

# San Jacinto County Central Appraisal District

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## APPRAISAL REVIEW BOARD

### ARB STANDING RULES OF ORDER

I. The officer's of the ARB shall be the Chairperson, the Vice-Chairperson and the Secretary.

1. The officers will be selected annually by the Appraisal District Board of Directors. The Board of Directors is encouraged to select a chairman with a background in law or property appraisal. In addition, the Appraisal Review Board will assist the directors in the officer selection process by submitting a recommended slate of officers to the Board of Directors.
2. In the absence of the Chairperson, the Vice-Chairperson will perform the duties of the Chairperson and shall assist the Chairperson in the performance of his/her duties when necessary. In the absence of the Chairperson and the Vice-Chairperson the Secretary will perform the duties of the Chairperson.
3. The secretary will attest all documents of the Board, but not necessarily be responsible for taking the minutes, but may delegate such duty to members of the staff which will be provided by the Chief Appraiser for the purpose.

### Meetings

I. Roberts Rules of Order will govern the conduct of all meetings of the Board, except for the hearings. If Roberts Rules of Order are in conflict with the rules of the Board, the rules of the Board will prevail.

1. The Board will meet to examine the records within ten (10) days after the date the Chief Appraiser submits the appraisal records to the Board. The Board will meet at any time at the call of the Chief Appraiser or Chairperson of the Board (Texas Property Tax Code Sec 6.42 (b)). A majority of the Board is required for any called meeting.
2. During the ARB Review cycle in May and June, the Board will designate certain days for scheduling evening or Saturday hearings for the convenience of property owners who cannot attend a hearing during normal ARB meeting hours (Texas Property Tax Code Sec 41.71).

3. The appraisal staff will schedule hearings at times and dates designated by the Appraisal Review Board. The district's staff will make every effort to assist the property owners through the process in a friendly and informative manner.

The meetings of the Board will be conducted in compliance with the Open Meetings Act, (Texas Civil Statutes, and Chapter 551).

### **Hearings**

The Chairperson will preside over the meetings of said Board and perform such other duties as may be deemed necessary. In order to expedite the hearing process the Board may hear protest using a two (2) panel format with three (3) members on each panel. If the district holds protest hearings in the panel format, the Chairperson and Vice-Chairperson will each chair a panel.

1. The Chairperson, after consulting with full Board shall make assignments of Board members to each panel. All panel decisions are subject to final approval by the full Board. Panel recommendations rejected by the full Board will be assigned for rehearing.
2. The Chief Appraiser shall deliver a copy of the Property Taxpayer Remedies pamphlet and the ARB's hearing procedures to the taxpayer or the taxpayer's agent at least (14) fourteen days prior to the protest hearing if requested. In addition, the Chief Appraiser must inform the taxpayer or the taxpayer's agent of their right to inspect or obtain copies of all evidence the Chief Appraiser plans to introduce at the protest hearing. (Texas Property Tax Code Sec 41.461).
3. Official notice may be taken of any fact that is common knowledge to an average well-informed citizen.
4. The Appraisal Review Board is prohibited from considering evidence supplied by the property owner or Appraisal District unless it is presented at the hearing. In addition, an ARB member who has communicated with or received information before the hearing from the property owner or the Appraisal District must recuse themselves from the hearing.

### **Affidavits In Lieu Of Personal Appearance**

A property owner may appear by affidavit instead of appearing personally or by agent. Property owners/agents who file affidavits of appearance are required to state in the affidavits whether or not they intend to appear at the hearing and that the affidavit may be used only if they do not appear at the hearing. If the affidavit indicates that the property owner/agent will not appear at the hearing or does not state that he or she will appear, "the appraisal review board 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." (Texas Property Tax Code Sec 41.45 (n) An affidavit must be considered by the Board if: 1) it contains statements that the evidence or argument presented in the affidavit is true and correct; 2) it is attested before an officer to administer oaths (such as Notary or

Judge); 3) it is submitted to the Board hearing the protest before it begins the hearing on the protest (Texas Property Tax Code Sec 41.45 (b)).

