



ARKANSAS COUNTY BOARDS OF EQUALIZATION

MODEL UNIFORM HEARING PROCEDURES

Compiled by the

ARKANSAS ASSESSMENT COORDINATION DEPARTMENT

STATE OF ARKANSAS

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Addendum A – BOE Member Affidavit

I. Introduction

Pursuant to Act 659 of 2017, the Arkansas Assessment Coordination Department (AACD) has established the following County Board of Equalization Model Uniform Hearing Procedures. Act 659 requires County Boards of Equalization (BOE) to adopt these Procedures at the first meeting each year and follow the Procedures throughout the BOE regular and special sessions.

Questions concerning the Model Uniform Hearing Procedures should be directed to:

Arkansas Assessment Coordination Department
900 West Capitol Ave. Ste. 320
Little Rock, AR 72201
501-324-9240
www.arkansasassessment.com

II. Equalization Board Role and Responsibilities

A. Due Process Proceedings

County BOEs serve a vital and integral role in the property tax system in Arkansas. BOEs have two responsibilities: (1) to review and equalize overall county assessments as assessed by the County Assessor; and (2) to hear assessment appeals by property owners. These County Board of Equalization Model Uniform Hearing Procedures focus on the second responsibility.

Under the requirements of the Federal and Arkansas Constitutions, property owners have the right to due process procedural safeguards before an assessment is considered final. The initial step in these safeguards is an informal appeal to the County Assessor's office. The next step in the process is an appeal to the County BOE.

B. Fairness and Impartiality

Appeal hearings are the BOE's most important opportunity for promoting good public relations and building public confidence in the property tax system. Property owners will likely form long-lasting opinions of the entire system based on their experiences at the hearings. Fair and impartial hearings are essential to this process, and the BOE should strive to conduct the hearings in such a manner.

The BOE should make appeal hearings as welcoming as possible to all parties. The BOE should conduct its business professionally and consider how the public perceives it. BOE members are urged to act in a courteous and respectful manner at all times. Members should listen attentively to all parties during the hearings, openly and publicly discuss their deliberations and reach their decisions impartially.

Members should not become argumentative or become advocates during the hearings through their words or actions. Members should avoid showing favoritism to either the property owners or the County Assessor.

C. Rights of the Parties

The County Assessor and a property owner or agent have the right to offer evidence and testimony at BOE hearings. Both parties also have the right to examine and cross-examine witnesses.

A property owner has the right to personally appear before the BOE at a hearing. A property owner also has the right to be represented by an agent at a BOE hearing, whether or not the property owner chooses to attend the hearing. A property owner or an agent also has the right to appeal by submitting documentation as to the valuation adjustment desired without making a personal appearance before the BOE.

III. Before Appeal Hearings Begin

A. Notice of Value Change Required

Property owners must be given notice of value changes made by County Assessors. The value changes could result from the completion of a countywide reappraisal or from the original valuations of newly discovered property or newly constructed real property improvements. The notice of value change must be sent to property owners no later than ten (10) business days after July 1 of the assessment year. The notices are to include a statement that property owners have the right to appeal the new valuation to the County BOE and the deadline for petitioning the BOE for an appeal hearing. A.C.A. § 26-23-203; A.C.A. § 26-26-1307.

Any property owner or his/her agent may apply to the Secretary of the BOE for a hearing to seek an adjustment of the County Assessor's valuation of property. The application must be made by the third Monday in August every year. The application for a hearing

before the BOE may be made in person, by letter or by petition, and many Board Secretaries accept applications by telephone or email.

Some counties confirm hearing appointments by mail and also provide documents such as property record cards and maps to property owners. Some counties schedule and confirm hearing appointments by telephone or email. Whichever communication method is used, it is important that the BOE Secretary maintain records of all hearing applications and communications with property owners concerning hearing schedules and appointments. Property owners should be given adequate notice of their BOE hearing dates, times and locations.

B. Scheduling, Rescheduling and Cancelling Hearings

The Secretary of the BOE (or his/her designee) schedules hearings after receipt of a hearing application from a property owner or agent. Every effort should be made to schedule the hearing at the convenience of the property owner. The BOE must schedule and conduct hearings after normal business hours at least one (1) day per week if necessary to accommodate working property owners. Some BOEs schedule hearings on Saturdays.

The BOE should to the extent possible not limit any party's rights to present evidence and offer arguments in the hearings. All parties are entitled to a reasonable amount of time to present relevant evidence and argument. However, the BOE may set time limits for presentations during the hearings. Any time limits should be reasonable and flexible, depending on the circumstances of each hearing. To the extent possible, the Secretary and/or the BOE should inform the parties in advance of the hearing of any applicable time limitations. Schedule permitting, the BOE should provide as much time as necessary for each party to fully present their evidence.

If a property owner or agent has applied for hearings on multiple properties and requests that all appeals be heard on the same day, the Secretary should make every effort to accommodate the request. While it may not be practicable or possible to schedule all hearings on the same day, the Secretary should try to schedule as many as time permits on the same day.

