2018

Camp County Appraisal Review Board Policies and Hearing Procedures

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98-1023 (01/17)

CAMP CENTRAL APPRAISAL DISTRICT
APPRAISAL REVIEW BOARD
PROCEDURES

ARB's Role in the Property Tax System

I. **The ARB is a quasi-judicial entity appointed by the Board of Directors of the Appraisal District.**

A. Responsibilities

1. Hear and determine challenges that are initiated by taxing units of Camp County.
2. Hear and resolve disputes between property owners and the appraisal district.
3. Approve the appraisal records after issuance of all change orders that were determined necessary during hearings.
4. Approve the records for final certification by the Chief Appraiser.
5. The ARB in accordance and as outlined in Sec. 25.25 and Sec. 41.411 of the property tax code grants to the Chief Appraiser the authority to correct errors that fall in this classification after their approval of the records for the current appraisal year.
6. Determine whether an exemption or a partial exemption is improperly granted or special appraisal granted.
7. However, 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).

B. Qualifications

1. Must be a resident of the county for two years prior to serve.
2. Must complete mandatory training for public officials and ARB training as provided by the Comptroller.
3. Not related by blood or marriage within the second degree to a person who operates for compensation as a tax agent or property tax appraiser in the appraisal district.
4. Can not contract with the appraisal district or an entity in the district.
5. Can not owe delinquent taxes on property 60 days after the due date.

II. Rules of Order

A. Organization

1. Board of Directors of the appraisal district will appoint five (5) members in January of each appraisal year.
2. The board of directors of the appraisal district will appoint the Chairperson and the Secretary to reside over the ARB hearings. The board of directors will take into consideration the qualifications a member may have in law and or real estate practices in appointing the chair and secretary.

B. Scheduling

1. The board shall schedule a hearing on a protest if the property owner initiating the protest files a timely protest pursuant to Texas Property Tax Code Section 41.44. The board may hear a protest when requested by a property owner that has not timely filed a notice of protest only if the property owner shows good cause for his failure to file timely. The board will make a determination as to whether the property owner has shown "good cause". The board at its discretion can make that determination with written information from the owner or may schedule a hearing and request the property owner to be present.

   The definition of **"good cause"** will be any circumstance that is not the fault or where the property owner had no control of the circumstance. Examples of **"good cause"** are medical emergency, death of an immediate family member, work, out of country for work related business, military duty, natural disasters, and must be proven with proper written documentation.

2. All cases scheduled for hearings will be assigned a protest or challenge number to identify the case during the proceedings of the board.
3. The Chief Appraiser will handle and determine which Sec. 25.25 cases to bring before the ARB.
4. ARB meetings will be scheduled Monday thru Friday and offer in addition a night meeting or a Saturday and Sunday meeting.
5. Protest hearings will be scheduled every 15 – 30 minutes apart. Exceptions may be made in the case of multiple properties protested by a single owner and multiply properties with multiple owners or complex properties.

C. Rescheduling or Postponement

1. When a property owner requests a postponement or rescheduling of his or her hearing, the board shall grant such when the property owner shows **"good cause"** for his or her inability to attend the hearing on the scheduled hearing date of if the Chief Appraiser consents to the postponement. The property owner may have one postponement for any reason as long as they are not represented by a tax agent.
2. Hearings may not be postpones to a date less than five (5) or more than fifteen (15) days after the original date unless the review board, the chief appraiser and the property owner agree to a different date.
3. **Failure to appear** for a hearing shall be determined as waiving its protest or challenge and the protest will be withdrawn and dismissed for lack of attendance unless the property owner notifies the Appraisal District not later than the fourth day after the date hearing occurred a written statement with the appraisal review board showing good cause for the failure to appear and requesting a new hearing.. No protest or challenge will be reopened unless **"good cause"** can be shown for the nonappearance of the property owner.

D. Affidavit/Telephone Conference Call in lieu of Personal Appearance

1. A property owner may offer evidence or argument by affidavit without personally appearing and may appear by telephone conference call to offer argument.

2. To appear at a hearing by telephone conference call, a property owner must notify the ARB by written request not later than the 10th day before the date of the hearing.

3. To appear by telephone conference call, a property owner must offer any evidence by a valid affidavit as described by the Property Tax Code. Evidence must be submitted to the ARB before they begin the hearing on the protest.

4. On receipt of the affidavit, the ARB will notify the Chief Appraiser for inspection and obtaining a copy of affidavit.

5. A property owner is responsible for providing access to a hearing on a protest conducted by telephone conference call to another person that the owner invites to participate in the hearing.

6. The ARB will provide a telephone number for the property owner to call to participate in the hearing. The ARB must hold the hearing in a location equipped with telephone equipment that allows each board member and other parties to the protest who are present at hearing to hear property owner offer argument.

7. Each protest hearing agreed to be conducted by telephone conference call will be assigned a case number and date and time of the hearing.

8. When a property owner calls in at their appropriate hearing time, and it is determined by the ARB the schedule will not allow the hearing to begin at that time, the property owner will be informed of such issue and will leave a telephone number for a return call when the ARB is ready to begin the hearing.

9. A valid affidavit as described by the Property Tax Code must be:
   a. attested to before an officer authorized to administer oaths
   b. include name of property owner initiating protest
   c. description of property subject of the protest
   d. evidence or argument

E. Testimony and Examination of Witness

4. All testimony must be given under oath.
5. The board may exclude irrelevant testimony and may instruct a witness to confine his or her testimony to the matter relevant to the issues before the board.
6. Individual board members may address questions directly to witnesses and parties after first being recognized by the Chairman.
7. Witnesses or parties appearing before the board shall address all questions to the board as a group not to individual members.
8. Cross-examination of witnesses or parties by the representative of the opposing party shall be permitted after acknowledgement of the chairperson. Abusive questions or personal questions shall not be permitted.
9. All evidence should be presented in approximately fifteen (15) minutes. Extra time may be allotted by the ARB.
10. No one will be permitted to speak as a witness or provide evidence unless that individual executed an affidavit of sworn testimony at the beginning of the meeting.

F. Documentary Evidence

11. Any party may submit evidence in documentary form by submitting the original document to the board. Total number of

copies provided should be at least seven (7) copies. One for each board member, one for CAD representative and one for the retention of records requirement.

