

2019  
Continuing Education for  
ARB Members:  
Legal Issues

**Roy Armstrong**

# 2018 ARB Survey Results

# 2018 ARB Survey Results

- Was the ARB courteous? 94.6%
- Was the ARB attentive? 92.4%
- Was the ARB knowledgeable? 84.4%
- Was the ARB organized? 91.7%
- Was the ARB fair? 76.9%



# 2018 Survey Results

- Were hearing procedures informative? 90.1%
- Were hearing procedures followed? 92.5%
- Did you receive prompt service? 89.9%
- Was there reasonable time for evidence? 89.7%
- Was the evidence considered? 77.9%
- Was the determination stated clearly? 90.3%



# Introduction to ARB Responsibilities

# Due Process of Law

- Government may not take a person's life, liberty or property without Due Process of Law
- Notice
- Opportunity to be heard



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# Statutory Duties

- The Texas Property Tax Code - “the Code”
- 2017 version
- Legislature is in session now
- [www.capitol.texas.gov](http://www.capitol.texas.gov) or search for Texas Legislature Online



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# Statutory Duties

- Hear and determine protests
- Hear and determine challenges
- Hear and determine motions to correct appraisal rolls

# Independence of the ARB

- ARB relationship to the Appraisal District
  - Members appointed by the District's Directors in some counties
  - Uses the District's offices (but not necessarily)
  - Uses District's staff for clerical assistance
  - Member per diems come from the District
- But the ARB does not work for the District

# Restrictions on Eligibility

- Member can't be closely connected to the Appraisal District, a taxing unit or a tax consultant practicing in the county
- Can't have a contractual relationship with the District or a taxing unit

# *Ex Parte* Communications – Rule 1

- Outside of a hearing, don't communicate with anyone about the:
  - evidence;
  - arguments;
  - facts;
  - merits;
  - or any other matters related to a protest

## *Ex Parte* Communications – Rule 2

- Outside of a hearing, nobody should be communicating with you with the intent to influence a decision you may make as an ARB member, even if no actual protest has been filed
  - Misdemeanor if done by District representatives or professional representatives of property owners

# *Ex Parte* Communications – Rule 3

- Outside of a hearing, representatives of the District or of a taxing unit should not be communicating with you about:
  - Comptroller's training courses; or
  - Any matter presented or discussed in a course

# *Ex Parte* Communications

- Communications can take many forms:
  - face-to-face
  - phone
  - e-mail
  - text
  - Twitter
  - Facebook messenger



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# Communications Allowed

- During hearings or other proceedings
- Social conversations
- Administrative, clerical or logistical matters
- Communications “necessary and appropriate” to the Directors’ decision to appoint or reappoint a person to the ARB
- The ARB’s lawyer

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# Protests

# Taxpayer Protests

- Code lists nine grounds
- They include anything related to appraisal issues

# Determination of Appraised or Market Value

- Suppose the District appraises a homestead:
  - Market value - \$300,000
  - Capped appraised value – \$280,000
- Property owner could protest either value or both
  - “District’s estimate of market value is too high”
  - “District miscalculated the cap on value”

# Determination of Value

- Generally this will mean determining the market value of the property
  - based on the evidence presented by the parties
  - considering the appraisal information covered in training

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# Unequal Appraisal

- Property owner isn't necessarily saying that the Appraisal District is wrong about the market value of his/her property
- Owner is saying that the appraisal is unfair because it is different from the District's appraisals of comparable properties

# Unequal Appraisal

- Property owner typically argues that the District's appraised value is greater than
  - the median appraised value of
  - a reasonable number of
  - comparable properties
  - appropriately adjusted



# Unequal Appraisal

- The selection of comparable properties and adjustments must be based on generally accepted methods
- Adjustments must be based on recognized methods necessary to produce a credible opinion

# Unequal Appraisal

- As you listen to a party's evidence, think about how the person determined the number of comparable properties to use
  - Was that reasonable?
  - Why was that selection method used?
  - Was there some statistical basis?
  - Was the determination based on generally accepted appraisal methods?

# Unequal Appraisal

- Are the comparables really comparable to the subject?
  - How are they the same?
  - How are they different?
  - Consider the property itself and its location

# Unequal Appraisal

- Were the adjustments appropriate and reasonable?
  - How did the person decide which adjustments to make?
  - Were they made using generally accepted appraisal methods?
  - Is there evidence to support them?

