



## WHAT EVERY LAWYER SHOULD KNOW ABOUT PROPERTY TAXES

*An insiders' guide to the confusing world of property taxation  
from BRUSNIAK TURNER.*

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## NO TRAINING, NO STANDARDS, NO PROBLEM!

*A Survival Guide to Texas ARB Hearings*

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*“You have the right to a hearing. You do not have the right to logic, consistency, or literacy.”*

— Whistleblower Statement, Published Posthumously

### **UNDERQUALIFIED AND UNDERPREPARED**

Knowledge and competence have never been priorities in resolving property tax protests. Appraisal Review Boards (ARBs) were not built to provide qualified or informed decision-makers — and neither were their predecessors, the “Boards of Equalization.” From the outset, Texas placed tax fairness in the hands of the untrained, prioritizing speed and volume over expertise and deliberation.

As a result, ARB members are not required to have any prior experience or subject matter knowledge to hear challenges to appraisal district (CAD) determinations. The only requirement is that they have lived within the boundaries of the appraisal district for the past two years. Beyond a few rules to prevent conflicts of interest, there are no other qualifications — meaning almost anyone can serve.

### **LIMITED POOL, HEAVY HOURS**

In practice, two things limit participation:

(1) Most people are not aware these positions exist — let alone that they can earn \$100 to \$200 a day doing their best Judge Judy impression.

(2) Those who do know these positions exist may be put off by the long hours and commitment to a minimum of six days a week during the months of May through July.

Plus, in larger metro areas, ARBs meet several days a month throughout the year. By contrast, rural ARBs may only meet once a year.

### **MOSTLY RETIREES, RARELY EXPERTS**

As a result, appraisal review boards are often — if not entirely — made up of retirees. They come from all walks of life and are tasked with weighing in on complex valuation issues and, at times, difficult legal questions. Rarely do lawyers, accountants, or appraisers serve on these boards. And almost never do you see anyone under the age of 40.

### **CRASH COURSE IN APPRAISAL LAW**

It was not until 1997 that the Legislature imposed any training requirements. Today, new ARB members must attend a single eight-hour session covering a wide range of topics. They are expected to learn the three approaches to value, how to appraise personal property, and how to calculate capitalization rates. They are also taught their legal responsibilities as board members, including restrictions on *ex parte* communications, professional appraisal standards, the burden of proof, equal and uniform valuation requirements, taxpayer rights under the Tax Code, and the remedies they will be asked to rule on. Members receive a four-hour refresher course each year, but there are no tests to measure whether any of it has actually stuck. Once they receive their certificate of attendance, they are fully authorized to decide taxpayer protests and rule on motions to correct CAD errors.

### **TO THEIR CREDIT, THE COMPTROLLER TRIES**

To the Comptroller's credit, the training program is well-designed. The instruction is evenhanded and consistently emphasizes that appraisal review boards are meant to function as "independent" adjudicators. But despite those efforts, the system still falls well short.

### **INDEPENDENT IN NAME ONLY**

Despite the Comptroller's instructional emphasis on the independence of ARBs from CADs, the reality is quite different. The Texas Supreme Court has ruled that ARB members are employees of appraisal districts—because appraisal districts pay them, reimburse their expenses, provide hearing and office space, dictate when and where they report, assign hearing loads, set time limits for each case, and control when decisions must be issued.

Compounding the problem, the Tax Code allows CADs to staff ARBs with their own employees. As a result, ARBs depend entirely on appraisal district personnel for everything—scheduling hearings, notifying taxpayers, handling clerical work, even making

photocopies. It is no surprise that ARB members, who spend their entire day around appraisal district staff—including the very appraisers who appear before them—end up chatting with employees, lingering before and after hearings, and sharing coffee and snacks. A friend once described the dynamic as a form of “Stockholm Syndrome.” Maybe that is a bit harsh—but *just a bit*.

### **GOOD LUCK WITH THAT ARGUMENT**

So do not be surprised when an ARB member says, “That’s not how we do it in this district,” even when your presentation is legally and factually correct. If a CAD appraiser manages to sufficiently confuse a panel, your odds of prevailing drop precipitously. And if your case turns on a legal issue, you are almost guaranteed to lose. There is no meaningful oversight of ARB decisions. You are given a “customer service” survey to submit to the Comptroller—but whether anyone actually reads them, let alone acts on them, is anyone’s guess.