12. If communication by facsimile is used the document must be backed up by a hard copy for record purposes.
13. **All evidence presented by the property owner will be retained as evidence for record keeping purposes with the ARB records. A hard copy of any evidence presented in an electronic format (i.e. power point presentation, video, cell phone photos, digital photos, etc.) must be provided for record keeping purposes with the ARB records.**
14. **All evidence presented by the appraisal district will be retained as evidence for record keeping purposes with the ARB records including but not limited to video, power point presentations or cell phone photos, digital photos, etc.**
15. All property owners will have the right to request a copy of data, schedules, formulas, and any other material the appraisal district plans to introduce as evidence in the hearing. Cost for this material may not exceed $25.00.
16. The appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing in a hearing relating to appraised value, market value, or an unequal appraisal. If the district fails to meet that standard the protest shall be determined in favor of the property owner.
17. A protest on unequal appraisal shall be determined in the favor of the protesting party unless the cad establishes the appraisal ratio of the property is equal to or less than the median level of appraisal of a reasonable representative sample of other properties. The appraisal ratio of the property is equal to or less than the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated. The appraised value is equal to or less than the median value of a reasonable number of comparable properties appropriately adjusted.
18. The method of calculation used in determining a 25.25(d) one-third over appraisal error motion will be as follows: Corrected value/75% = Threshold for current appraised value.

G. Issuance of subpoenas

19. The board sitting as a whole, on its own motion or at the request of a party, may subpoena witnesses or books, records, or other documents. The board may subpoena witnesses, books, records, or other documents of the appraisal district or of the property owner who is a part of the protest. Records of the appraisal

district that are made confidential by law must be subpoenaed by the board in order to be considered in any protest hearing.

20. A party to a hearing or proceeding of the board must make a request for subpoena in writing and show **"good cause"** for issuing the subpoena.
21. The board shall determine an amount of deposit reasonable to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the person to whom the subpoena is directed.

H. Further Proceedings and Rehearing

22. If the board should determine that further evidence is requested in order to make a decision in any hearing, the board shall schedule a continuation of the hearing at a later date and inform the parties of the rescheduled hearing (however an additional fifteen (15) days notice shall not be required).

I. Rulings by the Board

23. All final determinations of the protest hearings will be made at the end of each hearing with all parties present and a quorum of the ARB members present.
24. The ARB may request a recess during the hearing to address topic "H" above to request further information.

J. Ex Parte Contact

25. The board shall not consider any information on a protest that is not presented to the board or its panel during the protest hearing (Tex. Tax Code 41.66). A member of the review board may not communicate with another person regarding any matter relating to a protest other than matters necessary for the scheduling of hearings or those used as samples during other protest.
26. An Ex Parte statement will be acknowledge and sworn to by each member of the board prior to the commencement of the hearing stating they do not have prior knowledge or evidence about the case being presented.
27. If a member recues himself from a hearing because he can not sign the ex parte document, the board recommends leaving the room. If the property owner requests the removal of an ARB member the Board Chairman will make the decision to allow the member to stay and participate in the meeting or the session.

K. Conflicts of Interest

28. A member of the ARB may not participate in a determination of a hearing in which he or she has any ownership interest in the property. They may not participate in any hearing in which he or she is related to any party in the hearing by second degree affinity (marriage) or consanguinity (blood) within the third degree. (The first degree is parents or children; the second degree is grandparents, grandchildren, brothers and sister; the third degree is great grandparents, great grandchildren, uncles, aunts, nephews, and nieces).

L. Pre-hearing Conference

1. It is requested that no protest or challenge be heard unless the property owner or taxing unit has first reviewed the matter being protested with a representative of the appraisal district and has determined that a mutual agreement can not be formulated.

M. Order of Proceedings

1. Meeting will be held and opened according to open meetings requirements. Robert's Rule of Order will govern the conduct of all meetings unless Robert's Rule of Order conflict with the rules of this board then the board rules will govern.
2. A quorum will be established.
3. Chairperson will introduce all parties.
4. Execution of ex prate statements by ARB members
5. All witness will be sworn. Cad representative will be sworn in on the first meeting each year for the whole year. 15 day waiver documentation will be addressed, if necessary.
6. The chairperson will request the property owner to decide what evidence will be presented first.
7. The hearings will begin with the property owner or the Cad representative stating the nature of the case.
8. Evidence and arguments will be made by both parties with rebuttals and closing statements.
9. The board will formulate a conclusion from the evidence presented and disclose that decision at the end of each hearing. If a vote results in a tie the motion dies and the floor will be opened for a new motion and vote.

10. The board will deliver written confirmation of its decision to the parties by certified mail.

This document adopted this date March 8, 2018.

_____
Chairperson

This document amended this date May 10, 2018.

_____
Chairman

ATTENTION

You are required by Camp County Appraisal Review Board Policies and Procedures to supply a copy of any and all evidence you will be presenting to the Appraisal District Representative at the beginning of the hearing. If you would like for each ARB member to have a copy of your evidence, please bring 5 additional copies.

Please remember, as much as Possible, all original documents must be retained with the ARB Records, and be in reproducible form.

STAFF PROCEDURES FOR INFORMAL HEARINGS AND FORMAL ARB HEARINGS

The following steps are to be adhered to during the protest stages of the calendar of events for the Camp Central Appraisal District:

A. Protest will be received via the mail, email, or in person at the counter. If receipted at the counter the clerk will always ask for a phone contact number. If receipted at the counter the clerk will encourage the protesting party to speak with an appraiser that day if the protesting party wishes.

B. Each protest will be date stamped and initialed by the clerk and the clerk will identify the appropriate appraiser for the protest.

C. The protest will be delivered to the appropriate appraiser that will enter the protest into the CAMA system generating an appropriate protest number. All information provided by the protesting party will be entered into the CAMA system.

D. If the protesting party wishes to speak with the appraiser the clerk will direct the protesting party to the appropriate location to speak with the appropriate appraiser.

E. The appropriate appraiser will contact the individual protesting by phone prior to setting an ARB hearing time and date.

F. After the initial meeting with the protested party by phone or personal office contact, an agreed determination will be made as to the course of action by both parties.

G. The course of action includes adjustments with an agreed settlement and waiver or allotting time for a formal ARB hearing.

