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Texas Comptroller of Public Accounts

Continuing Education Course for Appraisal Review Board Members

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Introduction

In 2009, the 81st Texas Legislature, Regular Session, adopted a number of proposals aimed at reforming the way property is appraised and property values are reviewed. As part of the reform, the Legislature directed the Comptroller's office to approve curricula and provide materials for use in providing additional training and education for appraisal review board (ARB) members.¹ This continuing education manual has been developed as part of the Comptroller's response to that directive.

The Comptroller's office publishes the *Appraisal Review Board Manual* that serves as a reference guide for ARB members. The Comptroller's Property Tax Assistance Division (PTAD) has, for many years, used the *Appraisal Review Board Manual* to provide training to new ARB members. The Legislature's desire, however, was that training and education of ARB members continue through a member's service on the ARB and include continuing education in the following areas:

- the cost, income, and market data comparison methods of appraising property;
- the appraisal of business personal property;
the determination of capitalization rates for property appraisal purposes;
- the duties of an ARB;
the requirements regarding the independence of an ARB from the board of directors and the chief appraiser and other employees of the appraisal district;
the prohibitions against ex parte communications applicable to ARB members;
- the Uniform Standards of Professional Appraisal Practice (USPAP);
the duty of the appraisal district to substantiate the district's determination of the value of property;
the requirements regarding the equal and uniform appraisal of property;
the right of a property owner to protest the appraisal of the property as provided by Property Tax Code Chapter 41; and
- a detailed explanation of each of the actions described by Property Tax Code §§41.41(a), 41.411, 41.412, 41.413, 41.42, and 41.43 so that ARB members are fully aware of each of the grounds on which a property appraisal can be appealed.

This more focused treatment of the material included in the *Appraisal Review Board Manual* is intended as a continuing education course for ARB members to take at the start of their second year of service. ARB members reappointed to additional terms must successfully complete the course in each year they continue to serve.

The material in this manual, though comprehensive, is not exhaustive. Property tax law is complex and constantly changing, whether by actions of the Legislature or by interpretation by the courts or the attorney general. ARB members should consult legal counsel in matters that are beyond the scope of this manual or subject to legal interpretation.

CHAPTER 1

Legal Issues

This chapter addresses various provisions of law relating to ARBs. The intent of this chapter is to provide ARB members with information regarding statutory provisions governing taxpayer protests, with particular focus on specific statutory provisions.

I. Introduction to ARB Responsibilities

An ARB fulfills a vital and integral function in the property tax system. The U.S. Constitution provides that no person's property may be harmed or affected by governmental action unless due process is provided to the person affected by the action. In the context of taxation, Texas courts have held that due process affords taxpayers a right to be heard before final assessment.² In the context of property tax, ARBs provide taxpayers that right.³

A. Statutory Duties

The Property Tax Code ("Tax Code") sets forth the duties of the ARB. These duties consist of both procedural and substantive responsibilities. The substantive duties are outlined in Tax Code Section 41.01 and include the following:

- determining protests initiated by property owners;
determining challenges initiated by taxing units;
- correcting clerical errors in the appraisal records and the appraisal rolls;
acting on motions to correct appraisal rolls;
determining whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal for agricultural and timber land; and
- taking any other action or making any other determination specifically authorized or required by the Tax Code.

B. Independence of the ARB

When it enacted the Tax Code, the Texas Legislature created appraisal districts and ARBs as separate entities.⁴ Texas courts have recognized this legislative separation—directly acknowledging that the appraisal district and the ARB are "separate and distinct bodies."⁵ Although most ARB members are appointed by appraisal district boards of directors and an ARB may use the staff of the appraisal office for clerical assistance, the ARB maintains an independence from the appraisal district's board of directors and appraisal district staff, including the chief appraiser.⁶

Provisions enacted by the Legislature to ensure an ARB's independence include the following:

An individual is ineligible to serve on an ARB if the individual is a member of the appraisal district's 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.⁷

An individual is ineligible to serve on an ARB if the individual is related within the second degree of consanguinity or affinity to an individual who is engaged in the business of appraising property for compensation for use in proceedings under the Tax Code or of representing property owners

for compensation in proceedings under the Tax Code in the appraisal district for which the ARB is established.⁸

An individual is not eligible to be appointed or to serve on an ARB if the individual or a business entity in which the individual has a substantial interest is a party to a contract with the appraisal district or with a taxing unit that participates in the appraisal district.⁹

- An appraisal district may not enter into a contract with a member of the ARB established for the appraisal district or with a business entity in which a member of the ARB has a substantial interest.¹⁰
A taxing unit may not enter into a contract with a member of the ARB established for an appraisal district in which the taxing unit participates or with a business entity in which a member of the ARB has a substantial interest.¹¹

ARBs are appointed to act independently of the appraisal district and to make fair and impartial determinations.

C. Ex Parte Communications

Pursuant to Section 41.66(f) of the Tax Code, an ARB member may not communicate with another person concerning the following:

- (1) the evidence, argument, facts, merits, or any other matters related to an owner's protest, except during the hearing on the protest; or
- (2) a property that is the subject of a protest, except during a hearing on another protest or other proceeding before the ARB at which the property is compared to other property or used in a sample of properties.¹²

This prohibition, as stated, includes communications with "another person."¹³ Thus, the prohibition includes, but is not limited to, communications with the property owner, the owner's agent, members of the appraisal district's board of directors, the chief appraiser, members of the appraisal district staff, and even communications with the ARB member's family. The attorney general has issued an opinion interpreting Section 41.66(f) to include communications with appraisal district's in-house attorneys that also serve as counsel to the ARB. Op. Tex. Att'y Gen. No. GA-0556 (2007) ("Legal communications relating to tax protest matters between a tax appraisal district's in-house counsel, who also serves as counsel to the tax appraisal review board for that district, and the review board outside a public hearing would violate Tax Code section 41.66(f), which generally prohibits a review board's ex parte communications relating to property tax protest matters.") A communication could be an in-person conversation, a telephone call, an e-mail, a letter, or any other medium used for conveying information.

An ARB member commits a Class A misdemeanor if the member communicates with the chief appraiser or another employee of the appraisal district for which the appraisal review board is established in violation of Section 41.66(f).¹⁴ Under Section 12.21 of the Texas Penal Code, a Class A misdemeanor may be punished by a fine of up to \$4,000, confinement in jail for up to one year, or both. Section 6.411 of the Tax Code, classifying violations of Section 41.66(f) as Class A misdemeanors, does not apply in two circumstances: (1) Section 6.411 does not apply to communications between the board and its legal counsel; and (2) Section 6.411 does not apply to communications involving the chief appraiser or another employee of an appraisal district and a member of the ARB that are specifically limited to and involve administrative, clerical, or logistical matters related to the scheduling and operation of hearings, the processing of documents, the issuance of orders, notices, and subpoenas, and the operation of the ARB.

At the beginning of a hearing on a protest, each member of the ARB hearing the protest must sign an affidavit stating that he or she has not communicated with another person in violation of Section 41.66(f).¹⁵

II. Taxpayer Protests

Under Chapter 41 of the Tax Code, property owners have the right to protest before the ARB the following actions:

- determination of the appraised value of the owner's property or, in the case of land appraised as agricultural or timber land, determination of its appraised or market value;
- unequal appraisal of the owner's property;
- inclusion of the owner's property on the appraisal records;
- denial to the property owner in whole or in part of a partial exemption;
- determination that the owner's land does not qualify for agricultural or timber land appraisal;
- identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll;
- determination that the property owner is the owner of property;
- a determination that a change in use of land appraised as agricultural or timber land has occurred; or
- any other action of the chief appraiser, appraisal district, or ARB that applies to and adversely affects the property owner.¹⁶

Tax Code Section 25.25 provides property owners with additional rights to correct the appraisal roll.¹⁷ Protests brought pursuant to Chapter 41 and motions filed pursuant to Section 25.25 are determined by the ARB.

A. Explanation of Selected Statutes

1. Right of Protest (41.41(a))

As outlined above, Tax Code Section 41.41(a) sets forth nine grounds for protest. A property owner's protest might be based on one of the grounds provided, or it might be based on multiple grounds.

Determination of the Appraised or Market Value

Article VIII, Section 1 of the Texas Constitution provides that all real and tangible personal property in Texas, unless exempt or permitted by the Constitution, shall be taxed in proportion to its value as ascertained by law. The Tax Code provides that, except as otherwise provided in Chapter 23 of the Code, all taxable property is appraised at its market value as of Jan. 1.¹⁸ Chapter 23 of the Tax Code addresses 'Appraisal Methods and Procedures,' including special appraisal for agricultural and timber land.

The Tax Code defines market value as the price at which a property would transfer for cash or its equivalent under prevailing market conditions if exposed for sale in the open market with a reasonable time for the seller to find a purchaser; both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.¹⁹

Pursuant to Tax Code Section 41.41(a)(1), a property owner may protest a determination of the appraised value of the owner's property or, in the case of land appraised as provided by Subchapter C, D, E, or H of Chapter 23 of the Code, determination of its appraised or market value.²⁰ Subchapters C, D, E, and H of Chapter 23 of the Code pertain to land designated for agricultural use, appraisal of agricultural land, appraisal of timber land, and appraisal of restricted-use timber land, respectively.

Section 41.41(a)(1) protests are discussed at greater length in the section entitled *Protest of Determination of Value or Inequality of Appraisal*.

Unequal Appraisal

Article VIII, Section 1 of the Texas Constitution provides that taxation shall be equal and uniform. Pursuant to 41.41(a)(2) of the Tax Code, a property owner may protest the unequal appraisal of the owner's property.²¹ The property owner may have a right to have his value changed even if his property is appraised at its market value.

Section 41.41(a)(2) protests are discussed at greater length in the sections entitled *Protest of Determination of Value or Inequality of Appraisal* and *Requirements Regarding the Equal and Uniform Appraisal of Property*.

Inclusion of the Owner's Property on the Appraisal Records

Pursuant to Section 41.41(a)(3) of the Tax Code, a property owner may protest inclusion of the owner's property on the appraisal records. Thus, if property is included in the appraisal records that a property owner asserts should not be included, the property owner is entitled to protest. For example, a property owner might protest inclusion on the appraisal records of an improvement to real property and assert that the listed improvement does not exist. Section 41.41(a)(3), however, does not delineate specific types of protest; thus, the factual bases of protests brought under 41.41(a)(3) may vary substantially.²²

Denial to Property Owner in Whole or in Part of a Partial Exemption

Section 41.41(a)(4) of the Tax Code provides a property owner the right to protest denial to the property owner in whole or in part of a partial exemption. Common partial exemptions include those permitted for residence homesteads, individuals with disabilities, and individuals who are 65 years of age or older.²³ Chapter 11 of the Tax Code includes provisions relating to numerous exemptions permitted by law and provisions relating to administration of exemptions. As stated in Section 11.01(a) of the Tax Code, all real and tangible personal property that the State of Texas has jurisdiction to tax is taxable unless exempt by law.

Exemptions are strictly construed, as stated by the Texas Supreme Court:

[E]xemptions from taxation are not favored by the law and will not be favorably construed. Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally. Accordingly, the burden of proof of clearly showing that the [claimant] falls within the statutory exemption is on the claimant.²⁴

Determination that Owner's Land Does Not Qualify for Agricultural or Timber Land Appraisal

Section 41.41(a)(5) of the Tax Code provides a property owner the right to protest a determination that the owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H of Chapter 23 of the Code. As noted above, Subchapters C, D, E, and H of Chapter 23 of the Code pertain to land designated for agricultural use, appraisal of agricultural land, appraisal of timber land, and appraisal of restricted-use timber land, respectively.

Identification of Taxing Units in Which Owner's Property is Taxable

Pursuant to Section 41.41(a)(6) of the Tax Code, a property owner may protest identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll. One example of a protest that might be pursued under this provision would be a property owner's protest alleging that the property at issue is in a different school district than that reflected on the appraisal district's roll.

Determination that Property Owner is the Owner of Property

Section 41.41(a)(7) of the Tax Code provides a property owner the right to protest a determination that the property owner is the owner of property. A property owner, thus, might bring a protest under 41.41(a)(7) to assert non-ownership of any property the appraisal district has listed as being owned by the property owner.

Determination that Change in Use of Land Appraised as Agricultural or Timber Land has Occurred

Pursuant to Section 41.41(a)(8) of the Tax Code, a property owner may protest a determination that a change of use of land appraised under subchapter C, D, E, or H of chapter 23 of the Code has occurred. Again, Subchapters C, D, E, and H of chapter 23 of the Code pertain to land designated for agricultural use, appraisal of agricultural land, appraisal of timber land, and appraisal of restricted-use timber land, respectively.