It may be necessary to reschedule a hearing for a variety of reasons. If a property owner or agent requests to reschedule a hearing, the Secretary should do so if possible. The new hearing date should be set at the convenience of the property owner or agent depending on the BOE hearing docket and availability. If the BOE finds it necessary to

reschedule a hearing, the Secretary should notify the property owner or agent as soon as possible and reschedule the hearing at the convenience of the property owner or agent.

The property owner or agent may also cancel a hearing without rescheduling the hearing. The BOE should not cancel a hearing requested by and scheduled on behalf of a property owner or agent. If the BOE adjourns a regular or special session without taking action on a property owner's petition for adjustment when the assessment is raised on the subject property, the BOE must reduce the assessment to the assessed level of the previous year.

C. Adopting and Publishing Model Uniform Hearing Procedures

At its first meeting every year, the BOE must adopt and follow the Model Uniform Hearing Procedures. The BOE may adopt the Procedures by motion followed by a majority vote of the BOE.

After the BOE has adopted the Procedures, the Secretary of the Board must:

- a) Conspicuously post the Model Uniform Hearing Procedures in a prominent place in the room(s) in which the BOE hearings are held; and
- b) Upon request, provide a property owner in the county with a copy of the Model Uniform Hearing Procedures that have been adopted by the BOE for that year's hearings.

D. Equalization Board Member Affidavit

At the first meeting of the BOE every year, each member of the BOE must sign an affidavit stating that the member will not knowingly violate any law or procedure regarding the conducting of BOE hearings. If a member of the BOE violates a law or procedure regarding conducting BOE hearings before or during a hearing, the member must recuse from further participation in that hearing.

A model affidavit is provided in Addendum A.

IV. Conducting Appeal Hearings

A. Opening the Hearing

Prior to commencing the hearing, the Secretary of the BOE should confirm that all necessary parties are present and identify any witnesses who will testify. If a necessary party is absent, the Secretary should attempt to contact that party after the hearing to determine whether to reschedule another hearing date.

The chairperson of the BOE should call the hearing to order and:

- a) welcome all attendees and remind the parties of the hearing procedures, time limits for the hearing and other relevant matters;
- b) state that BOE members who are participating in the hearing have not communicated with anyone about the properties under appeal and have signed affidavits to that effect;
- c) announce the order of presentation for the appeal petitions to be heard; and
- d) if the BOE decides to hear testimony under oath, inform witnesses that testimony must be given under oath and swear-in all witnesses who plan to testify.

B. Order of Presentation of Evidence

Act 659 requires that BOE appeal hearings be conducted in the following order:

- a) The County Assessor or representative presents any evidence that the Assessor's office or a contracted appraisal company considered when determining the valuation of the property being appealed. The Assessor or representative may examine any witnesses as part of the presentation of evidence;
- b) Next, the appealing property owner or agent may cross-examine the Assessor, any representative of a contracted appraisal company present at the hearing and/or any other witnesses;

- (c) Next, the appealing property owner or agent presents any evidence that supports a valuation of the property that is different from the valuation set by the County Assessor. The appealing property owner or agent may examine any witnesses as part of the presentation of evidence;
- (d) Next, the County Assessor or representative may cross-examine the appealing property owner, agent and/or any other witnesses;
- (e) Next, the County Assessor may rebut the evidence presented at the hearing by the appealing property owner or agent. If the appealing property owner or agent presents material evidence that was not provided to the Assessor at least five (5) business days before the hearing, the BOE may continue the hearing to a future date in order for the Assessor to review and prepare a response, including without limitation additional evidence;
- (f) The BOE is prohibited from considering any information or evidence not presented at the hearing in reaching its determination. The BOE's determination must be based on the preponderance of the evidence presented at the hearing.

C. Equalization Board Decision and Notice

After the evidence has been presented by both parties, the BOE shall consider all evidence presented at the hearing and deliberate orally. No text messages, notes or other forms of communication should be exchanged among or between members of the BOE or any other persons.

The BOE then makes a determination based on evidence presented by the parties to either accept the valuation of the property set by the County Assessor or raise or lower the valuation of the property. The BOE's determination must be based on the preponderance of the evidence.

Notice of the BOE's decision must be provided in writing to the appealing property owner and/or agent within ten (10) business days after the hearing. The BOE's notice must include:

- a) the BOE's decision;
- b) the right of the property owner to appeal the BOE's decision to the County Court;

- c) the deadline for petitioning the County Court for a hearing; and
- d) a statement that a petition filed in County Court for a hearing on behalf of a corporation, limited liability company or other business entity must be signed and filed by an attorney licensed to practice law in Arkansas.

D. Preponderance of the Evidence

The burden of proof for parties appearing before the BOE in appeal hearings is the preponderance of the evidence.

Preponderance of the evidence means: “*the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.*” *BLACK’S LAW DICTIONARY 1201 (7th ed. 1999).*

Preponderance of the evidence is also described as the greater weight of credible evidence presented in the case. For a fact to be proved by a preponderance of the evidence, the BOE must find that the fact is more likely true than not true.