H. The appraiser will then prepare the documents necessary to schedule an ARB hearing.

I. At least 14 days prior to the hearing all documents required by Sec. 41.461 of the Tax code will be mailed to the protesting party.

J. If in the protest the party has requested all information to be used in the hearing, the appraiser will mail with the appointment schedule and all documents that will be used in the hearing.

K. If the owner request hearing materials after receipt of the hearing date, the appraiser will mail accordingly not charging more than the state required $15.00 for residences and $25.00 for other type properties.

L. Documents prepared and mailed are:

1. Comptroller rights and remedies
2. ARB procedures
3. The scheduled hearing document

M. All appraisal staff members prior to the hearings will make certain they have prepared all documents to be used in the hearings in which they were the appraiser for the protested property and complied with any request from property owners on receiving hearing documents.

N. Prior to being summoned into the hearing the staff appraiser will meet with the owner of the protested property informally if they failed to reach them prior to the hearing to determine if issues can be resolved before appearing before the ARB.

O. All staff members will remain at their work locations until they are summoned to enjoin in the hearings. No employee of the appraisal district will engage in activity with the ARB presenting an appearance of collusion or rubber stamping with the CAD.

P. The staff members and the protesting party will be summoned at the same time and enter the hearing location together.

Q. The cad staff will await instructions from the ARB Chairman.

7-03.00 Taxpayer Complaints and Public Access Policies

03.01 Appointment of Taxpayer Liaison Officer PTC Sec. 6.052

The Board of Directors of Camp Central Appraisal District is not required to appoint a Taxpayer Liaison because of the reduced population.

03.02 Complaint Procedures PTC Sec. 6.04 (d-g)

Any person having a complaint that falls under the jurisdiction of this Board shall Be granted the opportunity to discuss said complaint with the Board.

Complaints that fall within the jurisdiction of the Board include: the operations of the District, the Board of Directors, or the Appraisal Review Board; or the actions of any of the following persons: the Chief Appraiser or District staff, a member of the Board of Directors, or a member of the Appraisal Review Board. Matters outside the jurisdiction of the Board include: property valuations, exemptions, special appraisals, or any other matter that may be protested to the Appraisal Review Board.

Any complaint requiring action by the Board must be filed through the Chief Appraiser. Said complaints will be investigated by the Chief Appraiser, who will act as the intermediary between the complainant and the Board of Directors. In order to file a complaint, the necessary steps must be taken:

1. File a written complaint with the Chief Appraiser. The complaint should adequately describe the situation, the person(s) involved, and the action(s) the complainant would like the Board to take concerning the complaint.

2. The Chief Appraiser will research each complaint for all possible remedies. If the Chief Appraiser and the complainant are able to resolve the problem, the Chief Appraiser will then report the problem and its resolution in her informational report to the Board at their next regular scheduled meeting.

   If the Chief Appraiser and the complainant are not able to resolve the problem, the Chief Appraiser will place the complaint as an action item on the agenda for the next regular scheduled meeting of the Board of Directors.

3. In order for an unresolved complaint to be placed as an action item on the Board's agenda, adequate time must be given to notify all parties involved in the complaint and to allow proper time to comply with Section 551.000 et seq of the Texas Government Code concerning the Open Meetings Act
4. A complainant must further outline any special assistance or arrangements he/she will require in order to make his/her presentation to the Board, such as translators for non-English speaking or deaf persons, or special needs for a person having any physical, mental, or development disability.

5. If a complainant has an impairment and cannot present the company in writing, the complaint will be recorded and played for the Board in lieu of the written complaint.

6. If an unresolved complaint involves a District employee, including the Chief Appraiser, the employee will be notified of the complaint and must submit a written response to be presented along with the complaint at the next regular scheduled meeting of the Board of Directors.

If an unresolved complaint involves the operations of the Appraisal Review Board or one of its members, the complaint will be submitted to the ARB chairperson and the member of the ARB involved in the complaint, if applicable. If necessary, the ARB will call a special meeting to address the matters outlined in the complaint. The ARB chairperson must submit a written response to a complaint concerning the operations of the Appraisal Review Board, and the member involved in the complaint must submit a written response to a complaint regarding a member of the ARB. The written response will be presented along with the complaint at the next regular scheduled meeting of the Board of Directors.

All parties involved in the company will be allowed an opportunity to address the Board of Directors in person.

7. After hearing all evidence in the complaint, the Board of Directors will take appropriate action beginning with appointing an investigation committee and presenting the facts of the investigation to the board at a later open meeting date. The disposition will be determined at a meeting in which all investigative information has been relayed to the Board as a whole.

Model Hearing Procedures for Appraisal Review Boards

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 chair in addition to any other individual or entity as may be provided by law. The chair 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 chair 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 Section 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 Section 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 chair 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. 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 chair. The ARB chair shall investigate each such 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 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.

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 Section 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 Section 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 chair. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chair or the chair'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 chair or the chair'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 chair. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chair or the chair'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 chair or the chair'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 chair. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chair or the chair'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 chair or the chair'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)

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 (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.

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 by Telephone Conference Call

A property owner initiating a protest is entitled to offer evidence or argument by affidavit without personally appearing. To appear at a hearing by telephone conference call, 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 by telephone conference call, 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 by telephone conference call 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 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.

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 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.

5. 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.

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 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 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.

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. Required Contents That Vary By ARB

ARB model hearing procedures must comply with Comptroller Rule 9.805 concerning appraisal review board 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.

5. ARB Evidence Exchange and Retention/Audiovisual Requirements

(a) Exchange of evidence. Before and immediately after an appraisal review board hearing begins, the appraisal district and the property owner or the owner's agent shall each provide the other party with a duplicated set of evidentiary materials the person intends to offer or submit to the appraisal review board for consideration at the hearing. One set of these materials is to be exchanged with and retained by the other party, and another set of these materials is to be provided to and retained by the appraisal review board as evidence for its records as required under Comptroller Rule 9.803 (Requirements for ARB records). The duplicated material sets shall be produced in either paper or electronic form.

(b) Evidentiary materials on a portable electronic device. Evidentiary materials produced on a portable electronic device shall be saved in a file format type and downloaded to a small, portable, electronic device. The file format type and small, portable, electronic device must be considered generally accepted technology and must be suitable for retention by the recipient. For security purposes, the electronic files and devices shall be capable of being scanned or reviewed for the presence of any malicious software or computer viruses before acceptance by or exposure to the district's computer system.