### **Issuance of Subpoena**

1. The Board in its own motion or at the request of a party may subpoena witness's books, records, or documents on property or accounts which protests are filed (Texas Property Tax Code See 41.61).
2. A party to a hearing or proceedings of the Board must make a request for subpoena in writing (Texas Property Tax Code See 41.46 (b)).
3. The Board may not issue a subpoena until a good cause hearing is held (Texas Property Tax Code See 41.46 (c)).

### **Taxpayer Protests**

1. The Board will conduct hearings or protests by taxpayers. This will be done using the rules regarding the procedures of hearings. Each hearing is limited to fifteen (15) minutes per parcel for residential or personal property. Commercial hearings shall not exceed (15) minutes. Should there be multiple properties; each account will be limited to ten (10) minutes per parcel. The board may waive the time limit at their discretion, if the waiver will benefit the hearing process.
2. All cases where a 'Good Cause' determination is required will be decided on a case by case basis.

Under Tax Code Section 41.45(e-2), "good cause" is defined as "a reason that includes an error or mistake that: (1) was not intentional or the result of conscious indifference; and (2) will not cause undue delay or other injury to the person authorized to extend the deadline or grant a rescheduling."

When making a determination regarding good cause under Tax Code Sections 41.45(e) or 41.45(e-1), each element of the definition must be considered on a case-by-case basis by the ARB. These elements are:

- an error or mistake;
- unintentional or not the result of conscious indifference; and
- no undue delay or other injury to the ARB (e.g. scheduling problems with hearings).

3. The ARB may not consider an appraisal done in private capacity by the Chief Appraiser or a relative in the 2nd degree of affinity or consanguinity.

#### 4. Orders Determining Protest

Tax Code Section 41.47(a) states that “the appraisal review board hearing a protest shall determine the protest and make its decision by written order.”

Each issue that is the subject of the protest must be determined separately by the ARB and each determination must be reflected on the written order determining protest. In addition, the ARB must state in the written order the appraised value of the property as shown on the appraisal records submitted to the ARB by the chief appraiser under Tax Code Section 25.22 or 25.23.

5. The Board chair will be allowed to make and second motions during protest hearings.

### **Clerical Error & Multiple Appraisals**

1. At any time before the end of five (5) years after January 1, of the tax year the error occurred, the Board, on motion of the Chief Appraiser or his representative, or a property owner, may direct written order changes in the appraisal roll to correct clerical errors that affect property owner's liability or a single or multiple appraisal of a property in a single tax year (Texas Property Tax Code Sec 25.25 (c)).

2. "Clerical Error" means an error:

- That is or results from a mistake or failure in writing, copying, transcribing, entering, or retrieving computer data, computing, or calculating; or
- That prevents an appraisal roll or tax roll from accurately reflecting or finding or determination made by the Chief Appraiser, the Appraisal Review Board or the Assessor; however, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination. (Texas Property Tax Code Sec 1.04 (18)).
- Correction of a "clerical error" may be done at any time prior to the date the taxes become Delinquent and must conform to (Texas Property Tax Code Sec 42.08).

An error involving nonexistent property included in the Appraisal roll may be corrected at any time by the ARB on the motion of Chief Appraiser or the Property Owner.

### **Substantial Error**

1. At any time prior to the date the taxes become delinquent, a property owner or the Chief Appraiser may file a motion with the Appraisal Review Board 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 third (1/3) the corrected appraised value. If the appraisal roll is changed

under the subsection, the property owner must pay each affected taxing unit a ten percent (10%) late correction penalty. The roll may not be changed under Chapter 41 or if the appraised value of the property was established as a result of a written agreement between the property owner or his agent and the Appraisal District (Texas Property Tax Code Sec 25.25 (d)).

2. If the Chief Appraiser and the property owner do not agree to the correction before the 15th day after the date the motion is filed, a party bringing a motion under the subsection (c) or (d) is entitled on request to a hearing on and a determination of the motion by the Appraisal Review Board. A party bringing a motion under this section must describe the error or errors that the motion is seeking to correct. Not later than fifteen (15) days before the date of the hearing, the Board shall deliver written notice of the date, time and place of the hearing to the Chief Appraiser, the property owner, and the presiding officer of the governing body of each taxing unit entitled to present evidence and argument at the hearing and to receive written notice of the Board's determination of the motion. A property owner who files the motion must comply with the payment requirements of Section 42.08 or forfeit the right to a final determination of the motion (Texas Property Tax Code Sec 25.25 (a)).