If there is a change of use of property appraised pursuant to subchapters C, D, E, or H of chapter 23 of the Code, additional taxes may be imposed.²⁵ The appraisal district must notify a property owner of a determination that a change of use has occurred.²⁶ A property owner must protest the determination not later than the 30th day after the date the notice of the determination is delivered to the property owner.²⁷

Any Other Action

Section 41.41(a)(9) of the Tax Code provides a property owner the right to protest "any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner." By its terms, this provision is not limited. Therefore, an ARB might be presented with any number of specific grounds of protest under 41.41(a)(9).

2. Protest for Failure to Give Notice (41.411)

Section 41.411 of the Tax Code provides that a property owner is entitled to protest before the ARB the failure of the chief appraiser or the ARB to provide or deliver any notice to which the property owner is entitled.²⁸ If failure to provide or deliver the notice is established, the ARB must determine a protest made by the property owner on any other grounds of protest authorized by the Tax Code relating to the property to which the notice applies.²⁹ However, a property owner who protests under Section 41.411 must comply with the tax payment requirements of Section 42.08 of the Tax Code or the property owner forfeits the property owner's right to a final determination of the protest.³⁰

3. Person Acquiring Property After Jan. 1 (41.412)

Typically, either the person who owned the property Jan. 1 or that person's agent files a protest. However, a taxpayer who acquires property between Jan. 1 and the protest deadline may file a protest in the same manner as the Jan. 1 owner.³¹ A new owner who acquires the property while a protest regarding the property is pending may, on application to the ARB, proceed with the protest in the same manner as the prior owner who initiated the protest.³²

4. Protest by Person Leasing Property (41.413)

Certain lessees are also entitled to protest. A person leasing tangible personal property or real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the ARB a determination of the appraised value of the property if the property owner does not file a protest on the property.³³ The property owner is required to send to the lessee a copy of any notice of reappraisal of the property received by the property owner.³⁴ Failure to do so, however, does not affect the protest deadline for the property in question.³⁵ The ARB is required to deliver a copy

of any notice relating to the protest and the order determining protest to the owner of the property and the person bringing the protest.³⁶

5. Protest of Situs (41.42)

Section 41.42 of the Tax Code pertains to protests of situs. Chapter 21 of the Tax Code, entitled ‘Taxable Situs,’ addresses situs with regard to real property, tangible personal property generally, vessels and other watercraft, railroad rolling stock, commercial aircraft, business aircraft, and certain intangible property. Pursuant to Section 41.42 of the Tax Code, the ARB must rule in favor of the protesting party filing a protest against the inclusion of property on the appraisal records for an appraisal district on the ground that the property does not have taxable situs in that appraisal district if the owner establishes that the property is subject to appraisal by another appraisal district or that the property is not taxable in Texas.³⁷ The chief appraiser of the appraisal district in which the property owner prevails in a protest of situs must notify the appraisal office of the district in which the property owner has established situs.³⁸

6. Protest of Determination of Value or Inequality of Appraisal (41.43)

As previously discussed, property owners are entitled to protest determinations of value and unequal appraisal. Pursuant to Section 41.41(a)(1) of the Tax Code, a property owner may protest a determination of the appraised value of the owner’s property or, in the case of land appraised as agricultural or timber land, determination of its appraised or market value.³⁹ Pursuant to 41.41(a)(2) of the Tax Code, a property owner may protest the unequal appraisal of the owner’s property.⁴⁰

In most 41.41(a)(1) and 41.41(a)(2) protests, the appraisal district has the burden of proof by a preponderance of the evidence.⁴¹ One exception, one in which the appraisal district has a higher standard of proof, involves certain protests relating to property valued at \$1 million or less.⁴² In a protest relating to a property with a market or appraised value of \$1 million or less as determined by the appraisal district, the property owner may file with the ARB an appraisal of the property performed by a certified appraiser that supports the appraised or market value of the property asserted by the property owner.⁴³ If the following requirements have been met, the appraisal district has the burden of establishing the value of the property by clear and convincing evidence presented at the ARB hearing:

- the appraisal must have been performed by an appraiser certified under Chapter 1103 of the Texas Occupations Code;
the appraisal must have been performed not later than the 180th day before the date of the first day of the hearing;
the property owner must have delivered a copy of the appraisal to the chief appraiser not later than the 14th day before the date of the first day of the hearing;
the property owner must have filed a copy of the appraisal with the ARB;
- the appraisal must support the appraised or market value of the property asserted by the property owner; and
- the appraisal must be legally valid.⁴⁴

Pursuant to the Tax Code, to be valid, the appraisal filed by the owner must be attested to before an officer authorized to administer oaths and must include the following:

- the name and business address of the certified appraiser;
- a description of the property that was the subject of the appraisal;
a statement that the appraised or market value of the property: (1) was, as applicable, the appraised or market value of the property as of Jan. 1 of the current tax year, and (2) was determined using a method of appraisal authorized or required by Chapter 23 of the Tax Code; and

a statement that the appraisal was performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).⁴⁵

If the requirements have been met and the appraisal district has the burden of establishing the value of the property by clear and convincing evidence, the protest must be determined in favor of the property owner if the appraisal district fails to meet that standard.⁴⁶

Another exception to the general rule that the appraisal district has the burden of proof by a preponderance of the evidence in 41.41(a)(1) and 41.41(a)(2) protests involves protests relating to property subject to rendition or reporting requirements under Chapter 22 of the Tax Code.⁴⁷ Under this exception, set forth in Section 41.43(d) of the Tax Code, the burden of proof actually shifts to the property owner.⁴⁸ If a protesting property owner fails to deliver, before the date of the hearing, a rendition statement or property report required by Chapter 22 of the Tax Code or a response to the chief appraiser's request for information under Section 22.07(c) of the Tax Code, the property owner—rather than the appraisal district—has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing.⁴⁹ If the property owner fails to meet that standard, the protest must be determined in favor of the appraisal district.⁵⁰

In addition to the standards outlined above, the Tax Code provides express direction to appraisal districts involved in unequal appraisal protests and to ARBs hearing such protests.⁵¹ Pursuant to Section 41.43(b) of the Tax Code, a protest on the ground of unequal appraisal of property must be determined in favor of the protesting party unless the appraisal district establishes one of the following situations:

- the appraisal ratio of the property is equal to or less than the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;
- 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 to, or of the same general kind or character as, the property subject to the protest; or the appraised value of the property is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted.⁵²

ARBs must also consider the issue of substantial evidence when a protest is brought concerning certain value increases.⁵³ The chief appraiser is prohibited from increasing the appraised value of property in the year following a final determination of value resulting from a protest before the ARB, a lawsuit, or binding arbitration, unless the increase is reasonably supported by substantial evidence.⁵⁴ The substantial evidence must be based on all of the reliable and probative evidence in the record considered as a whole.⁵⁵ If an ARB or a court makes a determination of value based on unequal appraisal claims, this substantial evidence requirement may be met by presenting evidence showing that the inequality has been corrected with regard to the properties that were considered to be comparable in determining the value of the subject property.⁵⁶ The burden of proof is on the chief appraiser to support an increase in the appraised value of property under these circumstances.⁵⁷

In each of the contexts discussed in this section, evidence includes the data, schedules, formulas, or other information used to establish the matter at issue.⁵⁸

7. Correction of Appraisal Roll (25.25)

The Tax Code states that the appraisal roll may not be changed except as provided by Chapter 41 of the Code (protests, challenges, ARB corrections of clerical errors, and corrections on recommendation of the chief appraiser), Chapter 42 of the Code (judicial review), and Section 25.25 of the Code (correction of appraisal roll).⁵⁹

Section 25.25 provides rights and requirements for motions to correct the appraisal roll.⁶⁰ Under Section 25.25 of the Tax Code, a person who acquires property after Jan. 1 of the tax year at issue is entitled

to file any motion that Section 25.25 authorizes the person who owned the property on Jan. 1 of that year to file, if the deadline for filing the motion has not passed.⁶¹ If during the pendency of a Section 25.25 motion the ownership of property subject to the motion changes, the new owner of the property is entitled to proceed with the motion in the same manner as the property owner who filed the motion.⁶²

Pursuant to Section 25.25(b) of the Tax Code, chief appraisers may change the appraisal roll at any time to correct the following:

- a name or address;
- a determination of ownership;
- a description of property;
- multiple appraisals of a property; or
- a clerical error* or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability.

Before the 10th day after the end of each calendar quarter, the chief appraiser must submit to the ARB and to the appraisal district's board of directors a written report of each change made under Section 25.25(b) that decreases the tax liability of the owner of the property.⁶³ The report must include a description of each property and the name of the owner of that property.⁶⁴ The failure or refusal of a chief appraiser to change an appraisal roll under Section 25.25(b) is not an action that the ARB is authorized to determine under Section 25.25; that may be the subject of a suit to compel filed under Section 25.25(g); that a property owner is entitled to protest under Section 41.41 of the Tax Code; or that may be appealed under Chapter 42 of the Tax Code.⁶⁵

Pursuant to Section 25.25(c) of the Tax Code, the ARB, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years to correct the following:

- clerical errors that affect a property owner's liability for a tax imposed in that tax year;
- multiple appraisals of a property in that tax year; or
- the inclusion of property that does not exist in the form or at the location described in the appraisal roll.

A motion may be filed pursuant to Section 25.25(c) regardless of whether, for a tax year to which the motion relates, the owner of the property protested under Chapter 41 of the Tax Code an action relating to the value of the property that is the subject of the motion.⁶⁶

Pursuant to Section 25.25(d) of the Tax Code, at any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the ARB to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third the correct appraised value.⁶⁷ If the appraisal roll is changed under Section 25.25(d), the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value.⁶⁸ Payment of the late-correction penalty is secured by a lien that attaches to the property and is subject to enforced collection.⁶⁹ The roll may not be changed under 25.25(d) under these conditions:

Section 1.04(18) of the Tax Code defines "clerical error" as "an error: (A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating; or (B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board, or the assessor; however 'clerical error' does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination.

-
- (1) the property was the subject of a protest brought by the property owner under Chapter 41 of the Tax Code, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the ARB made a determination of the protest on the merits; or
 - (2) the appraised value of the property was established as a result of a written agreement between the property owner or the owner's agent and the appraisal district.⁷⁰

A property owner who files a motion under 25.25(c) or 25.25(d) must comply with the tax payment requirements of Tax Code Section 42.08 or forfeit the right to a final determination of the motion.⁷¹

On the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, the ARB must by written order correct an error that resulted in an incorrect appraised value for the owner's property.⁷²

B. Requirements Regarding the Equal and Uniform Appraisal of Property

Remedies for unequal appraisal permit values to be reduced even if the market values determined by the local appraisal districts are correct. If an appraisal district cannot establish that the appraised value of the subject property is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted, then the appraisal district is required to reduce the value of the property to the median value. Identifying comparable properties, selecting a reasonable number of such properties and adjusting the values appropriately have become areas of intense debate between property owners and appraisal districts.

In 2001, the 14th Court of Appeals in Houston held that "if a conflict exists between taxation at market value and equal and uniform taxation, equal and uniform taxation must prevail." *Harris County Appraisal District v. United Investors*, 47 S.W.3d 648 (Tex. App. – Houston [14th Dist.] 2001, no writ). Since that time, the subject of how to determine "the median appraised value of a reasonable number of comparable properties appropriately adjusted" as permitted by Tax Code Section 42.26(a)(3) has been a highly litigated issue.

In *United Investors*, the witness whose testimony was accepted by the Court made adjustments to values on the appraisal roll "downward and upward based on location, closeness to traffic volume, age, depreciation from cost schedules, and access to the shopping center." The selection of the comparable properties was "based on characteristics which would tend to most influence value, like location; age, and physical characteristics."⁷³ These adjustments have been used by appraisal districts and property owners in litigation regarding unequal appraisal since that time.

In 2002, the 14th Court of Appeals considered another Harris County Appraisal District case. In *Weingarten Realty Investors v. Harris County Appraisal District*, 93 S.W.3d 280 (Tex. App. – Houston [14th Dist.] 2002, no writ), the trial court permitted the testimony of the owner's sole expert, David Dominy, at the bench trial, but then issued an order excluding his testimony and ordering a take-nothing judgment against Weingarten. The Court of Appeals upheld the trial court's discretion in excluding the evidence. Its analysis of Dominy's testimony and cross-examination is instructive. The Court held that the appraisal district was able to demonstrate the expert's unreliability through its cross-examination on several matters:

The "comparable properties" were significantly smaller retail centers.

Nine of the 10 "comparable properties" had per-square-foot appraised values significantly lower than the subject property.

Only 10 comparables were used even though there were 191 retail centers in the northwest quadrant of Harris County where the subject was located.

Portions of the retail centers were used in the analysis.

Only physical characteristics of condition, age, size, and location were used in adjusting the comparables.

- The percentage adjustment for each characteristic of the comparables was too subjective.

Because of this cross-examination, the Court of Appeals held that the trial court had a sufficient basis to reject the expert's testimony as unreliable. The Court stated the methodology necessary to perform the calculation required by Section 42.26. An appraisal expert must select a reasonable number of comparable properties and then take the appraised value from the public record and appropriately adjust them to the subject property. After the adjustments, "the appropriately adjusted comparable properties are arrayed and a median is determined."⁷⁴ This test is a restatement of the one articulated in *United Investors*.