(c) Electronic file format types and devices. The Camp County ARB will accept the following types of file formats and devices: Adobe portable document format (PDF); Microsoft Word, typically used for text documents; Microsoft Excel, typically used for spreadsheets and tables; Microsoft PowerPoint, typically used for presentations or slideshows; and JPEG (.jpg or .jpeg) for photographs.
Camp County ARB will accept the following types of small, portable, electronic devices suitable for retention: USB flash drives (thumb or jump drives, USB or memory sticks), and compact discs (CD's, DVD's)
The appraisal district and the property owner or the owner's agent may agree to exchange evidence in a manner other than provided in appraisal review board hearing procedures so long as a copy of the evidence may be retained in the ARB records that satisfies subsection (a).

(d) Audiovisual equipment requirements. The Camp Central Appraisal District uses audiovisual equipment during ARB hearings, the appraisal district shall make available this same type of equipment or audiovisual equipment for use at the hearing by the property owner or the owner's agent. The equipment made available shall be capable of reading and accepting the same types of file formats and devices the appraisal review board has determined are generally accepted under subsection (c). In the alternative, property owners and their agents may bring their own audiovisual equipment for their presentation of evidentiary materials at the hearing. If the operation of audiovisual equipment at the hearing requires access to and connection with the Internet for the presentation, the parties must provide their own Internet connection and access through their own service provider. The property owner and the owner's agent may not access the appraisal district office's network or Internet connection nor any of the appraisal district office's technology or equipment other than that made available and described in the appraisal review board hearing procedures. The appraisal district and the property owner or the owner's agent may use audiovisual equipment with specifications that are different from those in the hearing procedures if the parties agree to do so in writing or verbally agree as shown in the audio recordings of the hearing.

Informational Guide to Model Hearing Procedures for Appraisal Review Boards

January 1, 2016
Property Tax Assistance Division
Texas Comptroller of Public Accounts

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Introduction

Effective Jan. 1, 2014, Tax Code Section 5.103(a) requires that the Comptroller of Public Accounts prepare model hearing procedures for appraisal review boards (ARB). The model procedures are required to be followed, according to subsection (d), when an ARB establishes its hearing procedures, as required by Tax Code Section 41.66(a).

Tax Code Section 5.103(b) lists 17 topics, 16 of which are addressed in the model hearing procedures under the categories of (1) ARB membership, (2) ARB duties, (3) ARB hearings, (4) conduct of ARB hearings, and (5) evidence considerations. The last statutorily-required topic—"any other matter related to fair and efficient appraisal review board hearings"—is addressed under the last section entitled "Other Issues."

The model procedures address specific matters required by Tax Code Section 5.103. An ARB may include additional procedures in its local hearing procedures regarding legal and administrative matters that are not addressed by these model procedures. Input from ARB legal counsel is advisable to establish local hearing procedures. The local procedures, however, may not contradict, negate, or otherwise substantively change the model procedures. If a conflict exists between the model procedures and local procedures, the model procedures prevail.

This informational guide is provided to aid ARBs in understanding the legal bases of the model procedures and to provide samples of additional or modified procedures that follow the model procedures, but do not contradict, negate, or otherwise substantively change them. The Comptroller's Property Tax Assistance Division is providing this guide solely as an informational resource. It is the model procedures that are required by statute and that must be followed by ARBs in establishing procedures under Tax Code Section 41.66(a). The legal provisions included in this guide are not exhaustive and the sample procedures are only illustrative. In providing sample procedures in this guide, the Comptroller neither advocates that an ARB establish such sample procedures, nor takes a position with regard to whether such provisions are advisable or legally enforceable. Those decisions should be made with advice of ARB legal counsel. The information provided in this guide neither constitutes nor serves as a substitute for legal advice. Questions regarding applicable statutes or additions or modifications to the model procedures should be directed to ARB legal counsel.

I. ARB Membership

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

Tax Code Section 6.41(a) establishes an appraisal review board (ARB) for each appraisal district. Subsection (b) requires that the board must have at least three members. The appraisal district board of directors by resolution may increase the size of the ARB to an appropriate number. Subsection (d) provides that, except as provided by Subsection (d-1), ARB members are appointed by resolution of a majority of the board of directors.

Tax Code Section 6.414(a) permits boards of directors to provide "for a number of auxiliary appraisal review board members that the board considers appropriate to hear taxpayer protests . . . and to assist the board in performing its duties." Subsection (g) states that "appraisal review board member" includes an auxiliary ARB member.

Beginning in 2014, in a county with a population of 120,000 or more, ARB members, including auxiliary ARB members, are appointed by the local administrative district judge. Tax Code Section 6.41(d-1) states that the members of the ARB are appointed by the judge. If the appraisal district board of directors provides for the existence of auxiliary ARB members in counties with populations of 120,000 or more, the local administrative law judge must appoint those members, as well as regular ARB members [Tax Code Section 6.414(b)].

Subsection (d-1) also states that "all applications submitted to the appraisal district or to the appraisal review board from persons seeking appointment as a member of the appraisal review board shall be delivered to the local administrative district judge. The appraisal district may provide the local administrative district judge with information regarding whether an applicant for appointment to or a member of the board owes any delinquent ad valorem taxes to a taxing unit participating in the appraisal district."

Applications are not required from persons seeking appointment to an ARB by the board of directors in counties with populations of less than 120,000; however, they may be requested by the board of directors to assist it in making appointments.

Tax Code Section 6.41(c) requires that an individual must be a resident of the appraisal district and must have resided in the district for at least two years in order to be eligible for appointment to an ARB. This eligibility requirement exists regardless of the county population.

Tax Code Section 5.041(e-2) requires each ARB member who is in the second year of his/her first term or has been reappointed to a subsequent term to complete the required training offered by the Comptroller of Public Accounts annually. An ARB member may not participate in a hearing, vote on a protest determination, or be reappointed to an additional term until the person completes the training and receives a certificate of course completion.

