

## Travis Appraisal Review Board Formal Hearing Procedures

The Travis Appraisal Review Board (TARB) is required to comply with the Model Hearing Procedures (MHP) propounded by the Texas Comptroller of Public Accounts, which are given in Attachment as an addition, the TARB has developed procedures to apply the MHP to local circumstances. Please read and study both the Model Hearing Procedures and the following local procedures.

**Decorum:** A Travis Appraisal Review Board (TARB) panel of three TARB members conducts the formal hearing. The Panel Chair will preserve decorum and may recess a hearing that becomes disruptive at his/her discretion. The property owner or agent and the Travis Central Appraisal District (TCAD) representative(s) are prohibited from debating each other. All communications must be directed to the TARB members, except for examination or cross-examination during testimony of witnesses or parties testifying at the hearing.

### Hearing Formats

The TARB will hear protests in one of three ways: in person, by affidavit or by telephone conference call.

In-person hearings are available on request at TCAD offices at 850 E. Anderson Lane, with 18 stations providing for socially distanced hearings. The TCAD has approved measures for public health protection during the COVID pandemic. These must be complied with.

A property owner may also request a hearing be held by telephone conference call. Property owners must submit their evidence by affidavit prior to the hearing. See procedures for telephone hearings later in this document.

Property owners may submit protests by affidavit without appearing in person or by telephone.

These rules apply to all three kinds of hearings, except as specifically noted.

### Hearing Procedures

**Opening hearing:** The Panel Chair will enter information identifying the protest into the record. The Panel Chair will indicate that the TARB members on the panel have signed an affidavit that they have not communicated with anyone about the protest. Hearings are recorded and open to the public. Cell phones should be turned off or silent. Only one person may speak at a time. If the owner does not attend the hearing, the person presenting the evidence must have a written document signed by the owner stating that the person is authorized to represent the owner in the hearing. TCAD and the TARB do not provide language translators; the owner must bring a person to translate, such as a relative or friend. The TARB Chair occasionally may provide for protest hearings in the evening or on Saturday or Sunday.

**Exchange of evidence:** Before or at the beginning of an in-person hearing, the Panel Chair will direct that each party (the TCAD and the property owner or agent) shall provide the other party with a duplicated set of the evidence (paper and/or electronic) that the party intends to submit to the TARB.

- **The owner/agent must bring four sets of paper evidence (plus one for the party to keep and use). If the owner/agent will present evidence on a portable electronic device during the hearing, the party may bring four sets of paper copies of this evidence or may bring this evidence in an acceptable electronic format under the next paragraph.**
- **The owner/agent must bring one set of the evidence to be presented on a portable electronic device in an acceptable electronic format (plus one for the party to keep and use) unless the party is bringing four paper copies of this evidence under the previous paragraph.**
- **See the procedures for evidence on a portable electronic device and audiovisual equipment later in this document.**
- **When a hearing is conducted by telephone, the Property Owner or agent must have previously provided its evidence under affidavit, as provided below. If the owner does not provide its evidence timely, it may not introduce evidence during the hearing. The property owner may request that the Appraisal District produce its evidence prior to the hearing.**
- **In a hearing on affidavit, the owner's evidence must all be presented under the affidavit. No other evidence will be considered.**

**Oaths:** The Panel Chair will place the parties and witnesses under oath or they will affirm they are under oath from a prior hearing. Witnesses may also affirm that they will testify under penalty of perjury. If any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board, the witness should indicate if he or she is appearing in that capacity.

**First party presents evidence:** The Panel Chair will ask the property owner/agent whether he/she wishes to present evidence and argument before or after the TCAD evidence and argument. The order so determined will govern all further proceedings. If the property owner/agent presents his/her case first, the Panel Chair shall direct the property owner/agent to present his/her evidence (written and electronic evidence and testimony). The owner/agent may examine witnesses. (If the owner/agent elects to present after TCAD, the order of these procedures is revised as needed.)

The owner/agent is encouraged to present the issues and evidence in a clear and concise manner. Formal hearings normally are limited to a total of 15 to 20 minutes (includes owner's time, TCAD's time, and panel's questions and deliberation). The Panel Chair shall inform the owner/agent of any time limits and enforce those time limits.

The owner/agent must conclude its initial presentation with its opinion of the property value, on January 1 of the year of the protest, or any other date specified by the Tax Code.