Four years later, the 1st Court of Appeals in Houston considered the methodology for making adjustments in considering the reliability of the owner's witness. In *Harris County Appraisal District v. Kempwood Plaza*, 186 S.W.3d 155 (Tex. App. – Houston [1st Dist.] 2006, no writ), the Court permitted testimony from the owner's expert concerning adjustments in an equal and uniform report concerning the value of a shopping center. The Court held that it is not error for an appraiser to use his or her personal experience and expertise to make certain determinations. Further, the fact that the owner's appraiser limited the representative sample to a single land use code and a single building class took into account a number of adjustments that would have been made if the sample were larger. The appraiser made adjustments based on location, age, and size, which the Court held were reliable. The appraiser testified, and the Court upheld, that his use of a single building class took into account "individual wear and tear, maintenance, updating, and remodeling over the years."⁷⁵ so that "effective age" adjustments were not required. The implication is that "effective age" adjustments would be appropriate in certain cases, depending on the property sample selected and the characteristics of the property.

Adjustments for economic factors were recognized in the *United Investors* case and more recently in a memorandum opinion from the 1st Court of Appeals in Houston. In *re MHCB (USA) Leasing & Finance Corp. and Valero Refining-Texas, L.P.* 2006 Tex. App. LEXIS 3515 (Tex. App. – Houston [1st Dist.] 2006, no pet.)(unpublished), concerned the equal and uniform appraisal of a coker plant in Galveston County. The Court observed that Tax Code Section 42.26(a)(3) does not delineate what specific considerations are relevant for adjustments. It concluded that information regarding both the appraised and the market value of comparable properties, "insofar as this information shows the need for the 'adjustments' contemplated by the statute, including quality, size, age and depreciation, could be potentially relevant to a determination of whether an appraisal district has appraised properties unequally." The Court upheld adjustments concerning characteristics that result in differences in appraised and market value as reflected by a price placed on various kinds of "adjustments." As a result, the Court permitted pre-trial discovery regarding issues related to market value (including a recent sale) so that the appraisal district could determine what adjustments to appraised value would be appropriate.

In another memorandum opinion, the 1st Court of Appeals in Houston allowed the income approach to value to be considered in developing adjustments in equal and uniform appraisal analyses. In *Hartman REIT Operating Partnership v. Waller County Appraisal District*, 2006 Tex. App. LEXIS 5646 (Tex. App. – Houston [1st Dist.] 2006, no pet.)(unpublished), the Court permitted rental income to be considered in valuing an office building. The appraisal district's expert testified that the income approach to value took all of the appropriate adjustment factors into consideration. The expert's analysis included the year built, the building class, total appraised value per square foot, the net operating income per square foot, and capitalization rate for each comparable property. An income adjustment was applied to reflect the differences between the comparable properties and the subject regarding their conditions, ages, sizes, and quality of construction. The Court held that this analysis was appropriate and concluded that the law "did

not foreclose, as a matter of law, WCAD from considering the information used by its chief appraiser, Chris Barzilla, in determining that the appraised value of Corporate Park West did not exceed the median appraised value of a reasonable number of comparable properties appropriately adjusted.¹

The 14th Court of Appeals recently addressed the issue of what is permitted in discovery regarding unequal appraisal litigation. *In re: Galveston Central Appraisal District*, 252 S.W.3d 904 (Tex. App. – Houston [14th Dist.] 2008, no pet.). In this litigation involving a Valero refinery, the appraisal district requested information concerning all sales of refineries within the United States over a four-year period. The trial court limited the request to sales in Galveston County for the applicable tax years (there were no such sales). Valero requested in its discovery income and expense documents that had been provided to the appraisal district by other oil and gas companies under confidentiality agreements. The trial court denied Valero's request for this information, and both parties sought mandamus relief from the court of appeals.

The 14th Court rejected both parties' requests for relief. It found that the appraisal district's request for all refinery sales in the United States for the prior four years was overly broad and that there was no showing that the sales were similar (and could lead to the discovery of admissible evidence). The Court also held that the appraisal district did not prove that its experts could not competently and adequately appraise the property without the requested data. Discovery cannot be used "simply to explore" and must be reasonably tailored to include only matters relevant to the case. The Court rejected Valero's request for income and expense documents from other companies. It considered Tax Code Sections 22.27 and 25.195 together to determine that confidential information could not be released to commercial property owners, as a matter of law. Only owners (or agents) of vacant land or residential property may inspect material or information obtained under Section 22.27 from other owners of similar property used to appraise the subject property.

This case is important because it establishes two important rules: (1) appraisal district experts must be able to prove that they cannot prepare their unequal appraisal reports without certain information (such as closing statements or other sales documents, and income and expense statements/reports) requested in discovery; and (2) confidential information as defined by Section 22.27 may not be provided to commercial property owners in litigation, even under the exception provisions of subsection (b); the trial court must consider requests for such confidential information in discovery and issue orders dealing with such disclosure. The Court also held the following:

Assuming that first Tax Code provision [Section 22.27], stating that information submitted to an appraisal office by a property owner for valuation of the owner's property for real estate taxation purposes which would otherwise be confidential may be disclosed in a judicial or administrative proceeding pursuant to a lawful subpoena, conflicted with the second Tax Code provision [Section 25.195] stating that owner of property other than vacant land or real property used for residential purposes may not inspect any material or information obtained by appraisal office under first Property Tax Code provision, second provision, as later-enacted statute, would prevail.⁷⁶

Another case is instructive concerning what property may be the subject of an unequal appraisal challenge. The Austin Court of Appeals upheld the trial court's dismissal of a case challenging the equality of appraisal of land only concerning property owned by a car dealership in *Covert v. Williamson County Appraisal District*, 241 S.W.3d 655 (Tex. App. – Austin 2007, pet. denied). Covert claimed that only the land appraisal was unequal. The appraisal district contended that the entire value of the account (land and improvements) must be the subject of an equity lawsuit. The Court of Appeals upheld the dismissal stating that the language of Section 42.26 indicates that the entire value of a property must be analyzed, not just an allocated portion. It held that "so long as that valuation is an equal and uniform assessment,

we cannot support overturning it because the land component is valued too high or the improvement component too low.” It held that the clear language of Section 42.26 referring to “a property” means the appraisal in its entirety. The Court stated that because the statute refers to “appraised value” of the subject property as the basis of comparison and appraised value means “market value” as a matter of law, “we do not agree with the Coverts that the Legislature intended to allow taxpayers to challenge the component values of their property in isolation from a consideration of the total assessed value of the property.”

These cases reflect the range of issues that courts have addressed concerning equality and uniformity of appraisal of business or commercial property. Certain methodologies have been upheld to calculate appraisal equality and uniformity. Effective age adjustments may be made, or not made, depending on the underlying data and appraisal methodology used. Discovery parameters have been established, and the fact that an entire property value must be the subject (rather than component parts) is now the law.

C. Duty of the Appraisal District to Substantiate Its Determination of Value

Explanations, descriptions, and definitions of “preponderance of the evidence” and “clear and convincing evidence” vary. In civil jury trials in Texas, a case is submitted to the jury by written definitions, instructions, and questions—collectively referred to as a jury charge. The State Bar of Texas publishes pattern jury charges prepared by committees of judges and attorneys. Trial courts routinely rely on the pattern jury charges and the Texas Supreme Court rarely disapproves of them.⁷⁷ The following are definitions and instructions included in the Texas pattern jury charges:

The term “preponderance of the evidence” means the greater weight and degree of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that a fact is more likely true than not true.

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

As discussed above, except in certain circumstances, in a protest brought pursuant to Section 41.41(a)(1) of the Tax Code, relating to determination of value, or Section 41.41(a)(2) of the Tax Code, relating to unequal appraisal, the appraisal district has the burden of proof at the ARB hearing.⁷⁸ The appraisal district has the duty to substantiate the district’s determination of the value of the property. In most of these protests, the appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the ARB hearing.⁷⁹ However, in some cases, the appraisal district has a higher burden of proof—the burden of establishing the value of the property by clear and convincing evidence presented at the ARB hearing.⁸⁰ The appraisal district must also have substantial evidence to support an increase in value in cases in which the value was determined in a preceding year by the ARB, an arbitrator, or the court.⁸¹ If the appraisal district fails to meet the applicable standard, the ARB must rule in favor of the property owner.⁸²

D. Conduct of Hearings

1. Hearing Procedures

Each ARB must establish procedures for hearings.⁸³ Upon request, which may be included in the owner’s notice of protest or made by a separate writing delivered to the ARB on or before the date of filing of the notice of protest, a protesting property owner is entitled to a copy of the hearing procedures.⁸⁴ The

copy of the hearing procedures must be delivered to the property owner not later than the 10th day before the date the hearing on the protest begins.⁸⁵ Additionally, the ARB must post a copy of the hearing procedures in a prominent place in the room in which the hearing is held.⁸⁶ To the greatest extent practicable, hearing procedures must be informal.⁸⁷ 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.⁸⁸ The hearings are open to the public.⁸⁹

Notice of Hearing

The ARB before which a protest hearing is scheduled must deliver written notice to the property owner initiating a protest of the date, time, and place fixed for the hearing not later than the 15th day before the date of the hearing.⁹⁰ The board must also give the chief appraiser advance notice of each protest hearing that includes not only the date, time, and place, but the subject matter as well.⁹¹

Notice must also be delivered not later than 15 days before the date of a hearing regarding a motion brought pursuant to 25.25(c) or 25.25(d).⁹² For such hearings, the ARB must deliver written notice of the date, time, and place of the hearing to the chief appraiser, the property owner, and the presiding officer of the governing body of each taxing unit in which the property is located.⁹³

Exchange of Information

After the chief appraiser has submitted the appraisal records to the ARB pursuant to Section 25.22(a) of the Tax Code, a property owner or the owner's designated agent is entitled to inspect and copy the appraisal records relating to the owner's property, together with supporting data and schedules.⁹⁴ Additionally, a property owner or the agent of a property owner whose property has been appraised by a private appraisal firm under contract with an appraisal district has the right to inspect and copy, at the appraisal firm's office, appraisal firm information used or considered in appraising the owner's property.⁹⁵ This includes information showing each method of appraisal used to determine the value of the property and all calculations, personal notes, correspondence, and working papers used in appraising the property.⁹⁶ The appraisal firm must make the information available for inspection and copying not later than the 15th day after delivery of a written request to inspect the information, unless a different date is agreed upon.⁹⁷ This right does not include information made confidential under Section 22.27 of the Tax Code, except that the property owner or agent is entitled to inspect and copy any information relating to the owner's property, including otherwise confidential information.⁹⁸ This right is restricted by Section 25.195 of the Tax Code to owners of residential property or vacant land.⁹⁹

If an owner or agent states under oath in a document filed with an ARB in connection with a proceeding initiated under the protest provisions or the correction of appraisal roll provisions of the Tax Code that the appraisal firm has not complied with a request for inspection or copying related to the property that is the subject of the proceeding, the ARB may not conduct a hearing on the merits of any claim relating to the property and may not approve the appraisal records relating to that property until the ARB determines in a hearing that the appraisal firm has made the information available for inspection and copying or the owner or agent has withdrawn the motion or protest that initiated the proceeding.¹⁰⁰

At least 14 days before a hearing on a protest, the chief appraiser must:

deliver a copy of the pamphlet *Property Taxpayer Remedies* prepared by the Comptroller's office 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;

inform the property owner that the owner or the owner's agent 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 deliver a copy of the ARB hearing procedures to the property owner.¹⁰¹

Tax Code Section 41.461 expressly provides that the chief appraiser shall, at least 14 days before a protest hearing, inform the property owner that he or his agent "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."¹⁰² Interpretation of this provision has been the subject of controversy among and between property owners and appraisal districts.

By way of example, in some circumstances, appraisal districts have made available to property owners more information than the appraisal districts later actually introduced at the hearing. In other circumstances, appraisal districts have made available to property owners information that the property owners claim was not in a form they could easily analyze or understand, leading to claims by property owners that they could not adequately prepare for their hearings. In yet other circumstances, appraisal districts, only considering the information they had already "planned" to introduce at the time the request for information was made, have made available to property owners less information than that which they later introduced at the hearing. The range of relief requested by property owners when they feel the appraisal districts have not complied with these provisions may be broad. The Tax Code provides ARBs with at least some guidance regarding possible relief.

The Tax Code provides that "[i]nformation that was previously requested. . .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."¹⁰³ The Tax Code also provides that "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 41.461.¹⁰⁴ Thus, some property owners may urge exclusion of evidence; some may request hearing postponements. These provisions, however, only provide an ARB with guidance as to what types of relief may be granted; they do not provide ARBs with guidance as to how to determine when an appraisal district has complied with the requirement that information be generally available or alternatively provided on request.