A. Administration of ARB Appointments

Tax Code Section 6.41(d) – (d-9) addresses appointment of ARB members. Section 6.41(d) sets forth the general rule that ARB members are appointed by resolution of a majority of the appraisal district board of directors. Section 6.41(d-1) – (d-9) provides for appointment of ARB members by the local administrative district judge in counties with a population of 120,000 or more. Neither the ARB nor its members have any statutory role in the ARB appointment process. Additionally, in appraisal districts in which ARB members are appointed by the local administrative district judge, Section 6.41(i)

expressly prohibits communication by an ARB member with the judge regarding the appointment of ARB members. Pursuant to Section 6.41(k), a violation of the prohibition in Section 6.41(i) is a Class A misdemeanor.

B. Conflicts of Interest

1. Tax Code Provisions

The term "conflict of interest" is used generally with regard to public officials and fiduciaries and their relationships to matters of private interest or gain to them. As the term relates to the duties of ARB members, statutory provisions outline restrictions.

Considered a restriction on eligibility of ARB members, Tax Code Section 6.412(c) prohibits members of the board of directors, an officer, or employee of the appraisal district, an employee of the comptroller, or a member of the governing body, officer, or employee of a taxing unit from serving on an ARB. This eligibility requirement must be investigated carefully so that appointments are not made to the ARB if such a conflict exists. If a conflict arises due to employment or appointment to one of the prohibited positions after appointment to the ARB, the member must resign from the ARB immediately.

Also a restriction on eligibility of ARB members, Tax Code Section 6.413 deals with interests in certain contracts. A person cannot serve on an ARB if the member or a business entity in which the member has a substantial interest is a party to a contract with the appraisal district or with a taxing unit that participates in the district. Likewise, the appraisal district or a taxing unit may not enter into a contract with a member of an ARB or with a business entity in which the ARB member has a substantial interest.

"Substantial interest" is defined in subsection (d). This eligibility requirement should be investigated before ARB member appointment. If an ARB member discovers a conflict after his/her appointment, the member must resign from the ARB or disengage from the contract creating the conflict immediately.

Tax Code Section 41.69, which is entitled "Conflict of Interest," provides direct guidance regarding conflicts of interest as they relate to protest hearings. It states that "a member of the appraisal review board may not participate in the determination of a taxpayer protest in which he is interested or in which he is related to a party by affinity within the second degree or by consanguinity within the third degree, as determined under Chapter 573, Government Code."

To restate, Section 41.69 prohibits participation in a protest hearing if the ARB member is interested in the protest in any way or if the ARB member is related to a party in a protest hearing by affinity within the second degree or by consanguinity within the third degree (see chart of kinship in the *Appraisal Review Board Manual*). An ARB member may be removed from the board due a violation of this provision [Tax Code 6.41(f)(1)].

2. Local Government Code Provisions

Tax Code Section 6.413(f) provides that "this section does not limit the application of any other law, including the common law relating to conflicts of interest, to an appraisal review board member." Not just Tax Code provisions determine conflicts of interest. ARB members may wish to review publications regarding conflicts of interest that are published by the Texas Attorney General (AG) and available on the AG's website. Questions regarding laws regarding conflict of interest should be directed to ARB legal counsel or, as applicable, your personal legal counsel.

One example of legal restrictions regarding conflicts of interest found outside the Tax Code is Local Government Code Chapter 171. Local Government Code Chapter 171 defines "local public official" to include elected or appointed officer "who exercises responsibilities beyond those that are advisory in nature." If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if (1) the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public, or (2) it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of real property, distinguishable from its effect on the public. The affidavit must be filed with the official record keeper of the governmental entity.

"Substantial interest" is defined for purposes of Chapter 171. Under Chapter 171, a person has a substantial interest in a business entity if he/she (or a person related in the first degree by consanguinity or affinity as determined under Government Code Chapter 573) owns 10 percent or more of the voting stock or shares of the entity, or owns either 10 percent or more or $15,000 of the fair market value of the business entity; or funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

If a local public official is required to file and does file an affidavit of conflict of interest, he/she is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action. (Local Government Code Section 171.004)

A violation of these provisions is a Class A misdemeanor.

C. Ex Parte and Other Prohibited Communications

1. Tax Code Section 41.66(g)

Tax Code Section 41.66(g) states:

"At the beginning of a hearing on a protest, each member of the appraisal review board hearing the protest must sign an affidavit stating that the board member has not communicated with another person in violation of Subsection (f). If a board member has communicated with another person in violation of Subsection (f), the member must be recused from the proceeding and may not hear, deliberate on, or vote on the determination of the protest. The board of directors of the appraisal district shall adopt and implement a policy concerning the temporary replacement of an appraisal review board member who has communicated with another person in violation of Subsection (f)."

Tax Code 41.66(f) prohibits communications between appraisal review board members and other persons concerning the following matters:

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

If an ARB member has communicated in this manner, the member may not participate in a protest hearing. The ARB member must recuse himself or herself immediately from the hearing and report the matter to the chairman or secretary of the ARB.

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 determination of the protest.

As noted above, the board of directors of the appraisal district, pursuant to Tax Code Section 41.66(f), must adopt and implement a policy concerning the temporary replacement of an ARB member who has communicated with another person in violation of Section 41.66(f).

A violation of Tax Code Section 41.66(f) is a Class A misdemeanor [Section 6.411(a) and (d)]. In addition, an ARB member may be removed from the board due a violation of this provision [Tax Code 6.41(f)(1)].

2. Tax Code Section 6.411

Subsection (b) prohibits communications between the chief appraiser or other employee of the appraisal district, a member of the board of directors, a property tax consultant, or an attorney representing a party to a proceeding before an ARB and a member of the ARB. These communications must be made "with the intent to influence a decision" of the ARB.

This prohibition does not apply to communications between:

- the ARB and its legal counsel; or
- the ARB and the chief appraiser, another employee of the appraisal district, a member of the board of directors, a property tax consultant, or an attorney representing a party to a proceeding before the ARB (1) during a hearing, (2) socially, (3) that are limited to administrative, clerical, or logistical matters related to scheduling and operation of hearings, processing documents, issuance of order, notices or subpoenas, and the operation, appointment, composition, or attendance at ARB training; or (4) that are required for the board of directors to determine whether to appoint, reappoint, or remove a person as a member or the chairman or secretary of the ARB.

A violation of this provision is a Class A misdemeanor.