The TCAD representative may cross-examine (ask questions of) the property owner/agent, any owner/agent representative, and/or testifying witnesses, when they have finished giving their testimony.

**Second party presents evidence: When the First Party has concluded presenting evidence, and all cross-examination has been finished, the Second Party presents its evidence, and the First Party cross-examines, in the same way.** At the end of the presentation, the Second party must state an opinion of value (if applicable) for the property.

After each party has concluded its presentation, the other party may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).

Other than in cross-examination, neither party or its witnesses may address the other. All questions must be addressed to the panel. The panel may at any time ask clarifying questions of either party and its witnesses.

**Closing:** Each party may make a closing statement including the TARB determination being sought. The Panel Chair will then close the testimony phase of the hearing.

**Decision: Decisions are based only on the evidence and testimony presented during the hearing and applicable laws and rules.** The TARB panel members will deliberate orally and will vote on separate motions on each ground of the owner's protest and determine by, vote market and/or equity value, which may lower or leave the value as reflected by the appraisal roll or may take other action as necessary.

After approval by the full TARB, the owner/agent will receive a letter from the TARB through certified mail a few weeks after the formal hearing confirming the panel's decision and advising the owner/agent of appeal options.

**Procedures for evidence on a portable electronic device:** These procedures apply to evidence to be presented to the TARB panel in an in-person hearing on a portable electronic device. The evidence must be in an acceptable file format and downloaded to an acceptable small, portable, electronic device. The owner/agent must bring to the hearing one non-returnable copy of the evidence in an acceptable format and on an acceptable device. Alternatively, the owner/agent may bring paper copies of the evidence that the owner/agent will show on the portable electronic device. A panel will not consider electronic evidence if it is not in an acceptable format and device or if the owner/agent cannot leave paper or electronic copies. This includes photos on cell phones, tablets, and other electronic devices; documents; and other materials. See the procedures for Exchange of Evidence for the number of copies to bring.

When checking in at TCAD on the day of the scheduled formal hearing, the owner/agent must inform staff that he/she will be making an electronic presentation and provide the staff with the copies of the evidence in the acceptable format and device or in paper copy. Additional wait time may be required before the hearing may begin.

The following are acceptable file formats: PDF, Microsoft Word, Microsoft Excel, or JPG. The following are acceptable small, portable, electronic devices: USB flash drive or compact disk (CD or DVD). Any file on a device 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 recipient's computer system.

**Procedures for audiovisual equipment:** TCAD does not use audiovisual equipment at a hearing (i.e., does not introduce evidence by showing screens to the TARB panel). TCAD presents its evidence as paper copies. An owner/agent must bring and operate any audiovisual equipment that will be necessary for his/her presentation at the hearing. TCAD will not provide electronic equipment, Wi-Fi, or Internet access for an owner/agent. Owners/agents may not access TCAD's network, Internet, technology or equipment. An owner/agent must provide his/her own Internet access.

TCAD and the owner/agent may use audiovisual equipment with different specifications if the parties agree in writing before the hearing or verbally agree on the record of the hearing.

**Procedures for Telephone Hearings:** A property owner wishing to request a hearing by telephone conference call must comply with both of the following subsections a and b. These procedures also apply to agents requesting telephone conference call hearings.

- a. Notify the TARB in writing of the request for a telephone hearing on the original notice of protest or by written notice filed with TARB not later than the 10th consecutive day before the date of the hearing. Faxes, electronic mail or other methods of electronic delivery are not sufficient for notice and will not be considered. If sent first-class mail, the mailing address is Travis Appraisal Review Board, P. O. Box 149012, Austin, TX 78714. If hand delivered or sent by common carrier, the address is Travis Appraisal Review Board, 850 E. Anderson Ln, Austin, TX 78752. Property owners are encouraged to use a method that provides proof of delivery. To help facilitate accurate processing, the words **"ATTENTION-Telephone Hearing Request"** must be prominently displayed on the outside of the envelope.
- b. Provide any evidence in the form of a sworn affidavit (e.g., signed by owner before a notary public). An owner is encouraged to file the affidavit with TARB at least three business days before the date of the hearing. The owner may use the affidavit form titled Property Owner's Affidavit of Evidence to the TARB found on the TCAD website. Faxes, electronic mail or other methods of electronic delivery are not sufficient and will not be considered. If sent first-class mail, the mailing address is Travis Appraisal Review Board, P. O. Box 149012, Austin, TX 78714. If hand delivered or sent by common carrier, the address is Travis Appraisal Review Board, 850 E. Anderson Ln, Austin, TX 78752. Property owners are encouraged to use a method that provides proof of delivery. To help facilitate accurate processing, the words