ARBs will likely continue to confront disputes on this issue. Each ARB should discuss the issue as a preliminary matter and consider how such disputes will be addressed. Legal counsel should be consulted.

In any case, without regard to whether any pre-hearing request has been made, before the hearing on a protest or immediately after the hearing begins, the chief appraiser and the property owner or the owner's agent must provide the other with a copy of any written material that the person intends to offer or submit to the ARB at the hearing.¹⁰⁵

Hearings

When a property owner files a notice of protest, the ARB must schedule a hearing on the protest.¹⁰⁶ Hearings on 25.25(c) and 25.25(d) motions are conducted in the same manner as hearings on taxpayer protests.¹⁰⁷ The ARB must provide for hearings on protests in the evening or on a Saturday or Sunday.¹⁰⁸ An ARB decides if a protest was timely filed and whether the protest had the necessary information to constitute a protest. An ARB must make these determinations carefully; otherwise, it may find itself defending a lawsuit to compel the hearing if it denies a hearing to which a property owner was entitled under the law. If the property owner is awarded the hearing by a district court, the district court must order the hearing be held and may award court costs and reasonable attorney fees to the property owner.¹⁰⁹

As suggested in the discussion of protest rights, a discussion that represents some, but certainly not all, of the protest rights provided by law, an ARB may encounter a variety of protest circumstances—including the filing of multiple protests regarding the same property. If more than one protest is filed relating to the same property, the ARB must schedule a single hearing on all timely filed protests relating to the property.¹¹⁰ Additionally, a hearing for a property that is owned in undivided or fractional interests, including separate interests in a mineral in place, must be scheduled to provide for participation by all owners who have timely filed a protest.¹¹¹

If an ARB has more than three members, it may sit in panels of not fewer than three members to conduct protest hearings.¹¹² However, the determination of a protest heard by a panel must be made by the entire (“full”) ARB.¹¹³ If the recommendation of a panel is not accepted by the full ARB, the ARB 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 full ARB may determine the protest.¹¹⁴ Before determining a protest or conducting a rehearing before a new panel or the full ARB, the ARB must deliver the required notice of the hearing or meeting.¹¹⁵

On request made to the ARB before the date of a hearing, a property owner that has not designated an agent under Section 1.111 of the Tax Code to represent the owner at the hearing is entitled to one postponement of the hearing to a later date without showing cause. In addition, and without limitation as to the number of postponements, the ARB must postpone the hearing to a later date if, at any time, the property owner or the owner’s agent shows good cause for a postponement or the chief appraiser consents to the postponement.¹¹⁶ The ARB cannot postpone the hearing to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought, unless the date and time of the hearing as postponed are agreed to by the chairman of the ARB or the chairman’s representative, the property owner, and the chief appraiser.¹¹⁷ A request by a property owner for a postponement may be made in writing, including by fax or email, by telephone, or in person, to the ARB, a panel of the ARB, or the ARB chairman.¹¹⁸ If a hearing for which postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman’s representative may take action on a postponement without the necessity of action by the full ARB.¹¹⁹ The granting of a postponement as discussed here does not require delivery of additional written notice to the property owner.¹²⁰

In addition to the grounds for a postponement already mentioned, the ARB must postpone the hearing to a later date under the following circumstances:

- the owner of the property or the owner’s agent is scheduled to appear at a hearing on a protest filed with the ARB of another appraisal district;
- the hearing before the other ARB is scheduled to occur on the same date as the hearing set by the ARB from which the postponement is sought;
- 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 the board from which the postponement is sought or, if the date of the postmark is identical, the property owner or agent has not requested a postponement of the other hearing; and
- 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.¹²¹

As previously discussed, at the beginning of a hearing on a protest, each member of the ARB hearing the protest must sign an affidavit stating that he or she has not communicated with another person in violation of Section 41.66(f).¹²² If an ARB member has communicated with another person in violation of Section 41.66(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 must adopt and

implement a policy concerning the temporary replacement of an ARB member who has communicated with another person in violation of the Section 41.66(f).¹²³

(1) Subpoenas

Pursuant to Section 41.61 of the Tax Code, if reasonably necessary in the course of a protest, the ARB, on its own motion or at the written request of a party to the protest, may subpoena witnesses or books, records, or other documents of the property owner or appraisal district that relate to the protest.¹²⁴ On the written request of a party to a protest, the ARB must issue a subpoena if the requesting party shows good cause for issuing the subpoena and deposits with the ARB a sum the ARB determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed.¹²⁵ The ARB cannot issue a subpoena under Section 41.61 unless it holds a hearing at which the ARB determines that good cause exists for the issuance of the subpoena.¹²⁶ The ARB conducting a good cause hearing must deliver to the party being subpoenaed and parties to the protest written notice of the date, time, and place of the hearing. The ARB must deliver the notice not later than the 5th day before the date of the good cause hearing.¹²⁷ The party being subpoenaed must have an opportunity to be heard at the good cause hearing.¹²⁸

A sheriff or constable must serve a subpoena issued pursuant to Section 41.61.¹²⁹ If the person to whom a subpoena is directed fails to comply, the ARB that issued the subpoena or the party requesting the subpoena may bring suit in the district court to enforce the subpoena.¹³⁰ If the district court determines that good cause exists for issuance of the subpoena, the court, pursuant to the Tax Code, shall order compliance.¹³¹ The district court may modify the requirements of a subpoena that the court determines are unreasonable.¹³² Failure to obey the order of the district court is punishable as contempt.¹³³ The county attorney or, if there is no county attorney, the district attorney must represent the ARB in a suit to enforce a subpoena.¹³⁴

An individual who is not a party to the proceeding and who complies with a subpoena issued by an ARB under Section 41.62 is entitled to the reasonable costs of producing the documents, mileage of 15 cents a mile for going to and returning from the place of the proceeding, and a fee of \$10 a day for each whole or partial day that the individual is necessarily present at the proceedings.¹³⁵ The ARB may, by rule, prescribe greater mileage or a larger fee, but an increase is not effective unless uniformly applicable to all individuals who are entitled to mileage or fee as provided under Section 41.63.¹³⁶ Under Section 41.63, compensation is paid by the appraisal office if the subpoena is issued on the motion of the ARB or by the party requesting the subpoena; however, compensation is not payable unless the amount claimed is approved by the ARB.¹³⁷

(2) Evidence

The property owner initiating the protest is entitled to appear before the ARB and offer evidence or argument.¹³⁸ However, the property owner need not appear in person; the owner may offer evidence or argument by affidavit.¹³⁹ To offer evidence or argument by affidavit without personally appearing, the property owner must attest to the affidavit before an officer authorized to administer oaths and submit the affidavit to the ARB before it begins the hearing on the protest.¹⁴⁰ On receipt of an affidavit, the ARB must notify the chief appraiser, who may inspect the affidavit and, on request, is entitled to a copy.¹⁴¹ To be valid, the affidavit must be attested to before an officer authorized to administer oaths and include the name of the property owner initiating the protest, a description of the property that is the subject of the protest, and evidence or argument.¹⁴² For purposes of the requirement to include evidence or argument, a statement from the property owner that specifies the determination or other action relating to the subject property from which the property owner seeks relief constitutes sufficient argument.¹⁴³ The Comptroller's office has created a standard form for an affidavit that appraisal districts must make available to property owners without charge.¹⁴⁴ However, a property owner is not required to use the Comptroller's form.¹⁴⁵

A member of the ARB may swear witnesses who testify.¹⁴⁶ All testimony must be given under oath.¹⁴⁷

Documentary evidence may be admitted in the form of a copy if the ARB determines that the original document is not readily available.¹⁴⁸ A party is entitled to an opportunity to compare a copy with the original document on request.¹⁴⁹ Official notice may be taken of any fact judicially cognizable; however, a party is entitled to an opportunity to contest facts officially noticed.¹⁵⁰

As discussed earlier, information that was previously requested by the protesting party under Section 41.461 of the Tax Code 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.¹⁵¹

2. Determination of Protests

An ARB may not review or reject agreements between an owner or agent and the appraisal district under Section 1.111(e) of the Tax Code.¹⁵² Pursuant to Section 1.111(e), an agreement between a property owner or the owner's agent and the chief appraiser is final if the agreement relates to a matter that (1) may be protested to the ARB or on which a protest has been filed but not determined by the ARB or (2) which may be corrected under Section 25.25 of the Tax Code or on which a motion for correction under that Section has been filed but not determined by the ARB.¹⁵³ These agreements may be reached between the parties before a hearing, or may even be reached during a hearing. The court of appeals in *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 68-69 (Tex. App. – Houston [14th Dist.] 2007, no pet.), reviewed a case in which, during the course of testimony in a protest hearing before the ARB, the agent for the property owner presented a value and the appraisal district's representative concurred. The court held that the agreement had become final at the moment the district's representative concurred and that any subsequent determinations by the ARB regarding value, including the order it entered, were irrelevant. Several appellate court decisions have addressed the same issue and ruled in accordance with the *Sondock* court.¹⁵⁴ As stated by one court, "because an appraisal review board cannot review a section-1.111(e) agreement, it necessarily cannot render an order resolving a protest based on a review of that agreement."¹⁵⁵

If there is no agreement pursuant to 1.111(e), the ARB hearing a protest must determine the protest and make its decision by written order.¹⁵⁶

If on determining a protest, the ARB finds that the appraisal records are incorrect in some respect raised by the protest, the ARB by its order must correct the appraisal records by changing the appraised value placed on the protesting property owner's property or by making the other changes in the appraisal records that are necessary to conform the records to the requirements of law.¹⁵⁷ If the appraised value of a taxable property interest, other than an interest owned by a public utility or by a cooperative corporation organized to provide utility service, is changed as the result of a protest or challenge, the ARB must change the appraised value of all other interests, other than an interest owned by a public utility or by a cooperative corporation organized to provide utility service, in the same property, including a mineral in place, in proportion to the ownership interests.¹⁵⁸

The ARB must deliver, by certified mail, a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser.¹⁵⁹

The notice of the issuance of the order must contain a prominently printed statement in upper-case, bold lettering informing the property owner in clear and concise language of his or her right to appeal the ARB's decision to district court, describing the deadline prescribed by Section 42.06(a) of the Tax Code for filing written notice of appeal, and describing the deadline prescribed by Section 42.21(a) of the Tax Code for filing a petition for review with the district court.¹⁶⁰ An ARB must include with the notice

of issuance of an order and the copy of the order a notice of the property owner's rights under Chapter 41A of the Tax Code, relating to appeal through binding arbitration, and a copy of the Comptroller's prescribed form for request for binding arbitration.¹⁶¹ An ARB must also include with the notice of issuance of an order and the copy of the order a notice of the property owner's rights under Subchapter Z of the Texas Government Code, relating to appeal to the State Office of Administrative Hearings (SOAH), and a copy of SOAH's prescribed form for notice of appeal under Subchapter Z.¹⁶²

CHAPTER 2

Methods of Appraising Property

This chapter covers the methods used by appraisers in appraising property for tax purposes. It is not intended to teach ARB members how to appraise property. However, it provides extensive methodology in order to give ARB members a better understanding about how property is appraised so that they may be better prepared to ask the right questions and assess the evidence presented by the parties. This part of the manual provides explanations of the law, the standards, the methods, and the language used in the appraisal of property.

The intent of this chapter is to provide ARB members with information they can use to evaluate the quality and credibility of the evidence presented in a protest hearing, not so that ARB members will be able to appraise the property under protest. It is not the ARB's duty to appraise property. An ARB member, for example, typically has no training, knowledge, or experience on how to measure, or distinguish, '20 percent good' or '50 percent depreciated' and, therefore, should not be forming opinions required of a trained and licensed appraiser. Indeed, it is illegal for someone, including an ARB member, to appraise property for taxation without first being certified by the Texas Department of Licensing and Regulation (TDLR). An individual commits a Class B misdemeanor if he or she performs an appraisal without being certified by TDLR.¹⁶³ An owner, however, is qualified to testify about market value of his or her property, even if he or she is not certified by TDLR. The owner's qualifications to testify are limited to opinions of market value of the owner's property.

ARB members will learn the basic procedures involved in carrying out property tax appraisals for various types of properties. At the conclusion of the chapter, participants will have a better understanding on how appraised value is properly developed and have a deeper understanding of the appraisal process so that they can better weigh evidence at protest hearings.

I. What is an Appraisal?

An appraisal is an unbiased opinion of value; it is not a statement of fact. No one can forecast the exact selling price of a property. Appraisers, however, cannot randomly assign values to properties; they must base their opinion of value on market conditions. The appraiser must avoid bias at all cost; he or she must base the opinion of value on fact, not on personal opinion.