3. Tax Code Section 6.41(i) and (j)

The chief appraiser or other employee or agent of the appraisal district is prohibited from communicating with an ARB member, a member of the district board of directors, or the local administrative law judge (in counties with populations of 120,000 or more) regarding "a ranking, scoring, or reporting of the percentage by which the appraisal review board or a panel of the board reduces the appraised value of property." [Subsection (j)] An ARB member is prohibited from communicating with the local administrative district judge regarding the appointment of ARB members in counties with populations of 120,000 or more. [Subsection (i)] Violations of these provisions are Class A misdemeanors.

Prohibitions regarding communications with administrative district judges in counties with populations of 120,000 or more do **not** apply to communications between an ARB member and the judge regarding the member's reappointment to the ARB, or removal of an ARB member from the board.

II. ARB Duties

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

A. Statutory Duties of an ARB

1. 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).

Statutory mandates for ARB actions deal with these duties (see Tax Code Chapters 41 and 25). The law authorizes actions for an ARB to take, such as establishing hearing procedures [Section 41.66(a)] and making determinations of protests and motions. By signing the statement at the conclusion of the training provided by the Comptroller of Public Accounts, members of the ARB acknowledge that they will comply with the duties prescribed by law for them [Tax Code Section 5.041(b-1)].

2. 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."

B. Notices Required under the Property Tax Code

Numerous notices are required to be provided either by the chief appraiser or the ARB to members of the public or individual property owners. Other notices are required to be given to the appraisal office or the ARB by property owners.

The following is a list of required notices. Other notices may exist, and the fact that they are not included on this list is not an indication that they are not required. This non-exclusive list includes notices to:

• Re-apply for an exemption of raw cocoa and green coffee	Section 11.33(b)
• Re-apply for exemptions	Section 11.43(c)
• Cancel exemptions	Section 11.43(h)
• Possible cancellation of homestead exemption for homeowner age 65 or older before cancellation	Section 11.43(q)
• Re-apply for stored cotton exemption	Section 11.437(b)

• Apply for exemptions required annually	Section 11.44(a)
• Modify or deny exemptions	Section 11.45(d)
• Apply annually for agricultural land appraisal	Section 23.43(e)
• Determine results of a report of decreased value	Section 22.03(c)
• Render value of business personal property	Section 22.22
• Deny agricultural land appraisal application	Section 23.44(d)
• Impose additional taxes for change of use of land designated as agricultural land	Section 23.46(c)
• Possible imposition of additional taxes and interest for land diverted to nonagricultural use before determination if owner is age 65 or older	Section 32.46(f)
• Impose additional taxes and interest for a change of use of open-space land	Section 23.55
• Possible imposition of additional taxes and interest for a change of use of open-space land before determination if owner is age 65 or older	Section 23.551
• Deny open-space land appraisal application	Section 23.57(d)
• Deny timber land appraisal application	Section 23.79(d)
• Deny recreational, park, or scenic land appraisal application	Section 23.85(d)
• Deny public access airport appraisal application	Section 23.95(d)
• Re-apply for open-space land appraisal	Section 23.54(e)
• Re-apply for timber land appraisal	Section 23.75(e)
• Re-apply for recreational, park, or scenic land appraisal	Section 23.84(c)
• Re-apply for public access airport appraisal	Section 23.94(c)
• Deny public access airport appraisal application	Section 23.95(d)
• Re-apply for restricted-use timber appraisal	Section 23.9804(f)

Also included in this non-exclusive list are notices of:

• Determination of sale of property before completion of replacement structure after a disaster	Section 11.135(e)
• Penalty for not continuing use of certain property for low-income housing	Section 11.181(g)
• Requirement to provide inventory records to determine value of Freeport goods	Section 11.251(h)
• Penalty for failing to respond to notice concerning Freeport exemption	Section 11.251(h)
• Requirement to provide property records to determine value of goods-in-transit	Section 11.253(h)
• Penalty for late Freeport exemption application	Section 11.4391(c)
• Penalty for delinquent rendition report/statement	Section 22.28(a)
• Denial of rendition penalty waiver request	Section 22.30(a-1)
• Determination of refund request for fleet transaction	Section 23.1243(c)

• Penalty for late application for agricultural designation	Section 23.431(c)
• Penalty for failure to notify chief appraiser of end of tick quarantine	Section 23.48(g) & Section 23.60(g)
• Penalty for failure to notify chief appraiser of loss of open-space land appraisal eligibility	Section 23.54(i)
• Penalty for late open-space land application	Section 23.541(c)
• Change of use of open-space land	Section 23.55(e)
• Penalty for failure to notify chief appraiser of loss of timber-land appraisal eligibility	Section 23.75(i)
• Penalty for late filing of timber land appraisal application	Section 23.751(c)
• Change of use of timber land	Section 23.76(e)
• Denial of timber land application	Section 23.79(d)
• Denial of application for recreational, park, and scenic land appraisal	Section 23.85(d)
• Penalty for violating deed restrictions: recreational, park, and scenic land appraisal	Section 23.87(b)
and for public access airport appraisal	Section 23.97(b)
• Penalty for failure to notify chief appraiser of end of eligibility for restricted-use timber appraisal	Section 23.9804(j)
• Denial of application for restricted-use timber appraisal	Section 23.9805(d)
• Change of use of restricted-use timber land	Section 23.9807(f)
• Value for rolling stock	Section 24.35(a)
• Qualification or cancellation of separate taxation for certain improvements	Section 25.08(d)
• Qualification or cancellation of separate taxation of standing timber	Section 25.10(d)
• Qualification or cancellation of separate taxation of undivided interests	Section 25.11(c)
• Appraised value of separate mineral interests	Section 25.12(c)
• Appraised values generally	Section 25.19
• Change in appraisal records ordered by the ARB resulting in increased tax liability	Section 41.11
• Protest to ARB by property owner	Section 41.44
• Protest hearing	Section 41.46

C. Remedy for 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.

- Sample 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 must 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)]

D. Determination of Good Cause under Tax Code Sections 41.44(b)

Tax Code Section 41.44(b) provides:

> "A property owner who files his notice of protest after the deadline prescribed by Subsection (a) of this section but before the appraisal review board approves the appraisal records is entitled to a hearing and determination of the protest if he shows good cause as determined by the board for failure to file the notice on time."

This provision permits the ARB to allow a late-filed protest to be heard and a determination made if good cause is shown.