***“ATTENTION-Affidavit Enclosed”*** must be prominently displayed on the outside of the envelope. An unsworn declaration compliant may be substituted for a sworn affidavit. A copy of the original document may be used, but if it is not in correct form is not, the TARB will not consider any evidence in the affidavit but will allow the owner to offer argument at the hearing. Forms for affidavits and for unsworn declarations are available on the TCAD website, under the forms tab under “ABA/Protest Forms”.

The property owner should call **512-717-5929** and listen for the telephone hearing option approximately five minutes before the hearing is scheduled to start. If the property owner does not call shortly before the scheduled hearing time, the TARB panel will conduct the hearing via appearance by affidavit or if no affidavit has been submitted, the panel will dismiss the protest for failure to appear.

When the owner’s call is answered, the owner should be prepared to give the owner’s name, the account number (PID). If a panel is not available to hold the hearing right away, the owner will be placed on hold. The owner must answer promptly when the TARB comes back on the line. If the owner does not respond, the owner will forfeit the opportunity to participate in the hearing by telephone. The panel will conduct the hearing via appearance by affidavit or if no affidavit has been submitted, the panel will make a recommendation with the information, evidence and testimony available within the hearing.

If a property owner has had to wait more than two hours from the time scheduled for his/her hearing and the hearing has not begun, the owner may terminate the call if he/she is on hold. The owner should promptly call **512-834-9317**, listen for the customer service option, and state that he/she is exercising the right to request a postponement of the telephone hearing.

The property owner is responsible for ensuring a clear connection from his/her end of the connection. The property owner should use a land-line telephone or if the owner uses a cell phone, he/she should call from a safe and secure location with a strong, reliable connection to a cellular network. A property owner using a telephone through an Internet connection shall ensure it is fast enough to provide clear transmission of sound without buffering. The owner should separate himself/herself from background noises like television and barking dogs, noises that might interfere with the TARB panel’s ability to hear and understand the owner.

If a call is dropped or if the property owner’s speech is garbled or unintelligible, the panel may terminate the call. The owner also may call **512-717-5929** and the phone system will place the caller back into their hearing room based on their phone number. If a connection cannot be reestablished within five minutes, the panel will proceed with the hearing and owner will have no further opportunity to participate in the hearing by telephone. The panel will conduct the hearing via appearance by affidavit or if no affidavit has been submitted, the panel will make a recommendation with the information, evidence and testimony available within the hearing.

If the property owner provides documents, photographs, tables or other items with his/her affidavit, those items should be clearly labeled and easy to follow.

In order to facilitate the presentation of evidence in telephone hearings, the TARB has adopted procedures for electronic display and screen-sharing of documents. These procedures are set out in Attachment A.

A property owner may not offer any new or additional physical evidence by telephone that was not provided in the affidavit. The owner may offer argument related to the evidence presented by affidavit or by TCAD.

The property owner is responsible for providing access to any other person that the owner invites to participate in the hearing. The owner is responsible for providing a language translator if needed by the owner.

If the panel determines that the property owner has wholly or partially forfeited the right to participate in a hearing by telephone, the panel will proceed to hear or dismiss the protest without the participation or further participation of the property owner.

**Online Resources: The TARB is required to follow the Model Hearing Procedures for Appraisal Review Boards promulgated by the Texas Comptroller of Public Accounts and found at <https://comptroller.texas.gov/taxes/property-tax/docs/arb/info-guide-model-hearing-procedures-arbs.pdf> (January 1, 2021) and as set out below. The TARB Formal Hearing Procedures may not contradict, negate, or otherwise substantially change the model procedures. If a conflict exists between the model procedures and the TARB Formal Hearing Procedures, the model procedures prevail.**

The Comptroller has additional online resources at <https://comptroller.texas.gov/taxes/property-tax/arb/>.

TCAD has additional resources online at <https://www.traviscad.org/arb/>.

## Attachment A

### ARB Procedures for Remote Screen Share During a Telephonic Hearing

The following procedures must be followed to be eligible for and take advantage of remote screen share functionality during a telephone hearing.