Texas law requires that the market value of property be established by using generally "accepted appraisal methods and techniques."¹⁶⁴ This means that appraisal districts have a legal duty to follow a set of industry-recognized procedures to develop an estimate of market value. An appraisal is defined in the Uniform Standards of Professional Appraisal Practice (USPAP) as follows:

the act or process of developing an opinion of value; an opinion of value; of or pertaining to appraising and related functions such as appraisal practice or appraisal services.¹⁶⁵

Following industry standards eliminates the potential for appraiser bias and provides methods to independently test and objectively defend the estimate of market value. While in the end an appraisal is an opinion, it is one that is based on objective processes and data and not mere guesswork.

Basic definitions involving value, which can take different forms in the appraisal and taxation process, are as follows:

Market value means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if the following elements are present:

- exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
- both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
- both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.¹⁶⁶

Appraised value means the value determined as provided by Chapter 23 of the Property Tax Code.¹⁶⁷

Assessed value means, for the purposes of assessment of property for taxation, the amount determined by multiplying the appraised value by the applicable assessment ratio, but, for the purposes of determining the debt limitation by the Texas Constitution, means the market value of the property recorded by the chief appraiser.¹⁶⁸

Taxable value is the amount determined by deducting from assessed value any applicable partial exemptions.¹⁶⁹

The Tax Code defines the following three distinct types of property:

Real property means land; an improvement; a mine or quarry; a mineral in place; standing timber; or an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated herein. An improvement is a building, structure, fixture, or fence erected on or affixed to land; a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily; or subdivision of land by plat; installation of water, sewer or drainage lines; or paving of undeveloped land.¹⁷⁰

Tangible personal property means personal property (property that is not real property) that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.¹⁷¹

- Intangible personal property means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill.¹⁷²

Property can change from real to personal property and from personal to real property. Minerals in place, for example, have not been removed from the ground. When they are mined, these minerals convert to personal property. A manufactured home is considered real property if the owner designates it as such on the statement of ownership and location for the home issued under Occupations Code Section 1201.207 and files a certified copy of the statement of ownership and location in the real property records in the county in which the home is located; otherwise, it is personal property.

Appraisers distinguish between improvements, including buildings, structures, fixtures, or fences, and improvements-to-land, such as sidewalks, curbs, retaining walls, and stock tanks. Improvements include such things as houses, barns, and other buildings. Appraisers usually include the value of

improvements-to-land with their opinion of land value, not their opinion of improvement value. Often, they use the term site to refer to the raw land and the improvements-to-land.

Mineral leases are an example of real property that falls under the category “any other ownership interest.” A person or company that purchases mineral rights in a property must pay property taxes on the value of that ownership interest. However, an ownership interest held by a mortgage lender or a contractor who has a lien on a property is not taxable. A lien enables the holder to take over ownership of property or force its sale if the owner does not pay a debt he or she owes the lien holder. The lien holders cannot be taxed on the value of the lien unless they actually use it and gain possession of the property. Borrowers are liable for the property taxes as long as they retain ownership of the property.

All property that is not real property is personal or intangible property. Tangible property includes both real and personal property. If one can feel, see, or touch personal property, it is tangible. If one cannot see the property itself, it is intangible. Stock in a corporation is intangible. Even though one can see the share of stock as a piece of paper, the corporation itself or the ownership interest in it cannot be seen.

Usually, ARBs do not have to be concerned with intangible property. In some instances, such property is taxable, such as the intangible property of insurance companies and savings and loans, but in most cases, it is exempt.¹⁷³

II. Uniform Standards of Professional Appraisal Practice (USPAP)

Texas law requires that the market value of property be determined as of Jan. 1 by the application of generally accepted appraisal methods and techniques. If an appraisal district uses mass appraisal methods to determine the appraised value of property—which most do—it must comply with USPAP.¹⁷⁴ The Appraisal Foundation, authorized by the U.S. Congress to oversee appraisal standards and appraiser qualifications, developed USPAP for use by professional appraisers in the United States. The industry considers USPAP as the “generally accepted standards.”¹⁷⁵ USPAP changes every two years. The appraiser is responsible for complying with current USPAP standards when the appraisal is conducted.

The underlying purpose of USPAP is to provide the public with a level of confidence in appraisal work. By setting the standards for the work appraisers perform, as well as the qualifications for appraisers, USPAP helps ensure that appraisal work is reliable, fair, and uniform. In addition to the appraisal standards, the *Appraisal Foundation* sets out the ethical and competency requirements that appraisers must observe and maintain.

USPAP addresses the ethical and performance obligations of appraisers through definitions, rules, standards, and statements. The rules specifically address ethics, competency, scope of work, and jurisdictional exceptions.¹⁷⁶

USPAP provides the following 10 standards used in appraising real, personal, and business property:

- Standard 1: Real Property Appraisal, Development;
- Standard 2: Real Property Appraisal, Reporting;
- Standard 3: Appraisal Review, Development and Reporting;
- Standard 4: Real Property Appraisal Consulting, Development;
- Standard 5: Real Property Appraisal Consulting, Reporting;
- Standard 6: Mass Appraisal Development and Reporting;
- Standard 7: Personal Property Appraisal, Development;
- Standard 8: Personal Property Appraisal, Reporting;
- Standard 9: Business Appraisal, Development; and
- Standard 10: Business Appraisal, Reporting.

Most appraisal districts use mass appraisal and will be concerned with Standard 6; however, if an owner brings in an independent appraisal, it too must comply with USPAP. If it is real property (single-family, commercial, land, etc.), Standard 1 must be followed in developing the appraisal and Standard 2 in reporting the appraisal; if it is personal property, Standard 7 applies in the development and Standard 8 in the reporting; and for business property, standards 9 and 10 must be observed.

A mass appraisal includes the following elements:

- identifying the properties the appraisal district will appraise;
- defining a market area whose consistent behavior applies to all properties being appraised;
- identifying characteristics, such as supply and demand, that affect the formation of value in the defined market area;
- developing a model structure that reflects the relationship among the characteristics affecting value in the market area;
- calibrating the model structure to determine the contribution of the individual characteristics affecting value;
- applying the conclusions reflected in the model to the characteristics of the property the appraisal district is appraising; and
- reviewing the mass appraisal results.¹⁷⁷

Like any complicated process, mass appraisal is best implemented by reducing its various parts into a model. A model is simply an expression of how things work. Once the user knows how it works, he or she can use it repeatedly with essentially the same results. A mass appraisal model explains or forecasts market value by using up-to-date, real estate data based on the three approaches to value, which will be discussed later in this manual. The International Association of Assessing Officers (IAAO) points out the following:

Mass appraisal model building requires good appraisal theory, data analysis, and research methods. The best models are accurate, rational, and explainable. Models that reflect the local market are also easier to defend.¹⁷⁸

USPAP Standard 6 applies to all mass appraisals of real or personal property, whether prepared with or without computer assistance, and includes rules appraisers must consider in appraising property under this method. In mass appraisal, the following is true:

.perfection is impossible to obtain. .However, an appraiser must not render appraisal services in a careless and negligent manner. .This Standards Rule requires an appraiser to use due diligence and due care.¹⁷⁹

III. Mass Appraisal

An appraisal district must estimate the value of thousands of properties. The appraisal district has neither the time nor money to repeat the full appraisal process for each individual property. Instead, it uses mass appraisal. The Appraisal Foundation defines mass appraisal as “the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.”¹⁸⁰ The definition includes basic appraising elements used to appraise individual pieces of property, such as standard methodology and common data. Appraising properties in mass, however, requires an additional component—the use of statistical testing.

In general, property appraisal is made up of a set of procedures designed to ensure that appraisers base opinions of value on a disciplined interpretation of factual information. The appraiser submits information from the market to a series of examinations that enable him or her to develop an opinion of the value of a single property. The following four areas comprise the essential elements of an appraisal system:

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- discovery of all taxable property;
 - inspection of all taxable property;
 - construction of system to record and maintain records of taxable property; and
 - estimation of fair and uniform value of all taxable property.

No matter how small the appraisal district, no appraiser can carry out all of these steps for every property. Maintenance of the integrity of the system requires independent verification and methods to perform quality checks on data gathered, analyzed, and recorded. This requires involvement of more than one individual. It is the chief appraiser's responsibility to assign and coordinate these tasks to ensure the quality of the data. One staff appraiser may spend the majority of his or her time collecting ownership information, a second may concentrate on inspecting existing property, a third may focus on inspecting new property, and a clerk may enter the data into the appraisal record-keeping system.

Because mass appraisers must work with large numbers of properties, appraisers must alter their discipline accordingly. Mass appraisers attempt to find the value of a typical property of a given type and then use that typical value to estimate the value of specific properties. Since every appraisal district has a variety of different types of properties, the first step in mass appraisal is to classify properties, to figure out what kinds of properties are typical in the appraisal district.

Mass appraisers then devise a value schedule for each type of property included in the appraisal district's classification system. The set of improvement schedules, for example, include (at least) one schedule for single-family residences, one for commercial properties, and one for multi-family residences. The market in the appraisal district determines the kinds of schedules necessary, but in almost every appraisal district, the commercial category is probably too large. Subdivisions of it might arise from size, from the type of commercial business, or from the location.

The process of building a value schedule involves the following seven basic steps:

- Step 1** Developing a classification system.
- Step 2** Collecting information on sales.
- Step 3** Posting sales to the appropriate category.
- Step 4** Calculating appropriate time adjustments and applying them to sale prices.
- Step 5** Adjusting sale prices of individual properties to eliminate any features that are not typical of their category.
- Step 6** Selecting the value from each category that best represents the typical value per unit of measure.
- Step 7** Calculating adjustments with which to tailor typical values to specific properties.

Step 5 distinguishes mass appraisal most clearly from appraisal of a single piece of property. Since mass appraisal aims to deal quickly with large numbers of properties, it devises values for categories. To find those values for categories, appraisers must eliminate all unique features of the individual properties within the group. They must then adjust their sale information so that it will reflect the market value not of the specific property sold, but of a typical property that lacks any unique features. At Step 7, appraisers produce adjustment figures which enable the schedule to work. These adjustments allow them to convert typical values back into values appropriate for specific properties.

In practice, mass appraisal does not progress as methodically as the seven-step process suggests. An appraisal district can construct a preliminary classification system, but must modify it as information on sales is collected. Obviously, sales cannot be posted until the appraisal district has perfected its classification scheme. The classification system might, for example, separate classes of single-family houses according to number of bedrooms.

All value schedules are different because all markets are different. Deciding what types of properties are typical can present tremendous difficulties, but that effort to classify properties is at the heart of mass appraisal. A value schedule cannot be any better than the classification system on which it is based.

Although it is possible to build a value schedule for land in the same way a schedule for improvements is built, those steps are not really necessary. Location, topography, and use all tend to go together. That is, one of the major ways we determine a location is by looking at the geographic features that define it. Quite often, locations are also identified by use of residential areas, central business districts, warehouse districts, industrial parks, and other categories. The appraisal district must develop adjustments to apply to properties identified as non-typical. Nonetheless, compared with the adjustments improvements require, the total number of adjustments to land prices should be small.

A. Characteristics of Mass Appraisal

What is the difference between mass appraisal and appraisal of a single piece of property? One difference is simply scale. Valuing a single property involves problems of an entirely different nature from those faced by an appraiser valuing 10,000 parcels, as a result of the difference in scale. The mass appraisal process has a number of general characteristics that distinguish it from single property appraisal.

One such characteristic is centralization of authority. While a sole and independent contractor may appraise a single property, the mass appraisal process is more than a single individual can undertake. Typically, tasks are divided among administrators and field appraisers.

A second characteristic is standardization of appraisal procedures. Not only must a large number of properties be appraised, they must be appraised in a manner that conforms to law and does not discriminate. This means that a great deal of the art of appraisal is replaced by standard operating procedures designed to minimize the difference in the treatment of properties and to make the treatment of properties routine.

A third characteristic is synchronization of tasks. When one person performs all the tasks in an appraisal, the tasks are performed in a proper order. Where, however, one person directs, a second develops valuation tools, a third collects data, a fourth uses the tools and the data to appraise, and a fifth draws on the work of the other four in producing an appraisal roll, it is essential that the work of the five be synchronized so that one does not wait on another so that the roll is produced on time.

Maximization, the fourth characteristic, is a commitment to getting the most value for the dollar spent. The mass appraisal balances cost per parcel, time involved per appraisal, and accuracy of appraisal in producing a product that meets the requirements of the jurisdiction.

A fifth characteristic is repetition. Many of the tasks performed in a mass appraisal are highly repetitive—from taking measurements to collecting data to filing. The mass appraisal system typically provides for repetitive tasks to be handled in a routine manner.

Division of labor concerns all of the above characteristics. It means that rather than having each person perform all the tasks required, the appraisal district employs specialists who perform a limited range of tasks over and over. These six characteristics—centralization, standardization, synchronization, maximization, repetition, and division of labor—are essential elements of mass appraisal.