### **Omitted Property**

If the Chief Appraiser discovers that real property was not taxed in any of the five (5) preceding years or the personal property was not taxed in one of the preceding two (2) years, he/she shall add the appraised value to the appraisal records for each applicable year. (Texas Property Tax Code Sec 25.21 (a)).

### **Failure to Provide Required Notice**

Property owners have a remedy for the failure of the chief appraiser or the ARB to provide or deliver a notice to which the property owner is entitled. Pursuant to Tax Code Section 41.411, the property owner is entitled to protest the failure to the ARB to provide or deliver required notices. If failure to provide or deliver the notice is established, the ARB shall determine the protest on any other grounds of protest authorized by law relating to the property to which the notice applies. The property owner must pay his/her taxes according to the requirements of Tax Code Section 41.4115.

### **Procedure for ARB Consideration of Failure to Provide Notice Protests**

When a property owner files a protest pursuant to Tax Code Section 41.411 that a notice to which the owner is entitled has not been delivered, the chairman of the ARB may notify its attorney to provide an analysis of the notice that is claimed not to have been delivered, investigate the facts of the protest, and provide legal advice as required by Tax Code Section 6.43(d).

The hearing must be bifurcated. The ARB must first determine if the notice is one that is required by law. If it is, the ARB must determine if it was delivered according to Tax Code Section 1.07 or, if applicable, Section 1.085. If the notice was not properly delivered, the ARB must determine if taxes were paid as required by law. After these jurisdictional determinations

are made and it is determined that the property owner is entitled to a hearing, the protest may be determined on its merits at that time and without postponement, unless the parties agree that the hearing on the protest merits should be postponed. "If failure to provide or deliver the notice is established, the appraisal review board shall determine a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies." [Tax Code Section 41.411(b)]

### **New Owner**

Section 15.15 provides that a person who acquires a property after January 1 of the tax year in question has the same rights to file a motion to correct the property's record as the January 1 owner. However, a new owner must meet the former owner's deadline for filing the motion. In addition, a new owner may continue any motion filed by the January 1st owner.

### **Joint Motion**

Under Texas Property Tax Code Sec 1.111 (e), an agreement between a property owner or the owner's agents and the Chief Appraiser is final if the agreement relates to a matter: 1) which may be protested to the ARB or on which a protest is filed but not final; or 2) which may be corrected under section 25.25. The ARB may not review or reject an agreement between a property owner or the property owner's agent and the Chief Appraiser under Sec 1.111 (c) (Texas Property Tax Code Sec 41.01 (b)).

### **Chief Appraiser Correction**

The Chief Appraiser may correct inaccuracies in the appraisal rolls under section 25.25 (B) of the Property Tax Code to the maximum extent permitted by law if in his sole discretion; he determines that the correction is in the best interest of the citizens residing in the San Jacinto County Appraisal District. These corrections must be reported at least quarterly to the Board.

## **I. ARB Membership**

### **[Tax Code Section 5.103(b) (16), (15), and (12)]**

#### **1. Administration of ARB Appointments**

ARB members are not provided any statutory role in the process for the administration of applications or requests for appointment for membership on the ARB. If an ARB member is contacted by an individual regarding requesting an appointment to the ARB, the member shall direct the individual to the person designated to receive applications or requests for appointment for the ARB.

#### **2. Conflicts of Interest**

Each ARB member is responsible for ensuring that he or she does not have any conflict of interest that results in ineligibility to serve on the ARB or 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 chairman in addition to any other individual or entity as may be provided by law. The chairman shall 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 may not participate in a protest hearing. If the conflict exists due to the provisions of the Local Government Code Chapter 171, an affidavit must be filed with the secretary of the ARB. The affidavit must be filed 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, no affidavit must be filed; however, the ARB member must recuse himself or herself immediately from the hearing and report the conflict to the chairman or secretary of the ARB.

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 is interested (i.e. there is no requirement under Tax Code 41.69 that the interest be substantial). Therefore, while a conflict of interest under Local Government Code Chapter 171 may not prohibit an ARB member from participation in a protest, Tax Code 41.69 may still prohibit participation. If an ARB member has a question as to whether or not he or she has a conflict of interest that might prohibit his or her involvement, the member shall immediately contact the ARB chairman to address the matter.