#### Evidence Submission

1. Taxpayer must submit the evidence electronically to the ARB no later than 4:00PM the day before the formal hearing.
  - a. Upload to the Efile portal <https://efile.traviscadonline.org/> (this feature is only available if the protest was originally e-filed using the portal), or
  - b. Email evidence [evidence@tcadcentral.org](mailto:evidence@tcadcentral.org)
2. Acceptable file types for electronic evidence are PDF, Microsoft Word, Microsoft Excel and JPG.
3. The size of the electronic document file submitted as evidence must be no more than 20MB.
4. For electronic evidence submitted via email:
  - a. The subject line of the email must be the word "Evidence".
  - b. The evidence documents to be submitted must be separate attachments included with the email. The ARB will not download from external links nor will text or special requests within the body of the email be considered.
  - c. The electronic documents submitted as evidence must be named with the property ID as the first six digits of the file name, for example 123456.pdf
  - d. The total size of the email must not exceed 20MB. The taxpayer may submit more than one email if necessary.
5. If the above procedures are not followed, then the hearing will proceed under the rules established for standard telephonic or in person hearings.

#### Telephonic Formal Hearing

1. The taxpayer shall call 512-717-5929 at least five minutes prior to their scheduled hearing time.
2. Taxpayer will provide the 6-digit property ID when prompted by the automated system.
  - a. Taxpayers that have been scheduled for consecutive hearing dockets will be emailed a 4-digit conference ID to use.
3. Taxpayer will be placed on hold until the ARB is ready to begin the hearing.

#### Screen Share

1. If evidence was submitted electronically to the ARB, then screen sharing functionality will be available.
  - a. Taxpayers are strongly encouraged to run a system test in advance of their hearings. Google Chrome is the recommended web browser. The system test is available at: <https://tcad.sonexis.net/systest/SystemTestMain.asp> using the selection of "I am a participant".
2. After dialing in to the telephonic hearing, while on hold, the taxpayer should go to the website address <https://tcad.sonexis.net/> and select "I am a participant".
3. At the start of the hearing the taxpayer will be given the conference ID needed to access the screen share session for the ARB panel.
  - a. Taxpayers that have been scheduled for consecutive hearing dockets will use the 4-digit conference ID given for dial-in.
4. All parties to the hearing (ARB members, taxpayers, and TCAD appraisers) will be able to view the documents presented in the screen share session.
5. Only the evidence submitted electronically may be presented during the screen share session.
6. When prompted by the ARB, the TCAD appraiser will give control of the screen share session to the taxpayer so that the taxpayer may present their evidence to the ARB; likewise, when prompted by the ARB, the appraiser will take control of the screen share session to present their evidence to the ARB.

## Model Hearing Procedures for Appraisal Review Boards

### I. ARB Membership [Tax Code Section 5.103(b)(12), (15), and (16)]

#### 1. Administration of ARB Appointments

ARB members have no statutory role in the process for the administration of applications or requests for appointment for membership on the ARB. If an individual is contacted by an ARB member regarding requesting an appointment to the ARB, the member must direct the individual to the person designated to receive applications or requests for ARB appointment.

#### 2. Conflicts of Interest

Each ARB member must ensure that he or she does not have any conflict of interest that results in ineligibility to serve on the ARB or that restricts or prohibits the ARB member's participation in ARB activities, such as participation in the determination of a taxpayer protest. An ARB member must promptly report any conflict of interest to the ARB chair in addition to any other individual or entity as may be provided by law. The chair must ensure prompt notification of reported conflicts of interest to the appropriate individuals.

If an ARB member discovers before or during a protest hearing that a conflict of interest exists, the member cannot participate in a protest hearing. If the conflict exists due to the provisions of the Local Government Code Chapter 171, the member must file an affidavit with the ARB secretary. The affidavit must be filed as soon as the conflict is identified, even if it requires a delay in the conduct of the hearing. If the conflict arises from Tax Code Section 41.69, the ARB member does not have to file an affidavit but must recuse himself or herself immediately from the hearing and report the conflict to the ARB chair or secretary.

ARB members must remember that while Local Government Code Chapter 171 addresses matters of "substantial interest," Tax Code Section 41.69 applies to any protest in which an ARB member has interest (i.e. there is no requirement under Tax Code Section 41.69 that the interest be substantial). While a conflict of interest under Local Government Code Chapter 171 may not prohibit an ARB member from participation in a protest, Tax Code Section 41.69 may still prohibit participation. If an ARB member has a question as to whether he or she has a conflict of interest that might prohibit his or her involvement, the member must immediately contact the ARB chair to address the matter.