"Good cause" is a term that is defined in Tax Code Section 41.45(e-2) for purposes of postponement requests under Tax Code Section 41.45(e) and requests for new hearings due to failure to appear under Tax Code Section 41.45(e-1). "Good cause" under Tax Code Section 41.44(b) is not defined.

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).

In making determinations regarding claims of good cause for accepting late-filed protests under Tax Code Section 41.44(b), the ARB may wish to implement local standards to provide for a uniform method of consideration, just as there is a uniform method provided in the statute for postponed and new hearings under Sections 41.45(e) and 41.45(e-1). The ARB should consult with its legal counsel to take steps or implement additional procedures as necessary or advisable to ensure that claims of good cause under Tax Code Section 41.44(b) are carefully considered to maintain statutory filing deadlines and uniform application of standards.

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)]

A. Scheduling of Hearings

When a timely notice of protest is filed, the ARB is required to schedule a hearing. The ARB has no authority to refuse to schedule a hearing for a timely filed protest. Scheduling of hearings is considered a clerical function that may be performed by the staff of the appraisal district as provided by Tax Code Section 6.43(f) with direction and final decision-making by the ARB chairman or an ARB member designated by the chairman [Tax Code Section 41.66(o)].

If more than one protest is filed related to the same property, a single hearing on all timely filed protests related to the property must be scheduled. A single hearing for a property owned by an undivided or fractional interest, including separate interests in minerals in place, shall be scheduled to allow all owners who have filed timely protests to participate. [Tax Code Section 41.45(a)]

Tax Code Section 41.71 requires that the ARB shall provide for hearings on protests in the evening or on a Saturday or Sunday.

- Sample Procedure for Affidavits of Appearance at Hearings

Property owners 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

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." [Tax Code Section 41.45(n)]

- Sample Procedure for ARB Panel Assignments and Hearing and Rehearing Schedules

If an ARB sits in panels as authorized by Tax Code Section 41.45(d), protests shall be assigned randomly, except that the ARB chairman with clerical assistance from the staff of the appraisal district [see Section 6.43(f)] 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. [Tax Code Section 41.66(k)]

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 cause exists to reassign a 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. "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." [Tax Code Section 41.66(k)]

Membership for ARB panels or the chairmanship of a panel may not be based on an ARB member's voting record in previous protests. [Tax Code Section 41.66(m)]

"If the recommendation of a panel is not accepted by the board, the board may refer the matter for rehearing to a panel composed of members who did not hear the original hearing or, if there are not at least three members who did not hear the original protest, the board may determine the protest. Before determining a protest or conducting a rehearing before a new panel or the board, the board shall deliver notice of the hearing or meeting to determine the protest in accordance with provisions of this subchapter." [Tax Code Section 41.45(d)]

B. Postponement of ARB Hearings and Determinations of Good Cause

The model procedures include procedures for postponements under Tax Code Sections 41.45(e), 41.45(e-1), 41.45(g), 41.66(h), 41.66(i), and 41.66(k). The provisions set forth in the Tax Code regarding postponement of hearings vary. Questions regarding applicability and legal requirements of the various provisions should be directed to ARB legal counsel.

As discussed above, some postponements, by law, may only be granted upon a showing of good cause. As noted, "good cause" is defined in Tax Code Section 41.45(e-2) for purposes of postponement requests under Tax Code Section 41.45(e) and requests for new hearings due to failure to appear under Tax Code Section 41.45(e-1). "Good cause"

is not defined in the Tax Code for purposes of permitting late-filed protests authorized by Section 41.44(b).

- Sample Procedure for Postponements due to Failure to Comply with Tax Code Section 41.461

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. [Tax Code Section 41.66(h)]
To obtain a postponement, the property owner must request additional time to prepare for the hearing and establish that the chief appraiser (1) failed to deliver a copy of the Comptroller's publication *Property Taxpayer Remedies* to the owner, or to a designated agent if requested by the agent; (2) failed to inform the property owner or agent that he/she may inspect and obtain a copy of information that the chief appraiser plans to introduce at the hearing; or (3) failed to deliver a copy of the local ARB hearing procedures, 14 days before the protest hearing. The information that might be used as evidence is not required to be delivered 14 days before the hearing. The property owner must only be informed that the information may be inspected and a copy obtained in order to establish compliance this provision. The property owner's request for postponement must be denied if failure to comply with this requirement is not established.

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)]

A. Process for Conducting Hearings

Tax Code Section 41.66(b) provides that "to the greatest extent practicable" hearing procedures shall be informal. This mandate is particularly important to the process for conducting hearings. Pursuant to Section 41.66(a), hearing procedures must be provided, if requested by a protesting party, on or before the date the notice of protest is filed. They must be delivered not later than the 10th day before the ARB hearing and may be delivered with the notice of protest hearing. This legal requirement is in addition to the requirements of Tax Code Section 41.461. A copy of the hearing procedures, which must follow the Comptroller's model procedures, is required to be posted in a prominent place in each room where ARB hearings are held.

ARB hearings are open to the public, according to Tax Code Section 41.66(d). Exceptions exist in subsections (d-1) and (d-2). Notwithstanding Government Code Chapter 551 (the Open Meetings Act), the ARB is required to conduct a hearing that is closed to the public, if the property owner or the chief appraiser intends to disclose proprietary or confidential information at the hearing to assist the ARB in making its

determination **and** if there is a joint motion by the property owner and the chief appraiser. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is that information obtained under Tax Code Section 22.27.

- Sample Procedure for Conducting Hearings Closed to the Public

Prior to the scheduled hearing time, a joint motion by the chief appraiser and the property owner must be filed with the ARB in writing to request that the hearing be closed because of an intent to disclose proprietary or confidential information that will assist the ARB in determining the protest. The hearing shall be conducted in the manner required by Government Code Subchapter E, Chapter 551, relating to closed meetings.

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, including witnesses, and the ARB members are permitted to stay in the hearing room. The same order 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 certified agenda is kept for the closed meeting according to the requirements of Government Code Section 551.103. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is confidential according to Tax Code Section 22.27 shall be stamped as "confidential" and retained separately in the ARB records. The confidentiality of the documents and their content must be maintained by the ARB members. After deliberation, the ARB shall reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting (see Government Code Section 551.102).