In the recusal process, the ARB member not only may not vote on the matter that is the subject of the protest, but also may not hear or deliberate on the protest.

### 3. Ex Parte and Other Prohibited Communications

ARB members shall not engage in prohibited ex parte or other communications. If an ARB member is approached by one or more individuals that appear to be engaging or attempting to engage in a prohibited communication, the ARB member shall 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 is responsible for ensuring that he or she understands the statutory duties of the ARB and shall comply with all statutory requirements in performing statutory duties as a member of the ARB.

## 2. Tax Code Section 41.01

- (a) The appraisal review board shall:
  - (1) determine protests initiated by property owners;
  - (2) determine challenges initiated by taxing units;
  - (3) correct clerical errors in the appraisal records and the appraisal rolls;
  - (4) act on motions to correct appraisal rolls under Section 25.25;
  - (5) determine whether an exemption or partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, E, or H, Chapter 23; and
  - (6) take any other action or make any other determination that this title specifically authorizes or requires.
- (b) The board may not review or reject an agreement between a property owner or the owner's agent and the chief appraiser under Section 1.111(e).

## 3. Notices Required under the Property Tax Code

Each ARB member is responsible for obtaining and maintaining familiarity with notices required under the Property Tax Code. If an ARB member has reason to believe that any notice that is required by law to be provided by the ARB is not being provided or does not meet the requirements of applicable law, the ARB member shall promptly notify the ARB chairman. The ARB chairman shall investigate each such report and take appropriate action to correct all verified problems.

## 4. Determination of Good Cause under Tax Code Section 41.44(b)

### **(Late Protest)**

“Good cause” for filing late protests is not defined in Tax Code Section 41.44(b). Claims of good cause for late-filed protests should be carefully considered and standards in making determinations of good cause under Tax Code Section 41.44(b) should be uniformly applied. The ARB should give due consideration to good cause claims in such a manner that properly respects the rights of property owners while not undermining or contravening laws related to filing deadlines or the orderly and expeditious fulfillment of ARB duties. Each protest filed under this section must be accompanied by an ‘affidavit of fact’ stating reasons of late filing and 1) it contains statements that the evidence or argument presented in the affidavit is true and correct; 2) it is attested before an officer to administer oaths (such as Notary or Judge).

## 5. Deadlines for Completing Statutory Duties

Tax Code Section 41.12 provides the deadlines and steps that must be taken in order for the ARB to complete its duties. By July 20, all or substantially all timely filed protests and challenges must be heard and determinations made. By the same date, changes in the appraisal records must

be submitted to the chief appraiser and the appraisal records must be approved. In counties with populations of at least one million, the deadline can be postponed, with approval of the appraisal district board of directors, until August 30. The board of directors in counties with populations of at least one million may also authorize the ARB to approve the records “if the sum of the appraised values, as determined by the chief appraiser, of all properties on which a protest has been filed but not determined does not exceed 10 percent of the total appraised value of all other taxable properties.”

### **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 shall schedule a hearing when a timely notice of protest is filed and, in doing so, may be provided with clerical assistance by the appraisal district.

##### 2. Scheduling Hearings for Property Owners not Represented by Agents

Pursuant to Tax Code Section 41.66(i), hearings filed by property owners not represented by agents designated under Tax Code Section 1.111 shall be scheduled for a specific time and date. More than one protest may be scheduled for hearings at the same time and date; however, if a hearing for a property owner is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time, the ARB is required to postpone the hearing, if a postponement is requested by the property owner. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

##### 3. Scheduling Hearings for Multiple Accounts

If requested by a property owner or a designated agent, hearings on protests concerning up to 20 designated properties shall be scheduled on the same day by the ARB. The request must meet all requirements of Tax Code 41.66(j), including the required statement in boldfaced type: “request for same-day protest hearings.” No more than one such request may be filed in the same tax year by a property owner or a designated agent. Also pursuant to Tax Code Section 41.66(j), the ARB may schedule hearings on protests 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 ARB’s customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under 41.66(j).