# Failure to Deliver Notice - §41.411

- Property owner did not file a protest during the regular protest season
  - “I didn’t protest in the spring because I didn’t know . . .”
- Owner may file a protest later in the year if he/she can show a failure to deliver a required notice
  - Protest has two components:
    - Claim of failure to deliver notice
    - Substantive complaint that actually affects the taxes

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# Failure to Deliver Notice - §41.411

- Protest must be filed before the delinquency date for the taxes in question
  - Usually February 1 following the tax year
  - But if no tax bill was properly sent, the delinquency date may be postponed until 125 days after some tax notice was delivered

# What Does Delivery Mean?

- District prepared the notice containing the necessary information
- District used the most recent address in its possession for the owner or authorized agent
- First-class postage, unless the Code requires certified mail
- Deposited in the mail

# Failure to Deliver Notice - §41.411

- If the evidence shows that the District failed to deliver some notice to which the owner was legally entitled, the ARB should:
  - Rule for the owner on the failure-to-deliver issue; and
  - Then hear the substantive issue
- If failure to deliver is not shown, the ARB should deny the failure to deliver protest, period.

# Payment of Taxes

- If you are hearing a failure-to-deliver protest after the delinquency date, you may have to consider whether the owner made a timely tax payment
- At least the taxes due on the amount of value not in dispute
- Oath of inability to pay may be an option

# Who May Protest?

- January 1 owner
- Owner who acquired the property after January 1
- Owner who acquires property after the protest deadline may take over a pending protest, but may not file a new protest
- A lessee obligated to reimburse the owner for taxes (if the owner doesn't protest)

# Protest of Situs

- Where property is taxable
- Very complicated
- Call your lawyer



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# Who has the Burden of Proof?

- If the protest alleges excessive or unequal value, the District has the burden
- Otherwise, the property owner has the burden
  - The owner has the burden on issues like:
    - exemptions;
    - agricultural appraisals and rollbacks;
    - failure to deliver notice;
    - situs, etc.

# Preponderance of the Evidence

- Greater weight of credible evidence
- Fact is proven if it seems more likely true than not
- Not just quantity of evidence

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# Preponderance of the Evidence



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# Rare Exceptions – Clear and Convincing

- Under two circumstances, the District will have to prove its value with **clear and convincing** evidence
- Each has multiple components
  - Property owner has an appraisal; or
  - Value lowered last year & owner provides evidence in advance
- Owner taking steps to impose an increased burden on the District will tell you
  - Then you can look it up

# Exceptions – Substantial Evidence

- The District will have to show that its value is reasonably supported by substantial evidence if:
  - last year's value was lowered as a result of a protest, arbitration or lawsuit; and
  - the District has raised the value this year
- Consider the substantial evidence standard applied by courts
- Think about whether the District had a legitimate reason for raising the value

# Exceptions – Property Owner's Burden

- The property owner will have the burden of proof if the owner was required to file:
  - a rendition or report; or
  - supplemental information requested by the District, and
- The owner failed to do so
- Preponderance of the evidence

# Conduct of Hearings

# Written Hearing Procedures

- Every ARB must have written hearing procedures
  - Should follow the Comptroller's Model Hearing Procedures
- Mailed to every protesting property owner
- Posted in every hearing room

# Notice of Hearing

- Protest will be set for hearing
- ARB sends notice of date, time, etc. at least 15 days before hearing
- At least 14 days before the hearing, the District sends:
  - ARB hearing procedures
  - Comptroller's pamphlet
  - Notice of right to inspect evidence

# Exchange of Evidence

- At least 14 days before the hearing, the District should identify the data, schedules, formulas and other information that it plans to introduce at the hearing
- The property owner has a right to inspect and get copies if he/she chooses
- If the District fails to meet its obligation, the evidence that was not made available may not be used in the hearing

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# Exchange of Evidence

- Before the hearing (or immediately after it begins) each side must provide the other with a copy of any:
  - written materials; or
  - material preserved on a portable devicethat the party intends to offer at the hearing
- Review Comptroller's Rule 9.805

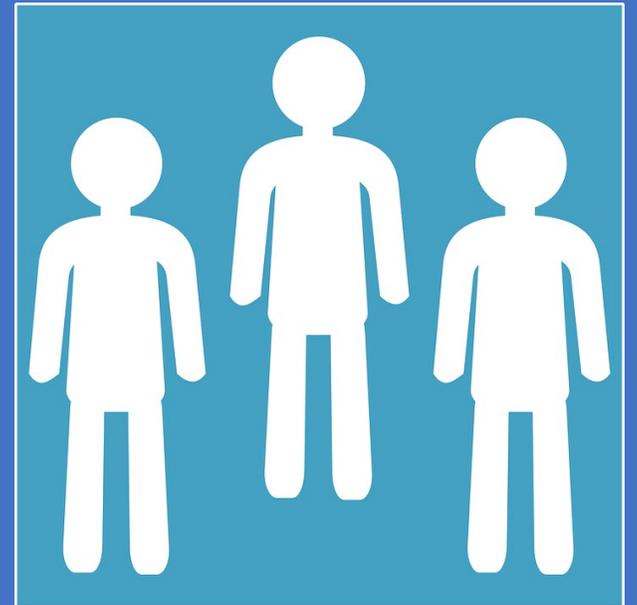
# Denying a Hearing

- Property owner may not always be entitled to a hearing
- But be careful about denying a hearing
  - Owner who believes he has wrongfully been denied a hearing may sue the ARB
  - Court may order a hearing
  - Even order the ARB to pay the owner's legal fees

