

## Boats and Barges

(See Roland)



1

# ARB Procedural Violations

\*\*\*\*\*

De Novo?  
De Not!



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- ▶ **Procedure:** a series of steps followed in a regular definite order
- ▶ **Procedural:** of or relating to the procedure used by courts or other bodies administering substantive law
- ▶ Source: Merriam-Webster online

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▶ NOW-- REMEDIES FOR  
DISAGREEMENTS ON ADMINISTRATIVE  
PROCEDURES

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## Changes to Sec. 5.103 (model ARB rules)

- ▶ ARB must incorporate comptroller's model hearing procedures in its rules.
- ▶ May adopt procedures that supplement, but may not contradict or circumvent comptroller rules.
- ▶ Comptroller reviews ARB procedures for compliance annually.

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## Changes to Sec. 5.104 (annual report on ARB survey)

- ▶ Include results of review of ARB procedures.
- ▶ Include results of requests for arbitration under 41A.015.

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## Two remedies created

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### The TLO Complaint Sec. 41.66 (q)

- ▶ A person who owns property in an appraisal district or the chief appraiser of an appraisal district may file a complaint with the taxpayer liaison officer for the appraisal district alleging that the appraisal review board established for the appraisal district has adopted or is implementing hearing procedures that are not in compliance with the model hearing procedures prepared by the comptroller under Section 5.103 or is not complying with procedural requirements under this chapter.

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## Procedure for TLO complaint

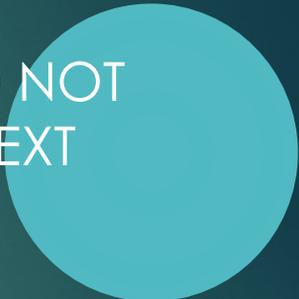
- ▶ Owner or chief appraiser files complaint with TLO
- ▶ TLO investigates and reports finding to CAD BOD
- ▶ BOD directs ARB chair to take remedial action if BOD determines allegations are true after reading TLO report.
- ▶ BOD may remove chairman from position as chairman if it determines the chairman had failed to take actions necessary to bring ARB into compliance with Sec. 5.103 and/or Chapter 41.

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### ▶ IN SUMMARY:

- ▶ Complaints can be filed with TLO.
- ▶ CAD Board of Directors can remove Chair of ARB.

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▶ REMIND AUDIENCE NOW TO NOT  
THROW THINGS DURING NEXT  
DISCUSSION

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LIMITED BINDING  
ARBITRATION

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“Honey look, these boots were only \$785.00!”



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“But, I got them on sale for a mere \$550.00. 😊”

Thanks to the hard work of the TAAD Legislative Committee, the final version of the next part of HB 988 is like the “\$550” pair of boots-- it is still bad, but a heck of a lot better than the way it started out.

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## 2008

*Appraisal Review Board of Harris Co. Appr. Dist.*

v

*Spencer Square*

- ▶ Owner argued “district courts may order an appraisal review board to conduct a new hearing whenever the appraisal review board fails to comply with procedural guidelines contained in the Tax Code.”
- ▶ Court said “no” because Owners can “...appeal the Board's order to the district court for trial de novo to remedy any errors committed by the Board. ”

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## 2021

### HB988- SUITS ON ADMIN PROCEDURAL MISTAKES

Sec. 41.81. LIMITED SUIT. (a) **A property owner** who has filed a notice of protest under this chapter **may bring suit** against an appraisal district, chief appraiser, or appraisal review board **to compel** the appraisal district, chief appraiser, or appraisal review board to **comply with a procedural requirement** imposed under this chapter or under a rule established by the appraisal review board or the comptroller under this chapter that is applicable to the protest.

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## BOILED DOWN IT MEANT:

- ▶ A property owner...may bring suit... to compel...compliance with a procedural requirement.

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- ▶ This version did not pass.

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## Limited Binding Arbitration (final version)

- ▶ (a) A property owner who has filed a notice of protest under Chapter 41 may file a request for limited binding arbitration under this section to compel the appraisal review board or chief appraiser, as appropriate, to:
  - ▶ Rescind procedural rules noncompliant with Sec. 5.103
  - ▶ Schedule a hearing required by Sec. 41.45
  - ▶ Deliver information to property owner pursuant to Sec. 41.461
  - ▶ Allow owner to offer evidence, examine/cross examine, present argument as required by Sec. 41.66(f)
  - ▶ Set hearing for time/date certain; postpone after 2 hours wait as required by Sec. 41.66(j)

(continued)

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## Binding arbitration, cont.

- ▶ Schedule multiple properties on request as required by Sec. 41.66 (j)
- ▶ Refrain from using or offering information not delivered 14 days before hearing under Secs. 41.461 and 41.67(d).

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## Procedure for binding arbitration

- ▶ **Within 5 business days** after event/date- Owner must notify ARB chair, chief appraiser, and TLO in writing (CMRRR) of the procedural requirement that the owner alleges isn't being followed.
- ▶ **Within 10 calendar days** of receiving the notice- Chairman or chief appraiser may stop process by delivering written statement confirming future compliance or cure for failure to comply.
  - ▶ Failure to comply not grounds for postponement of hearing.
  - ▶ ARB may cure by rescinding order and scheduling new hearing.

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## Procedure for binding arbitration, continued

- ▶ **Between 11 and 30 calendar days** after delivering notice of the original complaint, the Owner files a request for arbitration with the comptroller. Owner must use comptroller form and include arbitration deposit.
  - ▶ \$550 fee (\$450 for homesteads = \$500,000 or less).
  - ▶ Comptroller form must require specified information about property, complaint, and steps to remedy.
  - ▶ Comptroller appoints attorney as arbitrator.
  - ▶ ARB, chief appraiser, and property owner are parties. ARB may appear by chairman, counsel, or designated person; chief appraiser may appear in person, by counsel, or by designated person.

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## Arbitrator award

- ▶ Arbitrator's award is copied to the owner, ARB chair, chief appraiser, and comptroller.
- ▶ Includes a determination of whether failure to comply with a requirement alleged in the request occurred.
- ▶ Loser pays the arbitrator (same process as other binding arbitration).
- ▶ If applicable, order directs CA or ARB to comply with requirement; if hearing has been held, order directs ARB to rescind the order and hold a new hearing. Action must be taken ASA Practicable.
- ▶ **Order is final and not appealable.**

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## Multiple properties, hearings, requirements

- ▶ A property owner may request single arbitration for more than one property, more than one protest hearing, or allegations of more than one failure. Fee charged as if one property involved; CAD pays if any violation is found.

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# Coming Attractions

- ▶ What about CADs in counties with fewer than 120K folks? There is no provision in the Code for these districts to hire a TLO.
- ▶ Several of the new procedurally focused amendments require TLO participation. (helping judge with selection of ARB members, taking complaints about procedural shortfalls, tracking procedural complaints in binding arbitration)
- ▶ Should you hire one? Are you authorized to?
- ▶ If you are in a county with fewer than 120K, will your new TLO have all of the responsibilities/authority of a TLO from a county with a population of more than 120K?
- ▶ New procedural complaints and the arbitration remedies go into effect immediately. This may be problematic since the new law requires compliance with §41.01(c). The new rules must incorporate the comptroller's model rules. Before these rules can be adopted, you must hold a public hearing- not later than May 15.