##### 4. ARB Panel Assignments

If an ARB sits in panels as authorized by Tax Code Section 41.45(d), protests shall be assigned randomly, except that the ARB, with or without clerical assistance from the staff of the appraisal district, may consider the type of property or the protest grounds in order to assign the protest to a panel with members who have particular expertise.

Once a protest is scheduled to be heard by a specific panel, it shall not be reassigned to another panel without the consent of the property owner or a designated agent. If the ARB has cause to reassign a protest to another panel, the owner or designated agent may agree to the reassignment or request a postponement of the hearing. The ARB is required to 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, if the request is made before the date of the hearing. The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, an ARB panel, or the ARB chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chairman or the chairman’s representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

In addition and without limit as to the number of postponements, the ARB shall postpone a hearing if the property owner or his/her designated agent at any time shows good cause, as defined in Tax Code Section 41.45(e-2). The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, an ARB panel, or the ARB chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chairman or the chairman’s representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

In addition and without limit, the ARB shall postpone a hearing if the chief appraiser consents to the postponement. The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, an ARB panel, or the ARB chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chairman or the chairman’s

representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

6. Postponements Under Tax Code Section 41.45(e-1)  
**(No Shows)**

A property owner or a person designated by the property owner as the owner's agent to represent the owner at the hearing who fails to appear at the hearing is entitled to a new hearing if the property owner or the 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.

7. Postponements Under Tax Code Section 41.45(g)

The ARB must postpone a hearing to a later date if:

- (1) the owner of the property or the owner's agent is also scheduled to appear at a hearing on a protest filed with the ARB of another appraisal district;
- (2) the hearing before the other ARB is scheduled to occur on the same date as the hearing set by this ARB;
- (3) the notice of hearing delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the notice of hearing delivered by this ARB or, if the date of the postmark 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 request for a postponement a copy of the notice of hearing 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 shall postpone a hearing (one time only) if the property owner requests additional time to prepare for the hearing and establishes that the chief appraiser failed to comply with Tax Code Section 41.461. Only the property owner may request a postponement for this reason. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

9. Postponements Under Tax Code Section 41.66(i)

Hearings on protests filed by property owners not represented by agents designated under Tax Code Section 1.111 shall be scheduled for a specific time and date. More than one protest may be scheduled for hearings at the same time and date; however, if a hearing for a property owner is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time, the ARB is required to postpone the hearing, if a postponement is requested by the property owner. The request for postponement must contain the mailing address and email address of the

person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

#### 10. Postponements Under Tax Code Section 41.66(k)

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 designated agent. If the ARB has cause to reassign a protest to another panel, a property owner or designated agent may agree to reassignment of the protest or may request that the hearing on the protest be postponed. The ARB shall postpone the hearing on that request. 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. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

#### **IV. Conduct of ARB Hearings, Procedure of 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

**We are the appraisal review board that will be hearing your protest today. We do not work for the appraisal district. We are appointed to perform an independent review of your protest. At the end of the hearing, you may complete a survey regarding your experience today. There is a computer in the lobby for this survey or you may take it on paper form. The survey is voluntary. You also have the right to appeal our decision. Appeal information will be provided to you with our determination.**

For most protest hearings, the hearing should be conducted in the following order:

- a. Commence the hearing and announce the assigned protest number, property location and owner, and other identifying information.
- b. Announce that, in accordance with Tax Code Section 41.45(h), all written material that has not been provided must be 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 all testimony must be given under oath and swear-in all witnesses who plan to testify.
- g. The property owner (or agent, as applicable) may elect when to present his/her case, before or after the CAD presents its case.
- h. If the property owner or agent presents his/her case first, he/she shall present evidence (documents and/or testimony). If witnesses are present, the property owner or agent may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- i. Next, the appraisal district representative may cross-examine the property owner, the agent, or the representative and/or witnesses.
- j. If the property owner or agent presented his/her case first, the appraisal district representative shall present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- k. Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
- l. Members of the ARB shall not be examined or cross-examined by parties.
- m. The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
- n. The other party may then offer rebuttal evidence.
- o. The party presenting its case first shall make its closing argument and state the ARB determination being sought.
- p. The party presenting its case second shall make its closing argument and state the ARB determination being sought.
- q. The ARB or panel chairman shall state that the hearing is closed.
- r. The ARB or panel shall deliberate orally. No notes, text messages, or other form of communication are permitted.
- s. The ARB or panel chairman shall 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 to be determined. A vote shall be taken and recorded by a designated appraisal district staff person or member of the ARB assigned for this purpose. Separate motions and determinations must be made for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).
- t. Thank the parties for their participation and announce the determination(s) of the ARB and that an order determining protest will be sent by certified mail.