B. Jurisdictional Exceptions

USPAP provides exceptions to its general standards. The “jurisdictional exception rule” may apply to Standard 6 mass appraisal “because ad valorem tax administration is subject to various state, county, and municipal laws.”¹⁸¹

“Jurisdictional exception” is defined as an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment.¹⁸² If any part of USPAP is contrary to the law or public policy of any jurisdiction, only that part shall be void for that jurisdiction. The purpose of the rule is to provide a severability clause if one or more parts of USPAP is contrary to a state or local law. Law, in this context, means a body of rules with binding legal force established by a controlling governmental authority. It includes federal and state constitutions, statutes, case law, administrative rules, and local ordinances and regulations. Public policy refers to standards of conduct generally accepted by the community and recognized by law and other evidence.¹⁸³

There are numerous jurisdictional exceptions in the Tax Code, which require deviations from USPAP standards. Compliance with these laws is required and will not create violations of USPAP. Examples include, but are not limited to, the following special appraisal requirements found in Chapter 23 of the Tax Code:

- productivity value of agricultural land;¹⁸⁴
- productivity value of timber land;¹⁸⁵
- consideration of governmental taking of property;¹⁸⁶
- inventory appraisal of real or personal property as a unit;¹⁸⁷
- dealer inventory appraisals;¹⁸⁸
- appraisal of mineral interests not being produced;¹⁸⁹
- appraisal of oil and gas interests;¹⁹⁰ and
- nominal valuation of property owned by non-profit homeowner organizations.¹⁹¹

Other special appraisal provisions are included in Chapter 23 and other federal, state, and local laws. These provisions do not violate USPAP, but instead are jurisdictional exceptions to USPAP that must be followed regardless of generally accepted appraisal standards.

C. Mass Appraisal and the Three Approaches to Value

An appraisal district using mass appraisal cannot use the three approaches to value in the same way that a single property appraiser does because of the number of taxable properties in the appraisal district and the limited time within which the appraisal district must complete its work. Instead, appraisal districts develop property categories on the basis of market analysis and use elements of these approaches to convert market data into value schedules. The three approaches to value are incorporated into the mass appraisal process.

IV. Three Approaches to Value

The law requires that in determining the market value of property, the chief appraiser must consider the cost, income, and market data comparison methods of appraisal and use the most appropriate method.¹⁹² These methods, however, are not exclusive; the chief appraiser may use other methods or a combination of methods so long as they produce defensible market value.

The market data comparison approach focuses on the sale of comparable properties and requires an active market in sales of comparable properties. The cost approach estimates the cost of replacing an improvement and requires the appraiser to estimate replacement cost and accrued depreciation. Appraisers using the cost approach must also use the market or income approach to estimate land value. The income approach examines the income stream a property produces and requires that the subject property be able to produce income and that the appraiser have enough information to develop a capitalization rate. The capitalization rate expresses in numbers the relationship between a property’s income potential and its present value.

In appraising single pieces of property, all three approaches are used whenever possible, checking the results of one method against the others before estimating the final value. In mass appraisal, an appraisal district combines techniques from the three separate approaches.

A. Market Data Comparison Approach

Since appraisers are aiming to determine market value, it is not surprising that they generally consider the market data comparison approach as the most accurate method of appraisal. Appraisers use this approach whenever possible because it focuses directly on the actions of buyers and sellers in the marketplace and, therefore, usually produces the best results. The market data comparison approach works best when the subject property is not so unique that few comparable properties ever sell. Oil refineries, for example, can differ widely, depending on when they were built and what kinds of refining processes they use.

The market data comparison approach has two distinct advantages over the cost and income approaches. First, the market data comparison approach can be used for any kind of property—improved or unimproved and income-producing or not. Second, because it focuses directly on buyers and sellers in the market, it is most likely to produce reasonable valuations. At the same time, the market data comparison approach cannot be used if there are not enough comparable sales. Appraisal districts can usually find enough comparable residential sales, but other types of properties do not sell frequently, and when they do there may be intangible value included in the sale.

Because the market data comparison approach derives market value from the sale prices of properties comparable to the subject, appraisers must identify and describe the subject property precisely. Appraisers must determine who owns the various legal rights to the property and discover any limitations (such as easements, covenants, or deed restrictions) on that ownership. In order to select appropriate comparables, appraisers must discover what features of the subject property add to or detract from its market value.

Comparables must resemble the subject as closely as possible. The more the appraiser knows about the subject property, the more exactly he or she is able to match comparables to it.

The appraiser should inspect the subject property and comparables because the law requires that an appraiser follow “accepted appraisal practices.” Measuring and sketching the improvements rather than accepting someone else’s figures is very important. Calculating the area and re-checking the math is equally important.

The market data comparison approach requires appraisers to perform the following four steps:

- Step 1** Selecting properties that are similar to the property being appraised (the subject) that have recently sold.
- Step 2** Listing differences between these properties (comparable properties) and the subject.
- Step 3** Calculating adjustments and adjusting the comparables to the subject.
- Step 4** Estimating the subject’s value from the adjusted values of the comparables.

1. Selecting Comparable Properties

Appraisers do not always find sufficient comparables that closely resemble the subject. The market data comparison approach requires the same information on properties that are similar to it and which have recently sold be gathered. The subject property determines the type of sales information needed. A single-family residence, for example, does not require that information on warehouses be collected. An appraisal office should have sales and property information organized in its files according to some classification system that enables the appraiser to search the files for information on sales of properties similar to the subject by using the description of the subject.

Comparable sales should resemble the subject as closely as possible in the following six features:

- location;
- age;
- size of improvements;
- land area;
- architectural style; and
- date of sale.

Since the subject has not sold, the appraiser must consider date of sale in relation to Jan. 1. The more closely a comparable property resembles the subject, the easier to calculate and the more accurate the appraisal.

All comparables are not created equal. Good comparables require fewer adjustments and ensure a more accurate appraisal. If the appraiser cannot find good comparables, he or she will need to use more properties to ensure accurate adjustments.

2. Listing Similarities and Differences

None of the comparable sales will match the subject precisely. The appraiser must develop a way of describing, classifying, and evaluating the differences between the subject property and the comparables. Major factors distinguish subjects and comparables, including:

- property rights transferred with the sale;
- financing;
- conditions of sale (motivation);
- expenditures made after the sale;
- market conditions (date of sale);
- physical characteristics;
- location;
- use;
- economic characteristics; and
- non-realty components.

The appraiser must know what transferred (property rights) in each sale. Some property sells with the price representing tangible and intangible value. A sale needs to reflect a cash transaction because the premises behind “market value” require this. The definition of “market value” requires that the buyer and seller are well-informed, not under duress and acting in their own best interest. If the sale price reflects abnormal motivation conditions, the price must be adjusted or the comparable excluded. If a property sells needing to be updated or renovated, the expenditures made after sale will adjust the comparable to market standards reflecting the money for the rehabilitation or renovation costs.

If one comparable sold in January and one in July, and if the effective date of the appraisal is Jan. 1, the appraiser has to find a way to account for the different dates. If one comparable sold with a low down payment and a high interest rate and another sold on an assumed mortgage with a low interest rate, the appraiser has to convert both sale prices into values in current dollars. Real estate agents frequently identify location as the single factor that most influences the sale price of a home; thus, if comparables from neighborhoods different from the subject’s are available, the influence of location on value must be taken into account.

Physical characteristics cover a number of factors, including size of the lot, the area of the improvements, original construction quality, and condition. The appraiser must also consider special features and amenities. Garages, swimming pools, greenhouses, fences, heating and cooling systems, and custom features all influence the market value of the subject and comparables.

The remaining factors can include economic characteristics, use, and non-realty adjustment considerations. The adjustment for economic characteristics reflects differences in ability to generate income, differences in vacancy or expense structures, and even differences that could be expressed in different capitalization rates. However, appraisers must take care not to adjust in this category when they have already adjusted for the same difference in another category, such as location. Use factors could include private (deed restrictions) or public use (zoning) restriction differences. Non-realty items are sometimes included in a sale price. If the appraiser is only appraising real property, this must be excluded.

3. Adjusting the Comparables

The appraiser must assign a value to each difference between the subject and the comparables and adjust the sale price of each comparable so that it will reflect the price at which the subject should sell. Adjustments fall into one of three categories: those made as of the date of sale, a market conditions adjustment, and those that should be made as of the date of the appraisal (Jan. 1). Adjustments made at time of sale include property rights conveyed, financing, conditions of sale (motivation), and expenditures anticipated to be made at the date of sale. The next adjustment category is market conditions (time), which includes adjustments for changes in market conditions between the sale date of the comparable and Jan. 1 and for inflation or deflation. The last category of adjustments is related to differences for location, use, economic characteristics, physical differences, and non-realty components. These adjustments must always be applied to the comparable, not the subject. If the comparable's price is less than the subject, the appraiser adjusts the comparable's price upward. If the comparable's price is higher than the subject, the appraiser adjusts the comparable's price downward to reflect a value for the subject.

4. Deriving an Opinion of the Subject's Value

Comparables establish a range of possible values and a determination must be made where within that range the subject falls. Deriving this final opinion of the subject's market value requires an appraiser's judgment; it cannot be reduced to a simple mathematical process.

In general, an appraiser looks within the range established by the highest and lowest comparables to see which comparable most closely matches the subject. He or she also looks for the comparables sold on the dates closest to the effective date of the appraisal. Before making the final opinion, the appraiser must identify the comparables with the smallest number of adjustments and the comparables with the amount of total adjustments closest to zero. A decision may be required to reject the comparable with the lowest number of adjustments or with the amount of net adjustments closest to zero because another comparable more adequately reflects the subject. The comparable with the highest or lowest value may provide the best indication of the subject's value. The subject's value may also fall between the values indicated by two comparables.

Only one hard and fast rule governs the final opinion of value: **the appraiser must not average the indicated values of the comparables to arrive at an opinion of the subject's value.** There is no set of steps to use as a substitute for judgment and experience. The final opinion should not be arbitrary or random, but the appraisal cannot be reduced to a mechanical formula. The appraiser must rely on judgment and experience when examining comparables.

5. Appraising Land

The market data comparison approach is the preferred method of appraising any property, but it is especially critical to the appraisal of land. Since land cannot be reproduced, appraisers cannot use the cost approach in valuing it. The income approach is often inappropriate because much land does not produce income. However, the income approach to land is acceptable if the land is rented, such as with a ground

lease, or if there is income-producing potential for the land. Acceptable methods of land valuation include sales comparison, allocation, extraction, ground rent capitalization, land residual, and subdivision. Ground rent capitalization is a procedure where estimated net market rent of land is capitalized with a capitalization rate. In most cases, the process of elimination dictates that appraisers employ the sales comparison approach to estimate the land value. Whether used on land, improvements, or whole properties, the basics of the market data comparison approach remain the same.

6. Appraising Improvements

Improvements present an appraiser with a set of problems different from those that land presents. Land does not depreciate, but improvements do. Therefore, an appraiser must develop a way to account for the effects of weather, neglect, changes in architectural style, and other forces that can cause a structure to lose value. Moreover, differing construction techniques and materials produce structures that differ in quality. Appraisers must recognize and evaluate differences in the construction type and construction quality of improvements. Finally, differences in size and amenities also influence the value of improvements and appraisers must know how to interpret their impact on market values.

B. Cost Approach

When using the cost approach to determine the market value, the chief appraiser must use cost data obtained from generally accepted sources; make appropriate adjustments for physical, functional, or external obsolescence; and clearly state the reason for any variation between generally accepted cost data and locally produced cost data if the data vary by more than 10 percent.

The cost approach is usually used when market sales data is not available. It works best on newer improvements. Older improvements often contain outdated materials or were constructed using outdated techniques. Estimating the replacement cost and accrued depreciation of older properties is difficult.

A focus on the estimated cost involved in constructing an improvement distinguishes the cost approach from the other approaches to value. Because of this focus, an appraiser using the cost approach must always use a second appraisal approach to determine land value, usually the sales comparison approach.

The cost approach follows the following four basic steps:

- Step 1** Determining the value of the land without any improvements on it and under its highest and best use as though vacant.
- Step 2** Estimating the cost of replacing or reproducing the improvements.
- Step 3** Estimating and subtracting the value lost to accrued depreciation in order to arrive at the indicated value of the existing improvement.
- Step 4** Adding the indicated improvement value to the land value.

Using the cost approach requires good judgment. The cost approach provides the only reasonable way to estimate the value of many special use properties—aircraft hangars, for example, or museums, convention halls, fraternal lodges, and other non-income-producing properties for which there are no comparable sales. Knowledge of the cost approach is essential to effective mass appraisal.

1. Defining Cost

An estimate of replacement cost indicates what a typical builder charges to construct a building of equal utility to the subject. Reproduction cost tells what a typical builder charges to construct an exact replica.

An estimated reproduction cost more reflects the actual improvements than an estimated replacement cost. Reproduction cost estimates are tailored to the specific subject property. To estimate reproduction

cost, however, a great many details must be examined, including carpeting, bathroom fixtures, attics, ceilings, interior wall coverings, and others. These features may influence property value considerably, but property tax appraisers seldom have the opportunity to complete a detailed inspection of a house's interior. For this reason, property tax appraisers often cannot estimate reproduction cost.