In the recusal process, the ARB member cannot hear the protest, deliberate on the protest or vote on the matter that is the subject of the protest.

#### 3. Ex Parte and Other Prohibited Communications

ARB members must not engage in prohibited ex parte or other communications. If one or more individuals approach the ARB member and appear to be engaging or attempting to engage in a prohibited communication, the ARB member must immediately remove himself or herself from the conversation.

### II. ARB Duties [Tax Code Section 5.103(b) (1), (5), and (6)]

#### 1. Statutory Duties of an ARB

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

#### 2. Notices Required under the Property Tax Code

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

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

"Good cause" for filing late protests is not defined in Tax Code Section 41.44(b). Claims of good cause for late-filed protests should be carefully considered. The standards in making determinations of good cause under Tax Code Section 41.44(b) should be uniformly applied. The ARB should give due consideration to good cause claims in a manner that properly respects the rights of property owners and their agents while not undermining or contravening laws related to filing deadlines or the orderly and expeditious fulfillment of ARB duties.

### III. ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff) [Tax Code Section 5.103(b)(3), (4), (7), and (14)]

#### 1. Scheduling Hearings Generally

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

#### 2. Scheduling Hearings for Property Owners or Their Agents

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

### 3. Scheduling Hearings for Multiple Accounts

If requested by a property owner or the designated agent, hearings on protests concerning up to 20 designated properties must be scheduled to be held consecutively on the same day by the ARB. The request must meet all requirements of Tax Code Section 41.66(j), including the required statement in boldfaced type: "request for same-day protest hearings." More than one such request may be filed in the same tax year by a property owner or the designated agent. Also pursuant to Tax Code Section 41.66(j), the ARB may schedule protest hearings concerning more than 20 properties filed by the same property owner or their designated agent and may use different panels to conduct the hearings based on the ARB's customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under Section 41.66(j).

### 4. ARB Panel Assignments

If an ARB sits in panels as authorized by Tax Code Section 41.45(d) and (d-1), protests must be assigned randomly, except that the ARB, with or without clerical assistance from the appraisal district staff, may consider the property type or the protest grounds in order to assign the protest to a panel with members who have particular expertise.

Once a protest is scheduled to be heard by a specific panel, it cannot be reassigned to another panel without the consent of the property owner or a designated agent. If the ARB reassigns a protest to another panel, the owner or designated agent may agree to the reassignment or request a postponement of the hearing. The ARB is required to postpone the hearing if requested in this situation. Pursuant to Tax Code Section 41.66(k), "[a] change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel."

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

### 5. Postponements Under Tax Code Section 41.45(e)

A property owner who is not represented by an agent under Tax Code Section 1.111 is entitled to one postponement of a hearing without showing cause. The request must be made before the hearing date in writing, including by facsimile transmission or electronic mail, by telephone or in person to the ARB, an ARB panel or the ARB chair. If the requested hearing postponement is scheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative may act on the request for postponement without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the hearing cannot be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

Without limit, the ARB must postpone a hearing if the property owner or the designated agent shows good cause, as defined in Tax Code Section 41.45(e-2). The request must be made in writing, including by facsimile transmission or electronic mail, by telephone or in person to the ARB, an ARB panel or the ARB chair. If the postponed hearing is rescheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative can act on the postponement request without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the hearing cannot be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

Without limit, the ARB must postpone a hearing if the chief appraiser consents to the postponement. The request must be made in writing, including by facsimile transmission or electronic mail, by telephone or in person to the ARB, an ARB panel or the ARB chair. If the postponed hearing is rescheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative can act on the postponement request without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the hearing cannot be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

### 6. Postponements Under Tax Code Section 41.45(e-1)

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

### 7. Postponements Under Tax Code Section 41.45(g)

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

- 1) the owner of the property or the owner's agent is also scheduled to appear at an ARB protest hearing in another appraisal district;
- 2) the other scheduled ARB protest hearing is scheduled to occur on the same date as the hearing set by this ARB;
- 3) the hearing notice delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the hearing notice delivered by this ARB or, if the postmark date is identical, the property owner or agent has not requested a postponement of the other hearing; and
- 4) the property owner or the owner's agent includes with the postponement request a copy of the hearing notice delivered to the property owner or the owner's agent by the other ARB.