# ARB Panels

- A protest can be heard by a panel of three or more ARB members
- A panel's decision is only a recommendation
  - It is not final until it is approved by the full ARB

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# Property Owner May Appear

- In person
- Through an authorized agent
- By affidavit
- By telephone
  - May not present **evidence** over the phone
  - May offer **argument** over the phone

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# Property Owner's Affidavit

- Must be written and sworn
- May come in anytime before hearing begins
- Comptroller's form
  - But affiant doesn't have to use it
- May incorporate documents, photos, etc.
- Affidavit should state whether the person is planning to come in person

# Live Testimony

- Must be under oath
- Person testifying must state whether he/she is an appraiser licensed or certified by the TALCB, and whether he/she is testifying in that capacity

# Agreements Resolving Protests

- The District and the property owner may settle a disagreement . . .
  - that is the subject of a protest or motion not yet determined by the ARB; or
  - that may be subject to a protest or motion, even if the protest or motion has not been filed
- This also applies to a verbal agreement, at least one reached on the record at a hearing
- The ARB may not review an agreement

# Determination of Protests

- If the ARB finds that the appraisal records are incorrect in some respect raised by the protest, the ARB will order correction(s) to the records.
- A copy of the written order is sent to the owner (or agent) by certified mail
  - Also information about appeals

# Correcting Appraisal Rolls

# Correcting Appraisal Rolls - §25.25

- An appraisal roll is a list of all taxable properties in the Appraisal District that has already been approved by the ARB
- The Tax Code details certain changes that may be made by
  - a chief appraiser; and
  - an ARB
- Other changes are not allowed

# Section §25.25(c)

- An ARB may correct appraisal rolls for up to five past years to correct:
  1. Clerical errors that affect a property owner's liability for taxes;
  2. Multiple appraisals of a property in that year
  3. The inclusion of property that does not exist in the form or at the location described in the roll
  4. An error in which the property is shown as owned by someone who didn't own it on January 1

## Section §25.25(d)

- Motion filed before taxes become delinquent
- ARB may correct an appraised value that is more than one-third too high
  - Lesser errors may not be corrected
- Not available if a protest was decided by the ARB or if there is an agreement

# Section §25.25 Motions

- Motions do not excuse a property owner from paying at least some of the taxes assessed on the property
- Rules are very similar to those that apply to a failure-to-deliver-notice protest.

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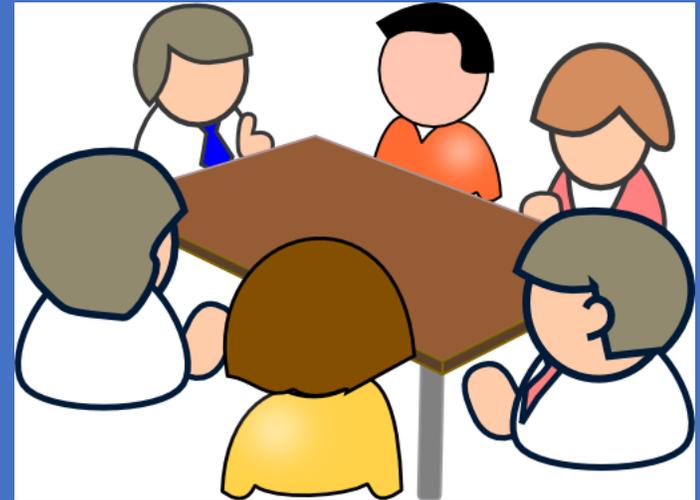


# Model Hearing Procedures

# Model Hearing Procedures

- ARB's hearing procedures must follow the Comptroller's Model Hearing Procedures
- Parts I through III are mostly things we have talked about
- Part IV hasn't changed since last year

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# Conflicts of Interest

- An ARB member should avoid a protest if . . .
  - the member has some interest in the property or the property owner; or
  - the member is closely related to the owner
- Report any conflicts to the ARB Chair
- Conflicts involving a “substantial interest” require an affidavit

# Model Hearing Procedures

- “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.”

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# Model Hearing Procedures

- 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.

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# Model Hearing Procedures

- 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.

# Model Hearing Procedures

- 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.

# Model Hearing Procedures

- 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.**

# Model Hearing Procedures

- 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.

# Model Hearing Procedures

- 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.

# Model Hearing Procedures

- 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.

# New Rule 9.805

- ARB's rules should include electronic evidence and A/V equipment
  - Acceptable file formats
  - Acceptable devices
  - A/V equipment if any

# Things to Remember

- Less formal language is fine
- Parties should not be allowed to debate one another
- Records must be kept under Rule 9.803
- Cross examination should be civil and relevant
- ARB can enforce time limits

# The End

## Turn in Statement of Compliance

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[www.TexasARB.com](http://www.TexasARB.com)