The elements of cost include direct and indirect cost and entrepreneurial incentive (profit). Direct costs (hard costs) are materials and labor. Indirect costs include architect fees, attorney fees, appraiser fees, financing fees, construction interest, marketing expenses, and other related costs that are not materials or labor. Entrepreneurial incentive is the money necessary to cause the development of the property. The previous examples relate to the four agents of production land, labor, capital, and coordination.

2. Depreciation

Estimating an amount for accrued depreciation is probably the most difficult task in all appraisal work. Some elements of depreciation—a broken window, for example—can hardly escape an appraiser's notice; but other elements, such as substandard wiring, are hidden beneath a building's surface. Still others, such as the negative or positive impact of a floor plan, may influence only a few buyers. Still, cost is not the same thing as market value; an appraiser must determine the dollar amount of losses arising from problems with a building's condition, design, and surrounding environment. The total of these losses equals accrued depreciation. Subtracting accrued depreciation from the cost to build a new structure leaves the estimated market value of the improvements.

Physical depreciation is from normal wear and tear and aging of improvements. Functional obsolescence is loss from poor or substandard layout, design, appearance, etc. External obsolescence is from economic and locational sources. Economic obsolescence is from poor market conditions that cause loss in value. Locational external obsolescence is from the property being located adjacent to or near a nuisance or property that causes loss in value.

Accrued depreciation can be defined as an improvement's loss of value from all causes relating to the property itself, its use and possible uses and the uses of surrounding properties. Accrued depreciation includes all loss from replacement or reproduction cost as of Jan. 1.

3. Cost Approach in Mass Appraisal

Mass appraisers have historically relied on the cost approach more than any other method. Before computers came into widespread use, a cost table provided just about the only way to appraise a large number of properties in a uniform manner. Even now, the mass appraisal process is quite similar to an appraisal using the cost approach: classify and measure the improvement, multiply the size times the appropriate value from the table, estimate and adjust for depreciation, and add land value to arrive at total property value.

Basically, the procedures for developing a value schedule based on cost are the same as those for developing one based on market data. The values in a cost schedule reflect typical building costs; the values in a market schedule reflect typical sale prices. Appraisers compile information and build a cost schedule in much the same way that they compile sales information and build a market schedule.

Building a cost-based value schedule and the depreciation table to accompany it has the following eight steps:

- Step 1** Analyzing the market to identify value factors.
- Step 2** Developing profiles of benchmark properties.
- Step 3** Collecting cost information.
- Step 4** Posting cost information to appropriate benchmark properties.

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- Step 5** Deriving typical costs for benchmark properties.
 - Step 6** Developing field procedures for classifying properties and adjusting preliminary value estimates for specific properties.
 - Step 7** Using market data to develop depreciation tables.
 - Step 8** Testing the schedule for accuracy and uniformity.

All cost appraisals depend upon an accurate opinion of land value. Land values in the area are used to test a cost schedule.

C. Income Approach

Appraisers use the income approach only to appraise properties that generate income or have a definite and predictable prospect of producing income. The income method assumes that potential buyers will base the amount they are willing to pay for a property on the income that the property currently produces and will produce in the future.

Since a property must be capable of generating income before the income approach can be used to appraise it, the income approach is seldom the best choice for appraising single-family residences. Nonetheless, the income approach can be used on single-family residences when the rental market for such properties is active.

Income appraisals are more suitable for commercial property, even if the property is not producing income at the time of the appraisal. The income approach can be used on an unoccupied commercial building because the income that the property produces under typical ownership and management can be estimated. The income approach can also produce reliable values on industrial property.

The Tax Code requires appraisers to use the income approach on property that qualifies for special valuation, such as agricultural, timber, and open-space land.

The income approach follows three basic steps:

- Step 1** Determining the subject property's net annual income.
- Step 2** Determining the capitalization rate.
- Step 3** Dividing net annual income by the capitalization rate in order to arrive at property value.

Using the income approach requires a considerable amount of information about property sales, interest rates, buyers' expectations, financing terms, and property income. In essence, the income approach requires estimating the future benefits of ownership and converting them into an indication of present worth.

The fundamental process involved in any income approach is the conversion of anticipated net income into an estimated value. The traditional income approaches use a single year's income to determine value. The expectation of change and even a future sale of the property are built into the capitalization rate used to convert the single year's income to value.

Expenses required for maintaining the property's income stream must be subtracted from effective gross income. However, only certain expenses are deducted. Fixed expenses of property taxes and insurance are appropriate deductions from effective gross income. Variable expenses of management, utilities, landscaping, janitorial, and other expenses directly related to operating the property are also deducted. The total of these expenses should be consistent with the ratio of like properties in the market.

Inappropriate expenses for the income approach that are not deducted include income taxes, entity expenses (from choice of ownership vehicle), capital improvements, and other non-operating expenses. To find property value, net operating income is divided by the capitalization rate. This returns the property's net operating income, which is what is capitalized into value.

V. Capitalization Rate

After estimating income, appraisers use a capitalization rate to determine value. The simplest method of deriving a market capitalization rate is to divide the net operating income from a comparable property sale by its adjusted sale price. Expressed in a formula, this would read as follows:

$$R = I \div V$$

In the equation, *R* is the capitalization rate, *I* is the net operating income, and *V* is the sale price. The net operating income would have to reflect only those expenses normally used by appraisers and recognized in the market. The appraiser must also consider how the subject property compares with the comparable property to ensure the sale price of the comparable property meets the conditions of the subject property's market.

Using a capitalization rate derived from highly comparable sales is generally regarded as the most accurate form of income capitalization. If an income-producing property sells and if the net operating income is available, the net operating income can be divided by the sale price to arrive at an overall capitalization rate. The appraiser then estimates a capitalization rate that best represents the subject property.

A capitalization rate in its simplest form is the conversion of net operating income into an opinion of value. How this is done can have adverse consequences if miscalculated, as may be seen from the following passage taken from the IAAO's *Property Appraisal and Assessment Administration*:

Small errors in estimating the capitalization rate will have a pronounced effect on the estimate of property value. For example, estimating the capitalization rate at 9 or 11 percent instead of 10 percent will change the estimated value by approximately 10 percent. For this reason, capitalization rates should be derived with care and supported with market data.¹⁹³

VI. Appraisal of Business Personal Property

Items not permanently affixed to, or part of, real estate are generally considered personal property. As a general rule, an item is personal property if it can be removed without serious injury to the real estate or to the item itself.

A. Rendition of Personal Property

Except with regard to rolling stock, an individual who owns or manages tangible personal property as of Jan. 1 used for the production of income must render it for taxation. A rendition statement for property valued at \$20,000 or more must include the following:

- the name and address of the property owner;
- a description of the property by type or category;
if the property is inventory, a description of each type of inventory and a general estimate of the quantity of each type of inventory;
- the physical location or taxable situs of the property; and
- the property owner's good faith opinion of the market value of the property or, at the option of the property owner, the historical cost when new and the year of acquisition of the property.¹⁹⁴

This general rule regarding rendition of personal property is intended to give the ARB member an overview of this provision of the Tax Code. For exceptions or variations to this general provision, please consult the Tax Code or your attorney.

B. Situs of Personal Property

The appraisal of personal property is more difficult than the appraisal of real property because it is easily concealed and frequently moved. For these reasons it is often difficult to determine situs for personal property.

Generally, tangible personal property is taxable by a taxing unit if it is located in the unit on Jan. 1 for more than a temporary period; if it normally is located in the unit, even though it is outside the unit on Jan. 1, if it is outside the unit only temporarily; or, if it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period. It also has situs if the owner resides or maintains a principal place of business in the unit and the property is taxable in Texas but the property is not located in the unit on Jan. 1 or is not located in any one place for more than a temporary period but is normally returned to the unit between uses.¹⁹⁵

C. Valuation of Personal Property

In appraising tangible personal property, the appraiser gives recognition to the trade level at which property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level.

D. Inventory Valuation

The Tax Code provides, with certain particular exceptions, that the market value of inventory is the price for which it would sell as a unit to a purchaser who would continue the business.¹⁹⁶ An inventory includes residential real property that has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income.¹⁹⁷

E. Special Problems in Inventory Appraisal

Some larger stores do not operate the entire store themselves, but lease certain sections to separate concerns. For example, many automotive departments in discount stores are leased. As these stores render their inventory, there is no guarantee either that leased departments are included or that the inventory of leased departments will be rendered separately. It is a good practice to ask the management of a large store if such leased departments exist. Once their existence is established, the inventories of such departments are treated as small stores of a particular type. When the larger store's inventory valuation is developed for the entire store, this figure is reduced by the leased departments' inventory value. This amounts to valuing the leased departments separately and allocating the residual inventory to the main store.

Consigned goods, like all other personal property, are taxable to the owner or consignor. Since the property is found in the hands of the consignee, an assessment is sometimes made against the consignee. This assessment is properly made against the owner, the consignor, since the consignee has no title to the goods. If the owner is unknown, the holder or consignee is responsible until the owner can be identified. Such property is taxable and should be appraised.

F. Valuation of Commercial and Industrial Personal Property

In the absence of specific market data, replacement cost of a new item, less depreciation, is considered a logical approach to the valuation of commercial and industrial personal property. An appraiser may estimate replacement cost either by indexing known historical costs or by using a standard valuation guide. Next, the appraiser must estimate the actual physical depreciation that has accrued.

Commercial and industrial inventories, supplies, and spare parts are valued at the lower of cost or market. Special equipment items such as computers are given special consideration because of a short economic life due to advances in technology. Appraisal of mobile machinery and tools, such as switch engines, gantry cranes, and forklifts depends on their size. The larger items are valued individually using current market prices for similar, used equipment as a guide. The smaller items are grouped into an average service life and treated in the same manner as furniture and fixtures.

Often the cost figures on leased equipment are not available to the appraisal district. Since manufacturers, in this case, are essentially final users, the retail level of trade rather than manufacturer's level is the proper level at which to value the property. The lack of retail selling prices necessitates the use of another approach to value in these situations.

Conclusion

This manual was developed as a continuing education program for ARB members. The Comptroller has provided a comprehensive introductory course to new ARB members for many years. This course augments the introductory course by discussing legal and appraisal issues in greater detail. It is designed for ARB members who are serving beyond one year.

The manual addresses the Legislature's concerns that ARBs remain independent and impartial in their deliberations. It attempts to increase ARB members' ability to consider and weigh evidence at protest hearings with the skill necessary to ensure fairness to both the property owner and the appraisal district.

While this course presents legal issues in greater detail, discussing court cases and attorney general opinions that have interpreted the Property Tax Code, it is not a law book and ARB members should not treat it as one. The law regarding property taxation, like the law in other areas of life, is constantly changing and evolving. ARB members should therefore use this manual as a guide, but should consult their attorneys when legal questions arise.

By the same token, this course discusses appraisal methods in much greater detail than the introductory course, but it is not an appraisal manual. Like the law, appraisal work is complex. This manual provides the methods appraisers use as a means for ARB members to weigh the validity and relevance of evidence.

Most ARB members are neither property tax attorneys nor trained appraisers and this manual is neither a law book nor an appraisal manual. ARB members should consider the manual a guide and an important resource in weighing evidence presented at a protest hearing, but should consult their attorney when an issue is not clear or questions arise.

