



Dana Horton
Chief Appraiser
Tel (979) 774-4100
Fax (979) 774-4196

APPRAISAL REVIEW BOARD HEARING PROCEDURES

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 may be provided by law. The chair must ensure prompt notification of reported conflicts of interest to the appropriate individuals.

If an ARB member discovers before or during a protest hearing that a conflict of interest exists, the member cannot participate in a protest hearing. If the conflict exists due to the provisions of the Local Government Code Chapter 171, the member must file an affidavit with the ARB secretary. The 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, 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.

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. there is no requirement under Tax Code Section 41.69 that the interest 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 be engaging or attempting to engage in a prohibited communication, the ARB member must immediately remove himself or herself from the conversation.

II. ARB Duties

[Tax Code Section 5.103(b) (1), (5), and (6)]

1. Statutory Duties of an ARB

Each ARB member must ensure that he or she understands the statutory duties of the ARB and complies with all statutory requirements in performing statutory duties as an ARB member.

2. Notices Required under the Property Tax Code

Each ARB member must obtain and maintain familiarity with notices required under the Property Tax Code. If an ARB member believes that any required notice is not being provided or does not meet the requirements of applicable law, the ARB member must promptly notify the ARB chair. The ARB chair must investigate each report and take appropriate action to correct all verified problems.

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

“Good cause” for filing late protests is not defined in Tax Code Section 41.44(b). Claims of good cause for late-filed protests should be carefully considered. The 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 a manner that properly respects the rights of property owners and their agents while not undermining or 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, may be provided with clerical assistance by the appraisal district.

2. Scheduling Hearings for Property Owners or Their Agents

Pursuant to Tax Code Section 41.66(i), hearing requests filed by property owners or their designated agents under Tax Code Section 1.111 must be scheduled for a specific time and date. More than one protest hearing can be scheduled 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 seventh day after the date of receipt of the request.

3. Scheduling Hearings for Multiple Accounts

If requested by a property owner or the designated agent, hearings on protests concerning up to 20 designated properties must be scheduled to be held consecutively on the same day by the ARB. 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.” More than one such request may be filed in the same tax year by a property owner or the designated agent. 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 their 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 Section 41.66(j).

4. ARB Panel Assignments

If an ARB sits in panels as authorized by Tax Code Section 41.45(d) and (d-1), protests must be assigned randomly, except that 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.

Once a protest is scheduled to be heard by a specific panel, it cannot be reassigned to another panel without the consent of the property owner or a designated agent. If the ARB reassigns a protest to another panel, the owner or designated agent may agree to the reassignment or request a postponement of the hearing. The ARB 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.”

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

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 request must be made before the hearing date in writing, including by facsimile transmission or electronic mail, by 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 hearing cannot 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.

Without limit, the ARB must postpone a hearing if the property owner or the designated agent shows good cause, as defined in Tax Code Section 41.45(e-2). The request must 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 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 hearing cannot 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. Without limit, the ARB must postpone a hearing if the chief appraiser consents to the postponement. The request must 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 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 hearing cannot 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)

A property owner or owner's agent who fails to appear at the hearing is entitled to a new hearing if the property owner or owner's agent file, not later than the fourth day after the date the hearing occurred, a written statement with the ARB showing good cause, as defined in Tax Code Section 41.45(e-2), for the failure to appear and requesting a new hearing.

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 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 seventh day after the date of receipt of the request.

9. Postponements Under Tax Code Section 41.66(i)

Protest hearings filed by property owners or their designated agents under Tax Code Section 1.111 must be scheduled for a specific time and date. More than one protest hearing can be scheduled at the same time and date; however, a property owner or their 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 seventh day after the date of receipt of the request.

10. Postponements Under Tax Code Section 41.66(k)(k-1)

Once a protest is scheduled to be heard by a specific panel it cannot be reassigned to another panel without the consent of the property owner or designated agent. If the ARB reassigns a protest to another panel, a property owner or designated agent may agree to reassignment or request that a hearing postponement. The ARB must postpone the hearing on that request. A change of panel members because of a conflict of interest, illness or inability to continue participating in hearings for the remainder of the day does not constitute panel reassignment. 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 seventh day after the date of receipt of the request.

A property owner or agent must consent to a special panel ARB hearing reassignment or 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.

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 should be read at the beginning of each hearing:

We are the appraisal review [board or panel] 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. You may 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. Appeal information will be provided 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.

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 and electronic 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. 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 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 chair shall state that the hearing is closed.
- r. The ARB or panel shall deliberate orally. No notes, text messages, or other forms of written 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. Provide the property owner or their

agent documents indicating that the members of the board hearing their protest signed the required affidavit.

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).

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. 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. 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 secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention.

2. Conducting Hearings Remotely

A property owner initiating a protest is entitled to offer evidence or argument by affidavit without physically appearing. To appear at a hearing remotely, a property owner must notify the ARB by written request not later than the 10th day before the date of the hearing. 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.

3. 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 chair must 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 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 and must be marked as “confidential” and maintained 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 confidentiality of the information must be maintained by the ARB members and disclosed 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. There must be no 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 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.

5. Party’s Right to Appear by an Agent

The ARB must 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 cannot 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.

A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to 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 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 cannot consider any appraisal district 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 delivered to the protesting party at least 14 days before the scheduled or postponed hearing, the requested information not made available cannot be used or offered 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.

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 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

ARB members must perform their ARB duties without bias or prejudice.

4. Confidential Information

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

5. Required Contents That Vary By ARB

ARB model hearing procedures must comply with Comptroller Rule 9.805 concerning ARB evidence exchange and retention and audiovisual equipment requirements. The rule requires that ARB procedures include specific items that may vary by ARB. The rule addresses:

- the manner and form, including security requirements, in which a person must 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 the property owner's agent.

This section of the ARB's hearing procedures must address each item required in Comptroller Rule 9.805.

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