If computer screens are used by ARB members during ARB hearings for reviewing evidence and other information, computer screens also must be 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 property owner or agent be provided a separate screen).

The property owner or agent and the appraisal district representative are prohibited from debating each other. All communications must be directed 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.

Records for each ARB proceeding must be kept according to Tax Code Section 41.68 and Comptroller Rule 9.803. The secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention.

### 2. Conducting Hearings Closed to the Public

A joint motion by the chief appraiser and the property owner is required to request that the hearing be closed due to intent to disclose proprietary or confidential information that will assist the ARB in determining the protest.

The ARB or panel chairman shall convene the hearing as an open meeting and then announce that the meeting will be closed to the public as permitted by Tax Code Sections 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 same order of proceedings as for hearings open to the public should be followed.

The secretary of the ARB is responsible for ensuring that a separate tape recording or written summary of testimony is kept for the closed meeting in accordance with the provisions of 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 and shall be marked as “confidential” and maintained as confidential in the ARB records for proper handling. At the conclusion of the hearing, the ARB panel shall confirm with the parties that all proprietary and confidential information has been appropriately identified by the ARB. The confidentiality of the information must be maintained by the ARB members and disclosed only as provided by law.

After deliberation, the ARB shall reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting. There must be no mention of the proprietary or confidential information during the open meeting.

### 3. 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 may not prohibit this entitlement in any way; however, it may enforce time limits and dictate the order of ARB hearings for witness examination and cross-examination. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence.

#### 4. Party's Right to Appear by an Agent

The ARB shall accept and consider a motion or protest filed by an agent if an agency authorization is filed at or before the hearing on the motion or protest. The ARB may not require that an agency authorization be filed at an earlier time. The ARB may not require a person to designate an agent to represent the person in a property tax matter other than as provided by 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 may not prohibit a party's right to offer evidence and argument. However, the ARB may enforce time limits and dictate the order of ARB hearings. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined 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

In a protest hearing, the ARB will not consider any appraisal district information or taxpayer/agent information on a protest that was not presented to the ARB during the protest hearing. In order for any appraisal district record (i.e., appraisal roll history, appraisal cards) to be considered by the ARB, it must be presented as evidence by or on behalf of a party (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)

If it is established during a protest hearing that information was previously requested under Tax Code Section 41.461 by the protesting party and that the information was not made available to the protesting party at least 14 days before the scheduled or postponed hearing, the requested information not made available may not be used as evidence in the hearing. The ARB shall make a determination to 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 made available at least 14 days before the hearing; and (2) the information sought to be excluded as evidence was previously requested by the protesting party.

### **Admission of Documentary Evidence**

1. Any party may submit evidence in document form by submitting the original copy of the document.
2. All documentary evidence presented by the property owner or agent will be scanned into the district's computer before the hearing begins to facilitate presentation to the board using computer monitors. Exceptions will be made for oversized documents such as maps.
3. Documentary evidence may be admitted in the form of a copy if the appraisal review board conducting the proceeding 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 (Texas Property Tax Code See 41.67 (b)). All evidence presented shall be retained by the board, including original pictures, correspondence, affidavits and other documents.
4. Offers made by the Appraisal District during the informal hearing process are inadmissible as evidence at the Formal Hearing before the ARB.

### **Testimony**

1. The Board may exclude irrelevant testimony and may instruct a witness to confine his/her testimony to matters pertaining to the issues before the Board.
2. Any Board Member hearing the case may examine any witness testifying before the Board and may question any of the parties appearing before the Board, after having been sworn in.
3. The Board shall limit cross-examination to matters relevant to the protest and will not allow unnecessary abusive or personal questions.