### 8. Postponements Under Tax Code Section 41.66(h)

The ARB must postpone a hearing (one time only) if the property owner or the designated agent requests additional time to prepare for the hearing and establishes that the chief appraiser failed to comply with Tax Code Section 41.461. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the seventh day after the date of receipt of the request.

#### 9. Postponements Under Tax Code Section 41.66(i)

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

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

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

A property owner or agent must consent to a special panel ARB hearing reassignment or request a postponement if they disagree with the reassignment. A change of special panel members because of a conflict of interest, illness or inability to continue participating in hearings for the remainder of the day does not constitute a special panel hearing reassignment.

### **IV. Conduct of ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff) [Tax Code Section 5.103(b)(2), (9), and (10)]**

#### 1. Conducting Hearings Open to the Public

This introductory statement should be read at the beginning of each hearing:

We are the appraisal review [board or panel] that will be hearing your protest today. We do not work for the appraisal district. We are appointed to perform an independent review of your protest. You may complete a survey regarding your experience today [provide instructions on how to fill out the survey]. The survey is voluntary. You also have the right to appeal our decision. Appeal information will be provided to you with our determination.

The ARB or ARB panel does not have to read the statement above if the owner or agent has previously appeared before the ARB or any ARB panel for the ARB for that county that same day.

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

- a. Commence the hearing and announce the assigned protest number, property location and owner and other identifying information.
- b. Announce that, in accordance with Tax Code Section 41.45(h), all written and electronic material that has not been provided must be provided.
- c. State that the ARB members who are considering the protest have not communicated with anyone about the protest and have signed affidavits to that effect.
- d. Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
- e. Ask if any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board and if the witness is appearing in that capacity.
- f. Inform witnesses that all testimony must be given under oath and swear-in all witnesses who plan to testify.
- g. Ask the property owner to decide if he/she wishes to present his/her evidence and argument before or after the appraisal district.
- h. If the property owner or agent presents his/her case first, he/she shall present evidence (documents and/or testimony). If witnesses are present, the property owner or agent may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- i. Next, the appraisal district representative may cross-examine the property owner, the agent or the representative and/or witnesses.
- j. If the property owner or agent presented his/her case first, the appraisal district representative shall present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- k. Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
- l. Members of the ARB shall not be examined or cross-examined by parties.
- m. The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
- n. The other party may then offer rebuttal evidence.
- o. The party presenting its case first shall make its closing argument and state the ARB determination being sought.
- p. The party presenting its case second shall make its closing argument and state the ARB determination being sought.
- q. The ARB or panel chair shall state that the hearing is closed.
- r. The ARB or panel shall deliberate orally. No notes, text messages, or other forms of written communication are permitted.
- s. The ARB or panel chairman shall ask for a separate motion for each matter that was the subject of the protest hearing. The motion should include the exact value or issue to be determined. A vote shall be taken and recorded by a designated appraisal district staff person or member of the ARB assigned for this purpose. Separate motions and determinations must be made for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).
- t. Thank the parties for their participation and announce the determination(s) of the ARB and that an order determining protest will be sent by certified mail. Provide the property owner or their agent documents indicating that the members of the board hearing their protest signed the required affidavit.

If computer screens are used by ARB members during ARB hearings for reviewing evidence and other information, computer screens also must be available to property owners and agents at the hearings to view the same information that is presented to the ARB members by the appraisal district staff. This requirement is met if the property owner or agent can see all information displayed on at least one computer screen in the hearing location (there is no requirement that the property owner or agent be provided a separate screen).

If a chief appraiser uses audiovisual equipment at a protest hearing, the appraisal office must provide equipment of the same general type, kind and character for the use of the property owner or agent during the hearing. See section VI, Other Issues, for more information regarding audiovisual equipment requirements.

The property owner or agent and the appraisal district representative are prohibited from debating each other. All communications must be directed to the ARB members, except for examination or cross-examination during testimony of witnesses or parties testifying at the hearing.

For taxing unit challenges, motions to correct appraisal records, protests regarding exemptions, or other matters that may be the subject of ARB hearings, the ARB should follow the order of conducting hearings above but may make exceptions for the type of hearing.

