out the capitalization rate.<sup>271</sup> For qualifying low-

income housing, the capitalization rate to be used is the same the chief appraiser applies in appraising other rent-restricted properties.<sup>272</sup>

A capitalization rate in its simplest form is the conversion of net operating income into an opinion of value. How this is done can have adverse consequences if miscalculated, as may be seen from the following passage taken from the IAAO's *Property Appraisal and Assessment Administration*:

Small errors in estimating the capitalization rate will have a pronounced effect on the estimate of property value. For example, estimating the capitalization rate at 9 or 11 percent instead of 10 percent will change the estimated value by approximately 10 percent. For this reason, capitalization rates should be derived with care and supported with market data.<sup>273</sup>

### Reconciliation

After an appraiser has considered and applied the traditional approaches to value, a final determination must be made as to the subject property's final concluded value. If an appraiser considered the cost approach, income approach and market data (sales comparison) approaches to value, there could potentially be three different conclusions. It is then the appraiser's responsibility to make 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. If the subject property is a shopping center, it is 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 was little quality data available in 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. In the end, the reconciliation may appear to be subjective, but it should be based upon logic.

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<sup>272</sup> Tex. Tax Code §11.1825(q)(2)

<sup>273</sup> Joseph K. Eckert, Ph.D., Robert J. Gloudemans, Richard R. Almy, *Property Appraisal and Assessment Administration*, p. 236 (1990) (IAAO publication)

<sup>271</sup> Tex. Tax Code §§23.53 and 23.74

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## Business Personal Property Appraisal

Items not permanently affixed to, or part of, real estate are generally considered personal property. As a general rule, an item is personal property if it can be removed without serious injury to the real estate or to the item itself.

### Personal Property Rendition

Except for rolling stock, an individual who owns or manages tangible personal property as of Jan. 1 used for the production of income must render it for taxation. A rendition statement for property valued at \$20,000 or more must include the following:

- the property owner's name and address;
- the property's description by type or category;
- if the property is inventory, a description and general estimate of the quantity of each type;
- the property's physical location or taxable situs;
- the property owner's good faith opinion of the property's market value or, at the option of the property owner, the historical cost when new and the year of acquisition of the property;<sup>274</sup> and
- a notarized signature unless the person filing the report is a secured party as defined by Tax Code Section 22.01, the property owner, an employee of the property owner, an employee of the property owner on behalf of an affiliated entity of the property owner, or on behalf of a property owner who is rendering tangible personal property with a good faith estimate of not more than \$150,000 in total market value.<sup>275</sup>

This general rule regarding personal property rendition is intended to give the ARB member an overview of this Tax Code provision. For exceptions or variations to this general provision, please consult the Tax Code or the ARB's attorney.

### Personal Property Situs

Personal property appraisal is more difficult than real property because it is easily concealed and frequently moved. For these reasons it is often difficult to determine situs for personal property.

Generally, tangible personal property is taxable by a taxing unit if it is located in the unit on Jan. 1 for more than a

temporary period; if it normally is located in the unit, even though it is outside the unit on Jan. 1, if it is outside the unit only temporarily; or, if it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period. It also has situs if the property owner resides or maintains a principal place of business in the unit and the property is taxable in Texas but the property is not located in the unit on Jan. 1 or is not located in any one place for more than a temporary period but is normally returned to the unit between uses.<sup>276</sup>

### Personal Property Valuation

In appraising tangible personal property, the appraiser gives recognition to the trade level at which property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level.

### Inventory Valuation

The Tax Code provides, with certain exceptions, that inventory market value is the price for which it would sell as a unit to a purchaser who would continue the business. An inventory includes residential real property that has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented and produces no income.<sup>277</sup>

### Special Problems in Inventory Appraisal

Consigned goods, like all other personal property, are taxable to the property owner or consignor. Since the property is found in the hands of the consignee, an assessment is sometimes made against the consignee. This assessment is properly made against the property owner, the consignor, since the consignee has no title to the goods. Such property is taxable and should be appraised.

### Commercial and Industrial Personal Property Valuation

Commercial and industrial inventories, supplies and spare parts are valued at the lower of cost or market. Special equipment items such as computers are given special consideration because of a short economic life due to advances in technology. Appraisal of mobile machinery and tools, such as switch engines, gantry cranes and forklifts depend on their size. The

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<sup>274</sup> Tex. Tax Code §22.01

<sup>275</sup> Tex. Tax Code §22.24(e)

<sup>276</sup> Tex. Tax Code §21.02

<sup>277</sup> Tex. Tax Code §23.12

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larger items are valued individually using current market prices for similar, used equipment as a guide. The smaller items are grouped into an average service life and treated in the same manner as furniture and fixtures.

## Conclusion

This manual was developed as a continuing education program for ARB members. The Comptroller's office has provided a comprehensive introductory course to new ARB members for many years. This course augments the introductory course by discussing legal and appraisal issues in greater detail. It is designed for ARB members who are serving beyond one year.

The manual addresses the Legislature's concerns that ARBs remain independent and impartial in their deliberations. It attempts to increase ARB members' ability to consider and weigh evidence at protest hearings with the skill necessary to ensure fairness to both the property owner and the appraisal district.

While this course presents legal issues in greater detail, discussing court cases and attorney general opinions that have interpreted the Tax Code, it is not a law book and ARB members should not treat it as such. Laws regarding property taxation, similar to laws in other areas of life, are constantly changing and evolving. ARB members should therefore use this manual as a guide and should consult their attorneys when legal questions arise.

By the same token, while this course discusses appraisal methods in much greater detail than the introductory course, it is not an appraisal manual. Like the law, appraisal work is complex. This manual provides the methods appraisers use as a means for ARB members to weigh the validity and relevance of evidence. An ARB may retain an appraiser certified by TALCB to instruct it on valuation methodology if such instruction is provided for in the appraisal district's budget.<sup>278</sup>

Pursuant to Tax Code Section 5.041, the Comptroller's office maintains a 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 may call 800-252-7551 and leave a message that includes the member's name, the county of the ARB, the question and a return call phone number. A PTAD staff member will return the call.

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<sup>278</sup> Tex. Tax Code §5.041(h)





EXHIBIT A

# Model Appraisal Review Board 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 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.

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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. Tax Code Section 41.01 addresses the duties of the ARB and the actions they are authorized to make.

#### 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 be carefully considered. The standards in making determinations of good cause under Tax Code Section 41.44(b) must be 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

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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 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

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ARB's customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under Tax Code Section 41.66(j).

4. ARB Panel Assignments [**Tax Code sections 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 1.2 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 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 fax, 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

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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 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 fax, 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 fax, 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 files, 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)



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 cannot 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 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

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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

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- 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

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for rehearing to a another special panel composed of members who did not hear the original protest. If the 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 request form for electronic delivery of the notice of determination from the ARB. 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 to offer evidence or argument by affidavit without physically appearing. Tax Code Section 41.45(b-1) requires a property owner to notify the ARB by written request not later than the 10th day before the date of the hearing if the property intends to appear remotely.

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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, if applicable, 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 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



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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

- 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**

The ARB's adopted 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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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, 2024  
Property Tax Assistance Division  
Texas Comptroller of Public Accounts



EXHIBIT B

# 22 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><u>RULE §155.2</u></b>	<b>Work Relating to Property Tax Protests</b>

(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







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

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Texas Comptroller of Public Accounts  
Publication #96-1415  
January 2024