### **Weighing Evidence**

#### **1. Burden of Proof Requirements in the Tax Code**

Tax Code Section 41.43(a) provides that the appraisal district has the burden of establishing the value of property by a preponderance of the evidence presented at the hearing in protests involving excessive value and unequal appraisal. Protests involving other matters that can be the subject of a protest, such as ownership and exemptions, require that the protesting party must establish its position by a preponderance of the evidence [see, e.g., Tax Code Section 41.43(d)]. If the party with the burden of proof does not meet its burden of proof, the protest shall be determined in favor of the other party. Several exceptions to the "preponderance of the evidence" standard exist including, but not limited to:

- a. Section 41.43(a-1) provides that the appraisal district's burden shifts to clear and convincing evidence in protests concerning the market or appraised value of \$1 million or less if a report prepared by a certified appraiser is filed with the ARB and delivered to the chief appraiser more than 14 days before the hearing. The appraisal must meet certain requirements in order to be valid (Subsection a-2). If

the appraisal district does not meet its burden of proof, the protest shall be determined in favor of the property owner.

- b. Section 41.43(a-3) requires that the appraisal district must establish by clear and convincing evidence the value of the property if: (1) the appraised value of the property was lowered under Subtitle F of the Tax Code in the preceding year (Subtitle F includes protests filed with the ARB, binding arbitration, and lawsuits); (2) the appraised value of the property in the preceding year was not established as a result of a written agreement between the property owner or the owner's agent and the appraisal district under Section 1.111(e); and (3) not later than the 14th before the date of the first day of the hearing, the property owner files with the ARB and delivers to the chief appraiser information (such as income and expense statements regarding comparable sales), that is sufficient to allow for a determination of the appraised or market value of the property if the protest concerns excessive value, or information that is sufficient to allow for a determination of whether the property was appraised unequally if the protest concerns unequal appraisal. If the appraisal district does not meet its burden of proof, the protest shall be determined in favor of the property owner.
- c. Section 41.43(d) provides an exception that shifts the burden of proof to the property owner if, before the date of the hearing, a rendition statement or property report required by Tax Code Chapter 22 or a response to a chief appraiser's request for information under Section 22.07(c) is not delivered. The property owner then has the burden of establishing value of the property by a preponderance of the evidence. If the property owner fails to meet the standard, the protest shall be determined in favor of the appraisal district.
- d. Section 23.01(e) provides that if the appraised value of property is lowered under Subtitle F of the Tax Code in the preceding year (Subtitle F includes protests filed with the ARB, binding arbitration, and lawsuits), the appraised value may not be increased in a subsequent year by the chief appraiser "unless the increase by the chief appraiser is reasonably supported by substantial evidence when all of the reliable and probative evidence in the record is considered as a whole." If the appraised value is determined based on a protest of unequal appraisal, "the chief appraiser may satisfy the requirement to reasonably support by substantial evidence an increase in the appraised value of the property in the following year by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection."

## 2. Standards for Burden of Proof

Pattern jury charges in Texas provide one source of guidance concerning the meaning of two standards for appraisal districts to meet their burden of proof:

The term “preponderance of the evidence” means the greater weight and degree of credible evidence admitted 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 a fact is more likely true than not true.

“Clear and convincing evidence” means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

“Substantial evidence” is defined in Black’s Law Dictionary as “such evidence that a reasonable mind might accept as adequate to support a conclusion.”

### **Procedure Regarding Burden of Proof**

**If a statutorily required burden of proof is met by the party bearing such burden, the ARB must make determinations based on the weight of the evidence presented by both parties. Meeting the burden of proof standard does not automatically cause the party with the burden to prevail. In addition, the ARB cannot make its own calculations and determinations of value without regard to the evidence. It must rely solely on the evidence presented at the hearing and weigh the evidence presented by both parties. This responsibility requires that the ARB consider the credibility and reliability of the witnesses and other evidence.**

## **VI. Other Issues**

### **[Tax Code Section 5.103(17)]**

#### **1. Compliance with the Law, Integrity, and Impartiality**

Members of the ARB shall comply with the law and should act at all times 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**

Members of the ARB shall perform their ARB duties without bias or prejudice.

4. Confidential Information

Members of the ARB shall not disclose or use for any purpose unrelated to ARB duties confidential information acquired in the performance of ARB duties.

5. Any other matter related to fair and efficient appraisal review board hearings