Records for each ARB proceeding must be kept according to Tax Code Section 41.68 and Comptroller Rule 9.803. This includes the ARB retaining evidence offered or submitted by the parties as required by Tax Code Section 41.45 and Comptroller Rules 9.803 and 9.805. The secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention.

## 2. Conducting Hearings Remotely

A property owner initiating a protest is entitled to offer evidence or argument by affidavit without physically appearing. To appear at a hearing remotely, a property owner must notify the ARB by written request not later than the 10th day before the date of the hearing. To offer evidence or argument at a hearing conducted remotely, a property owner must submit a written affidavit of any evidence before the hearing begins. A property owner is responsible for providing access to a hearing conducted remotely to another person the owner invites to participate in the hearing.

## 3. Conducting Hearings Closed to the Public

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

The ARB or panel chair must convene the hearing as an open meeting and then announce that the meeting will be closed to the public as permitted by Tax Code Sections 41.66(d) and (d-1). Only the parties to the protest, their witnesses and the ARB members are permitted to stay in the hearing room. The same order of proceedings as for hearings open to the public should be followed.

The ARB secretary must keep a separate tape recording or written summary of testimony for the closed meeting in accordance with Comptroller Rule 9.803 generally. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is confidential according to Tax Code Section 22.27 and must be marked as "confidential" and maintained as confidential in the ARB records for proper handling. At the conclusion of the hearing, the ARB panel must confirm with the parties that all proprietary and confidential information has been appropriately identified by the ARB. The confidentiality of the information must be maintained by the ARB members and disclosed only as provided by law.

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

## 4. Right to Examine and Cross-Examine Witnesses or Other Parties

Tax Code Section 41.66(b) states that "each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing." The ARB cannot prohibit this entitlement in any way; however, it may enforce time limits and dictate the order of ARB hearings for witness examination and cross-examination. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence.

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

The ARB must accept and consider a motion or protest filed by an agent if an agency authorization is filed at or before the hearing on the motion or protest. The ARB may not require that an agency authorization be filed at an earlier time. The ARB cannot require a person to designate an agent to represent the person in a property tax matter other than as provided by Tax Code Section 1.111.

A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to file a protest if the property owner does not and to designate, under Tax Code Section 41.413, another person to act as his/her agent with the same authority and limitations as an agent designated under Tax Code Section 1.111.

# V. Evidence Considerations [Tax Code Section 5.103(8), (11), and (13)]

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

The ARB cannot prohibit a party's right to offer evidence and argument but may enforce time limits and dictate the order of ARB hearings. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence and argument. The ARB should, schedule permitting, provide as much time as possible to each party to a hearing to fully present evidence and offer argument.

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

In a protest hearing, the ARB cannot consider any appraisal district information on a protest that was not presented to the ARB during the protest hearing. In order for any appraisal district record (i.e., appraisal roll history, appraisal cards) to be considered by the ARB, it must be presented as evidence by or on behalf of a party (e.g. chief appraiser, appraisal district representative, property owner, agent or witness) at the protest hearing.

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

If it is established during a protest hearing that information was previously requested under Tax Code Section 41.461 by the protesting party and that the information was not delivered to the protesting party at least 14 days before the scheduled or postponed hearing, the requested information not made available cannot be used or offered in any form as evidence in the hearing. The ARB must exclude evidence under Tax Code Section 41.67(d) only if evidence presented at the hearing establishes that: (1) the information sought to be excluded as evidence was not delivered at least 14 days before the hearing; and (2) the information sought to be excluded as evidence was previously requested by the protesting party.

**VI. Other Issues [Tax Code Section 5.103(17)]**

1. Compliance with the Law, Integrity, and Impartiality

ARB members must comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the ARB.

2. Patience and Courtesy

ARB members must be patient, dignified and courteous to parties appearing before the ARB.

3. Bias or Prejudice

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

4. Confidential Information

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

5. Required Contents That Vary by ARB

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

- the manner and form, including security requirements, in which a person must provide the other party with evidentiary materials the person intends to offer or submit to the ARB for consideration at the hearing on a small, portable, electronic device;
- how the evidence must be retained as part of the ARB's hearing record; and
- the audiovisual equipment provided by an appraisal district, if any, for use by a property owner or the property owner's agent. This section of the ARB's hearing procedures must address each item required in Comptroller Rule 9.805.

January 1, 2021

Property Tax Assistance Division

Texas Comptroller of Public Accounts

## **Chronology**

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