Endnotes

- ¹ Tex. H.B. 2317, 81st Leg., Reg. Sess. (2009), amending Tex. Tax Code §5.041.
- ² *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 70 (Tex. App. – Houston [14th Dist.] 2007, no pet.).
- ³ *Sondock v. Harris County Appraisal District*, 231 S.W.3d 65, 70 (Tex. App. – Houston [14th Dist.] 2007, no pet.).
- ⁴ Tex. Tax Code §6.01(a); 6.41(a).
- ⁵ *Program Centers of Grace Union Presbytery, Inc. v. Earle*, 726 S.W.2d 628, 630 (Tex. App. – Fort Worth 1987, no writ); *Towne Square Assocs. v. Angelina County Appraisal Dist.* 709 S.W.2d 776, 778 (Tex. App. – Beaumont 1985, no writ); *Corchine Partnership v. Dallas County Appraisal Dist. and Dallas County Appraisal Review Board*, 695 S.W.2d 734, 735 (Tex. App. – Dallas 1985, writ ref'd n.r.e.).
- ⁶ Tex. Tax Code §§6.41, 6.43, and 5.041(e-1)(5).
- ⁷ Tex. Tax Code §6.412(c).
- ⁸ Tex. Tax Code §6.412(a)(1).
- ⁹ Tex. Tax Code §6.413(a).
- ¹⁰ Tex. Tax Code §6.413(b).
- ¹¹ Tex. Tax Code §6.413(c).
- ¹² Tex. Tax Code §41.66(f).
- ¹³ Tex. Tax Code §41.66(f).
- ¹⁴ Tex. Tax Code §41.411(a).
- ¹⁵ Tex. Tax Code §41.66(g).
- ¹⁶ Tex. Tax Code §41.41(a).
- ¹⁷ Tex. Tax Code §25.25.
- ¹⁸ Tex. Tax Code §23.01(a).
- ¹⁹ Tex. Tax Code §1.04(7).
- ²⁰ Tex. Tax Code §41.41(a)(1).
- ²¹ Tex. Tax Code §41.41(a)(2).
- ²² See Tex. Tax Code §41.41(a)(3).
- ²³ Tex. Tax Code §11.13.
- ²⁴ *North Alamo Water Supply Corp. v. Willacy County Appraisal Dist.* 804 S.W.2d 894, 899 (Tex. 1991)(citations omitted).
- ²⁵ Tex. Tax Code §§23.46, 23.55, 23.76, and 23.9807.
- ²⁶ Tex. Tax Code §§23.46(c), 23.55(e), 23.76(e), and 23.9807(f).
- ²⁷ Tex. Tax Code §41.44(a)(4).
- ²⁸ Tex. Tax Code §41.411(a).
- ²⁹ Tex. Tax Code §41.411(b).
- ³⁰ Tex. Tax Code §41.411(c).
- ³¹ Tex. Tax Code §41.412(a).
- ³² Tex. Tax Code §41.412(b).
- ³³ Tex. Tax Code §41.413.
- ³⁴ Tex. Tax Code §41.413(d).
- ³⁵ Tex. Tax Code §41.413(d).
- ³⁶ Tex. Tax Code §41.413(c).
- ³⁷ Tex. Tax Code §41.42.
- ³⁸ Tex. Tax Code §41.42.
- ³⁹ Tex. Tax Code §41.41(a)(1).
- ⁴⁰ Tex. Tax Code §41.41(a)(2).
- ⁴¹ Tex. Tax Code §41.43(a).
- ⁴² Tex. Tax Code §41.43(a)-(a-1).
- ⁴³ Tex. Tax Code §41.43(a-1).
- ⁴⁴ Tex. Tax Code §41.43(a-1).
- ⁴⁵ Tex. Tax Code §41.43(a-2).
- ⁴⁶ Tex. Tax Code §41.43(a-1).
- ⁴⁷ Tex. Tax Code §41.43(a), (d).
- ⁴⁸ Tex. Tax Code §41.43(d).
- ⁴⁹ Tex. Tax Code §41.43(d).
- ⁵⁰ Tex. Tax Code §41.43(d).
- ⁵¹ Tex. Tax Code §41.43(b).

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- ⁵² Tex. Tax Code §41.43(b).
⁵³ Tex. Tax Code §23.01(c).
⁵⁴ Tex. Tax Code §23.01(c).
⁵⁵ Tex. Tax Code §23.01(c).
⁵⁶ Tex. Tax Code §23.01(c).
⁵⁷ Tex. Tax Code §23.01(c).
⁵⁸ Tex. Tax Code §41.43(c).
⁵⁹ Tex. Tax Code §25.25(a).
⁶⁰ Tex. Tax Code §25.25.
⁶¹ Tex. Tax Code §25.25(i).
⁶² Tex. Tax Code §25.25(j).
⁶³ Tex. Tax Code §25.25(b).
⁶⁴ Tex. Tax Code §25.25(b).
⁶⁵ Tex. Tax Code §25.25(o).
⁶⁶ Tex. Tax Code §25.25(l).
⁶⁷ Tex. Tax Code §25.25(d).
⁶⁸ Tex. Tax Code §25.25(d).
⁶⁹ Tex. Tax Code §25.25(d).
⁷⁰ Tex. Tax Code §25.25(d).
⁷¹ Tex. Tax Code §25.25(e).
⁷² Tex. Tax Code §25.25(h).
⁷³ *Harris County Appraisal District v. United Investors*, 47 S.W.3d 648, 650 n.4 (Tex. App. – Houston [14th Dist.] 2001, no writ).
⁷⁴ *Weingarten Realty Investors v. Harris County Appraisal District*, 93 S.W.3d 280, 286 (Tex. App. – Houston [14th Dist.] 2002, no writ).
⁷⁵ *Harris County Appraisal District v. Kempwood Plaza*, 186 S.W.3d 155, 161 (Tex. App. – Houston [1st Dist.] 2006, no writ).
⁷⁶ *In re: Galveston Central Appraisal District*, 252 S.W.3d 904, 905 (Tex. App. – Houston [14th Dist.] 2008, no pet.).
⁷⁷ *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 45 (Tex. 2007).
⁷⁸ Tex. Tax Code §41.43(a).
⁷⁹ Tex. Tax Code §41.43(a).
⁸⁰ Tex. Tax Code §41.43(a-1).
⁸¹ Tex. Tax Code §23.01(c).
⁸² Tex. Tax Code §41.43(a).
⁸³ Tex. Tax Code §41.66(a).
⁸⁴ Tex. Tax Code §41.66(a).
⁸⁵ Tex. Tax Code §41.66(a).
⁸⁶ Tex. Tax Code §41.66(a).
⁸⁷ Tex. Tax Code §41.66(b).
⁸⁸ Tex. Tax Code §41.66(b).
⁸⁹ Tex. Tax Code §41.66(d).
⁹⁰ Tex. Tax Code §41.46(a).
⁹¹ Tex. Tax Code §41.46(a)-(b).
⁹² Tex. Tax Code §25.25(e).
⁹³ Tex. Tax Code §25.25(e).
⁹⁴ Tex. Tax Code §25.195(a).
⁹⁵ Tex. Tax Code §25.195(c).
⁹⁶ Tex. Tax Code §25.195(c).
⁹⁷ Tex. Tax Code §25.195(d).
⁹⁸ Tex. Tax Code §25.195(c).
⁹⁹ Tex. Tax Code §25.195(b).
¹⁰⁰ Tex. Tax Code §25.195(e).
¹⁰¹ Tex. Tax Code §41.461(a).
¹⁰² Tex. Tax Code §41.461(a)(2).
¹⁰³ Tex. Tax Code §41.67.
¹⁰⁴ Tex. Tax Code §41.66(h).
¹⁰⁵ Tex. Tax Code §41.45(h).
¹⁰⁶ Tex. Tax Code §41.45(a).
¹⁰⁷ Tex. Tax Code §25.25(m).
¹⁰⁸ Tex. Tax Code § 41.70.
¹⁰⁹ Tex. Tax Code §41.45(f).
¹¹⁰ Tex. Tax Code §41.45(a).
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¹¹² Tex. Tax Code §41.45(d).
¹¹³ Tex. Tax Code §41.45(d).

- ¹¹⁴ Tex. Tax Code §41.45(d).
- ¹¹⁵ Tex. Tax Code §41.45(d).
- ¹¹⁶ Tex. Tax Code §41.45(e).
- ¹¹⁷ Tex. Tax Code §41.45(e).
- ¹¹⁸ Tex. Tax Code §41.45(e).
- ¹¹⁹ Tex. Tax Code §41.45(e).
- ¹²⁰ Tex. Tax Code §41.45(e).
- ¹²¹ Tex. Tax Code §41.45(g).
- ¹²² Tex. Tax Code §41.66(g).
- ¹²³ Tex. Tax Code §41.66(g).
- ¹²⁴ Tex. Tax Code §41.61(a).
- ¹²⁵ Tex. Tax Code §41.61(b).
- ¹²⁶ Tex. Tax Code §41.61(c).
- ¹²⁷ Tex. Tax Code §41.61(c).
- ¹²⁸ Tex. Tax Code §41.61(c).
- ¹²⁹ Tex. Tax Code §41.62(a).
- ¹³⁰ Tex. Tax Code §41.62(b).
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- ¹³² Tex. Tax Code §41.62(b).
- ¹³³ Tex. Tax Code §41.62(b).
- ¹³⁴ Tex. Tax Code §41.62(c).
- ¹³⁵ Tex. Tax Code §41.63(a).
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- ¹³⁷ Tex. Tax Code §41.63(c)-(d).
- ¹³⁸ Tex. Tax Code §41.45(b).
- ¹³⁹ Tex. Tax Code §41.45(b).
- ¹⁴⁰ Tex. Tax Code §41.45(b).
- ¹⁴¹ Tex. Tax Code §41.45(b).
- ¹⁴² Tex. Tax Code §41.45(i).
- ¹⁴³ Tex. Tax Code §41.45(j).
- ¹⁴⁴ Tex. Tax Code §41.45(k).
- ¹⁴⁵ Tex. Tax Code §41.45(l).
- ¹⁴⁶ Tex. Tax Code §41.67(a).
- ¹⁴⁷ Tex. Tax Code §41.67(a).
- ¹⁴⁸ Tex. Tax Code §41.67(b).
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- ¹⁵⁰ Tex. Tax Code §41.67(c).
- ¹⁵¹ Tex. Tax Code §41.67(d).
- ¹⁵² Tex. Tax Code §41.01(b).
- ¹⁵³ Tex. Tax Code §1.111(e).
- ¹⁵⁴ See, e.g., *Hartman v. Harris County Appraisal Dist.*, 251 S.W.3d 595 (Tex. App. – Houston [1st Dist.] 2007, pet. denied); *Loposer v. Harris County Appraisal Dist.*, 2009 Tex. App. LEXIS 5532 (Tex. App. – Houston [14th Dist.] 2009, no pet)(unpublished); *Amidei v. Harris County Appraisal Dist.*, 2009 Tex. App. LEXIS 5559 (Tex. App. – Houston [1st Dist.] 2009, no pet)(unpublished); *Prince v. Harris County Appraisal Dist.*, 2009 Tex. App. LEXIS 8 (Tex. App. – Houston [14th Dist.] 2009, no pet.)(unpublished); *Verm v. Harris County Appraisal Dist.*, 2008 Tex. App. LEXIS 4900 (Tex. App. – Houston [14th Dist.] 2008, no pet.)(unpublished).
- ¹⁵⁵ *MHCB (USA) Leasing & Fin. Corp. v. Galveston Cent. Appraisal Dist.*, 249 S.W.3d 68, 83 (Tex. App. – Houston [1st Dist.] 2007, pet. denied).
- ¹⁵⁶ Tex. Tax Code §41.47(a).
- ¹⁵⁷ Tex. Tax Code §41.47(b).
- ¹⁵⁸ Tex. Tax Code §41.47(b).
- ¹⁵⁹ Tex. Tax Code §41.47(d).
- ¹⁶⁰ Tex. Tax Code §41.47(e).
- ¹⁶¹ Tex. Tax Code §41A.02.
- ¹⁶² Tex. Gov't Code §2003.908.
- ¹⁶³ Tex. Occ. Code §1151.252.
- ¹⁶⁴ Tex. Tax Code §23.01(b).
- ¹⁶⁵ Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, p. U-1.
- ¹⁶⁶ Tex. Tax Code §1.04(7).
- ¹⁶⁷ Tex. Tax Code §1.04(8).
- ¹⁶⁸ Tex. Tax Code §1.04(9).
- ¹⁶⁹ Tex. Tax Code §1.04(10).
- ¹⁷⁰ Tex. Tax Code §1.04(2).
- ¹⁷¹ Tex. Tax Code §1.04(5).
- ¹⁷² Tex. Tax Code §1.04(6).

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- ¹⁷³ Tex. Tax Code §11.02.
- ¹⁷⁴ Tex. Tax Code §23.01(b).
- ¹⁷⁵ The Appraisal Foundation, *What is USPAP?* (2009).
- ¹⁷⁶ Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, page U-6.
- ¹⁷⁷ For a complete discussion of Standard 6 see Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, Appraisal Standards Board, U43-53.
- ¹⁷⁸ Robert J. Gloude-mans, *Mass Appraisal of Real Property*, p. 75.
- ¹⁷⁹ Uniform Standards of Professional Appraisal Practice, 2008-2009 edition, p. U-44.
- ¹⁸⁰ Uniform Standards of Professional Appraisal Practice, 2008-2009 edition, p. U-4.
- ¹⁸¹ Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, p. U-43.
- ¹⁸² Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, p. U-3.
- ¹⁸³ Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, p. U-4.
- ¹⁸⁴ Tex. Tax Code §23.51.
- ¹⁸⁵ Tex. Tax Code §23.73.
- ¹⁸⁶ Tex. Tax Code §23.11.
- ¹⁸⁷ Tex. Tax Code §23.12.
- ¹⁸⁸ Tex. Tax Code §§23.121-23.128.
- ¹⁸⁹ Tex. Tax Code §23.17.
- ¹⁹⁰ Tex. Tax Code §23.175.
- ¹⁹¹ Tex. Tax Code §23.18.
- ¹⁹² Tex. Tax Code §23.0101.
- ¹⁹³ *Property Appraisal and Assessment Administration*, (1990), p. 236.
- ¹⁹⁴ Tex. Tax Code §22.01.
- ¹⁹⁵ Tex. Tax Code §21.02.
- ¹⁹⁶ Tex. Tax Code §23.12.
- ¹⁹⁷ Tex. Tax Code §23.12.

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