### **DUE PROCESS? TECHNICALLY, “YES.” PRACTICALLY, “NO.”**

What you will often find is that both CADs and their “independent” ARBs feel largely unconstrained by laws enacted by the Legislature. That raises the question: what about due process?

Texas courts have held that the right to a *de novo* appeal satisfies constitutional due process. Since appeals to district court are heard as if ARB proceedings had never occurred, any violations at the administrative level are treated as moot—no matter how severely state law was ignored, or a taxpayer’s rights were violated. Courts will not consider systemic or repeated violations of taxpayer rights, even when raised in separate lawsuits filed outside the standard protest appeal process. For taxpayers whose rights were ignored—and who lack the time, money, or legal support to pursue district court appeals—that principle offers cold comfort.

### **A BROKEN SYSTEM**

This is as good as it gets—a system that relies on minimally trained, unqualified adjudicators who are entirely dependent on the very appraisal district they are supposed to judge independently and without bias. And who, along the way, grow friendly with the staff they are meant to keep in check.

### **ARBITRATION: A PARTIAL SAFETY VALVE**

The Legislature has attempted to address some of these issues by creating a limited right to binding arbitration for specific statutory violations. These include failures to notify a taxpayer of a hearing date, refusals to reschedule after a two-hour wait, denial of the opportunity to present evidence or cross-examine witnesses, or the admission of documents that were not disclosed 14 days in advance—though only if a taxpayer previously requested them. Relief is also available when an ARB violates its own adopted hearing procedures.

If a taxpayer prevails in arbitration, the remedy is a new ARB hearing. Other violations of taxpayer rights remain unaddressed. For now, the Legislature has not extended remedies beyond this narrow list.

## **YOU CAN'T BYPASS THE ARB**

Skipping the ARB process and heading straight to court is not an option. The Texas Supreme Court didn't just shut that door—they deadbolted it. To preserve the right to appeal, a taxpayer must appear in person, by teleconference, or by affidavit.

## **THE WORKAROUND: “TOP LINE” AGREEMENTS**

An ever-increasing number of protests—combined with mandatory exhaustion of administrative remedies—has led to significant ARB congestion. To relieve the backlog, the Legislature created a limited safety valve: “Top Line” agreements. These statutory tools allow a taxpayer to agree to a maximum value, bypass the ARB hearing, and still preserve their right to appeal. Many property tax professionals use them to avoid the ARB process entirely.

However, “Top Lines” only work if an appraisal district is willing to offer them. If not, a taxpayer must still appear before the ARB to preserve appeal rights. Even when offered, these agreements often come with strings attached. Every “Top Line” includes one or more waivers—and those waivers matter. It's not uncommon for a taxpayer to unknowingly surrender important rights by signing without fully understanding the terms.

## **ADVICE FOR NAVIGATING THE PROCESS**

Always check the box on the protest form requesting an informal hearing—that is “tax-speak” for a settlement conference. It is often the best opportunity to resolve and avoid a formal ARB hearing. But if no settlement is reached, taxpayers must attend their ARB hearing to have any chance at a reduction or to preserve their right to appeal. There is no downside to showing up; ARBs are not permitted to increase values above those set by the appraisal district.

The deck may be stacked against taxpayers, but it is still worth testing the system. Be polite. Present the case clearly. Taxpayers do still win—just not nearly as often as they would if the system actually worked the way it is supposed to.

## **FINAL THOUGHTS**

So, there you have it—Texas's taxpayer justice system, brought to you by a rotating cast of the semi-retired, undertrained, and occasionally confused. Is it fast? Yes. Is it fair? Define “fair.” Is there a way around it? Not really.

But still, if you go to the formal ARB hearing, bring solid evidence, keep your expectations low and your tone polite—you *might* walk away with a win. And if not, don't worry. There's always arbitration, court ... or just screaming into the void.

Good luck out there—and remember: The process isn't broken. It's functioning exactly as designed—*which is arguably worse*.

This piece builds on my earlier article, “[Appraisal Review Boards: The Weakest Link!](#)”—available on my firm's website for anyone wondering whether things have gotten

better.



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