B. 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.

The model procedures for conducting hearings provide for the orderly presentation of evidence and examination and cross-examination of witnesses or other parties.

C. Party's Right to Appear by an Agent

Tax Code Section 41.66(c) provides that "a property owner who is entitled as provided by this chapter to appear at a hearing may appear by himself or by his agent." The representation of property owners at protest hearings is governed by Tax Code Section 1.111 and Comptroller Rule 9.3044. Subsection (i) of Tax Code Section 1.111 requires an ARB to 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. In addition, subsection (g) states that "an appraisal district, appraisal review board, or taxing unit may not require a person to designate an agent to represent the person in a property tax matter other than as provided by this section."

V. Evidence Considerations

[Tax Code Section 5.103(8), (11), and (13)]

A. A Party's Right to Offer Evidence and Argument

Tax Code Section 41.45(b) states that "the property owner initiating the protest is entitled to an opportunity to appear to offer evidence or argument." Subsection (h) requires, before the hearing on the protest or immediately after the hearing begins, that the chief appraiser and the property owner or the property owner's agent exchange copies of written or electronic materials that they intend to offer or submit to the ARB. 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. 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. [Tax Code Section 41.66(b)]

A property owner, attorney, or agent offering evidence or argument in support of a protest concerning appraised or market value or unequal appraisal 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 he or she is offering the evidence or argument as an appraiser licensed under those provisions. [Tax Code Section 41.66(l)]

If the person offering the evidence or argument holds a license or certificate from the Texas Appraiser Licensing and Certification Board (TALCB), he or she is required to state the capacity in which the person is appearing before the ARB.

The model procedures for conducting a hearing provide for exchanging evidence, offering evidence, examining and cross-examining witnesses or parties, and presenting arguments. Likewise, the model procedures provide for inquiry by the ARB as to applicability of the Texas Appraiser Licensing and Certification Act.

Tax Code Section 41.67(b) provides that copies of documentary evidence may be admitted, if original documents are not readily available. A party is entitled to an opportunity to compare a copy with the original document on request.

Tax Code Section 41.67(c) provides that official notice may be taken of any fact judicially cognizable. A party is entitled to an opportunity to contest facts officially noticed.

B. Prohibition of Consideration of Information Not Provided at the ARB Hearing

Tax Code Section 41.66(e) prohibits an ARB from considering "any appraisal district information on a protest that was not presented to the appraisal review board during the protest hearing." For example, in order for any appraisal district record (i.e., appraisal roll history, appraisal cards) to be presented or considered by the ARB, it must be presented as evidence by a party, party representative, or witness (e.g. chief appraiser, appraisal district representative, property owner, or agent) at the protest hearing.

The role of the ARB in a hearing is to receive, consider, and make determinations based on evidence provided at the hearing, and follow the law in doing so. No provision in the Tax Code provides for the ARB to consider any evidence that is not presented during the hearing. In fact, the Tax Code includes only provisions that prohibit consideration of certain information – like Tax Code Section 41.66(e) discussed above and provisions regarding ex parte communications. Each ARB should discuss with its legal counsel whether the ARB should establish local procedures to supplement the model procedures to address issues that might arise in this context.

C. Exclusion of Evidence Required by Tax Code Section 41.67(d)

Tax Code Section 41.67(d) states:

> "Information that was previously requested under Section 41.461 by the protesting party that was not made available to the protesting party at least 14 days before the scheduled or postponed hearing may not be used as evidence in the hearing."

Tax Code Section 41.461 states:

> (a) At least 14 days before a hearing on a protest, the chief appraiser shall:
> (1) deliver a copy of the pamphlet prepared by the comptroller under Section 5.06(a) to the property owner initiating the protest if the owner is representing himself, or to an agent representing the owner if requested by the agent;
> (2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue; and
> (3) deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.

(b) The charge for copies provided to an owner or agent under this section may not exceed the charge for copies of public information as provided under Subchapter F, Chapter 552, Government Code, except:

(1) the total charge for copies provided in connection with a protest of the appraisal of residential property may not exceed $15 for each residence; and

(2) the total charge for copies provided in connection with a protest of the appraisal of a single unit of property subject to appraisal, other than residential property, may not exceed $25.

For evidence to be excluded under Tax Code Section 41.67(d), the evidence presented at the hearing must establish 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.

It is important to note that Section 41.461 does not require the information that the chief appraiser plans to introduce at the hearing be delivered 14 days before the hearing. The property owner or agent must only be informed that the information may be inspected and a copy obtained. The only provisions in Tax Code Section 41.461 requiring delivery by the chief appraiser 14 days before the hearing are those pertaining to the Comptroller's publication *Property Taxpayer Remedies* and the local ARB hearing procedures.

Also, Tax Code Section 41.461 does not require a request by a protesting party, but Section 41.67(d) does. If 41.67(d) does not apply because there was no timely request for the information set forth in Section 41.461, the ARB may be requested to postpone the hearing under the terms of Section 41.66(h):

> "The appraisal review board shall postpone a hearing on a protest if the property owner requests additional time to prepare for the hearing and establishes to the board that the chief appraiser failed to comply with Section 41.461. The board is not required to postpone a hearing more than one time under this subsection."

VI. Other Issues

[Tax Code Section 5.103(17)]

The model hearing procedures may also include "any other matter related to fair and efficient appraisal review board hearings." In addition to the model procedures related to this section, two additional issues are addressed here that ARBs may wish to discuss with legal counsel to determine if supplemental local procedures are warranted or might be helpful: weighing evidence and orders determining protest.

A. 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 different burden of proof standards:

> 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 a 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.

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

ARBs may wish to consider these standards in applying the law and in drafting supplemental procedures.

- Sample Procedure Regarding Burden of Proof

In determining whether a party has met its burden of proof, the ARB must weigh the evidence presented by both parties. Meeting the burden of proof standard does not automatically cause the party with the burden to prevail. Tthe 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 then weigh the evidence presented by

both parties. This responsibility requires that the ARB consider the credibility and reliability of the witnesses and other evidence.

B. 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 as well as the value the ARB determined from the protest hearing.

A model order determining protest is prepared by the Comptroller of Public Accounts and posted on the Comptroller's website (Form 50-221). The ARB should provide input to the appraisal district staff, if utilized, in the preparation of the written order determining protest to ensure that each matter protested and determined is shown.