An appealing property owner or agent is not required to show that the assessed valuation of the property under appeal is clearly erroneous, manifestly excessive or confiscatory in order to prevail at the appeal hearing.

E. Consideration of Evidence

At the conclusion of a hearing, members of the BOE weigh the evidence as part of their determination process. Evidence is all the information presented by parties in support of their side of the case. Evidence can be in the form of witness testimony, documents and other writings, electronic presentations or physical objects.

The BOE should consider all evidence presented at the hearing and take into account the relevance, reliability and credibility of each evidentiary item when assigning weight to that

item. For example, expert witness testimony is usually provided by persons with professional designations or credentials, and the BOE should take into account the designations, credentials and experience of the witness when assigning value to that testimony. Documents may be more or less relevant and reliable depending on the date the document was created or the purpose of the document.

In sum, BOE members evaluate the strength, value and believability of the evidence presented by one party as compared to the evidence presented by the other party. The BOE then determines which party has carried the burden of proving their case by a preponderance of the evidence. The BOE should not consider any information not presented as evidence at the hearing.

V. *Ex Parte* Communications and Conflicts of Interest

A. *Ex Parte* Communications Prohibited

Ex parte communications between members of the BOE or between a BOE member and any other persons concerning property on appeal are prohibited.

Members may not communicate with other BOE members about a property under appeal, including evidence, facts or any merits of the appeal, except during BOE hearings. Such communications also violate the Arkansas Freedom of Information Act. A.C.A. § 25-19-106.

BOE members also may not communicate with any other person about a property under appeal, including evidence, facts or any merits of the appeal, except during BOE hearings. Other persons include but are not limited to property owners or agents, County Assessors and employees of the Assessor's office, contracted appraisal company employees and the BOE member's friends and family.

Prohibited communications include in-person conversations, telephone calls, email or text messages, letters or other correspondence and any other medium used for conveying information such as Facebook and other social media.

BOE members may communicate about property on appeal for purposes of comparison or equalization or both during other BOE hearings. BOE members may also

communicate with attorneys for the BOE and with the Secretary of the BOE for scheduling purposes.

B. Conflicts of Interest

BOE members must maintain independence and an unbiased approach to each property valuation being appealed. BOE members must avoid any appearance of a conflict of interest. The public must perceive the BOE as an impartial body that favors no person, business or property over another person, business or property.

Simply put, ***conflict of interest*** means “*a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.*” *BLACK’S LAW DICTIONARY 295 (7th ed. 1999).*

Conflicts of interest may arise under many circumstances, but three of the most common are:

- a) a BOE member has an ownership, equitable or financial interest in a property under appeal; or
- b) a BOE member has a business or close personal relationship with an owner or agent for an owner who has a property under appeal; or
- c) a family member of a member of the BOE is a property owner or agent who has a property under appeal, or the family member is appearing before the BOE as a witness or in another capacity. Family member generally includes: parents, children, spouse, spouse’s parents or children, step-parents, step-children, grandparents, grandchildren, brothers, sisters, spouse’s brothers and sisters, spouse’s grandparents, spouse’s grandchildren, aunts, uncles, nieces and nephews.

C. Equalization Board Member Recusal

A BOE member must recuse from an appeal hearing and avoid further participation in that hearing if the member violates a law or procedure regarding the conducting of a BOE hearing before or during the hearing. The County Judge shall appoint an interim member of the BOE to serve for the duration of that hearing.

Addendum A

IN THE EQUALIZATION BOARD OF _____ COUNTY, ARKANSAS

AFFIDAVIT OF COMPLIANCE

I, _____, being first duly sworn, state that:

1. I am currently lawfully serving as an appointed member of the Equalization Board of _____ County, Arkansas, and I hereby swear to carry out the duties of my position in accordance with any and all state laws and procedures.

2. I have been provided with a copy of the Arkansas County Boards of Equalization Model Uniform Hearing Procedures established by the Arkansas Assessment Coordination Department, have reviewed and understand the procedures therein, and hereby swear to comply with all laws and procedures set forth therein. Such laws and procedures include, but are not limited to: the roles and responsibilities of equalization boards and individual members, the rights of parties before and during a hearing, the duty to remain fair and impartial, the requirement of pre-hearing notice and procedures, the duty to adopt and publish model uniform procedures, the order and procedure of hearings, the standard and burden of proof required in a hearing, the decision-making and notice of decision process of the equalization board, the prohibition against ex parte communications, the duty to avoid and disclose any conflicts of interest, and the duty to recuse under certain circumstances.

3. Further, I hereby swear to not knowingly violate any law or procedure set forth in the Model Uniform Hearing Procedures or otherwise.

4. I understand that should I knowingly violate a law or procedure regarding the conducting of county equalization board hearings before or during a hearing, I shall recuse from further participation in that hearing.

I understand that any false statement in this affidavit will subject me to penalties as set forth by law, including but not limited to, being removed from the equalization board.

Name, Member

STATE OF ARKANSAS

COUNTY OF _____

Member, _____, being first duly sworn under oath, presents that he/she has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2____.

Notary Public

My commission expires: _____