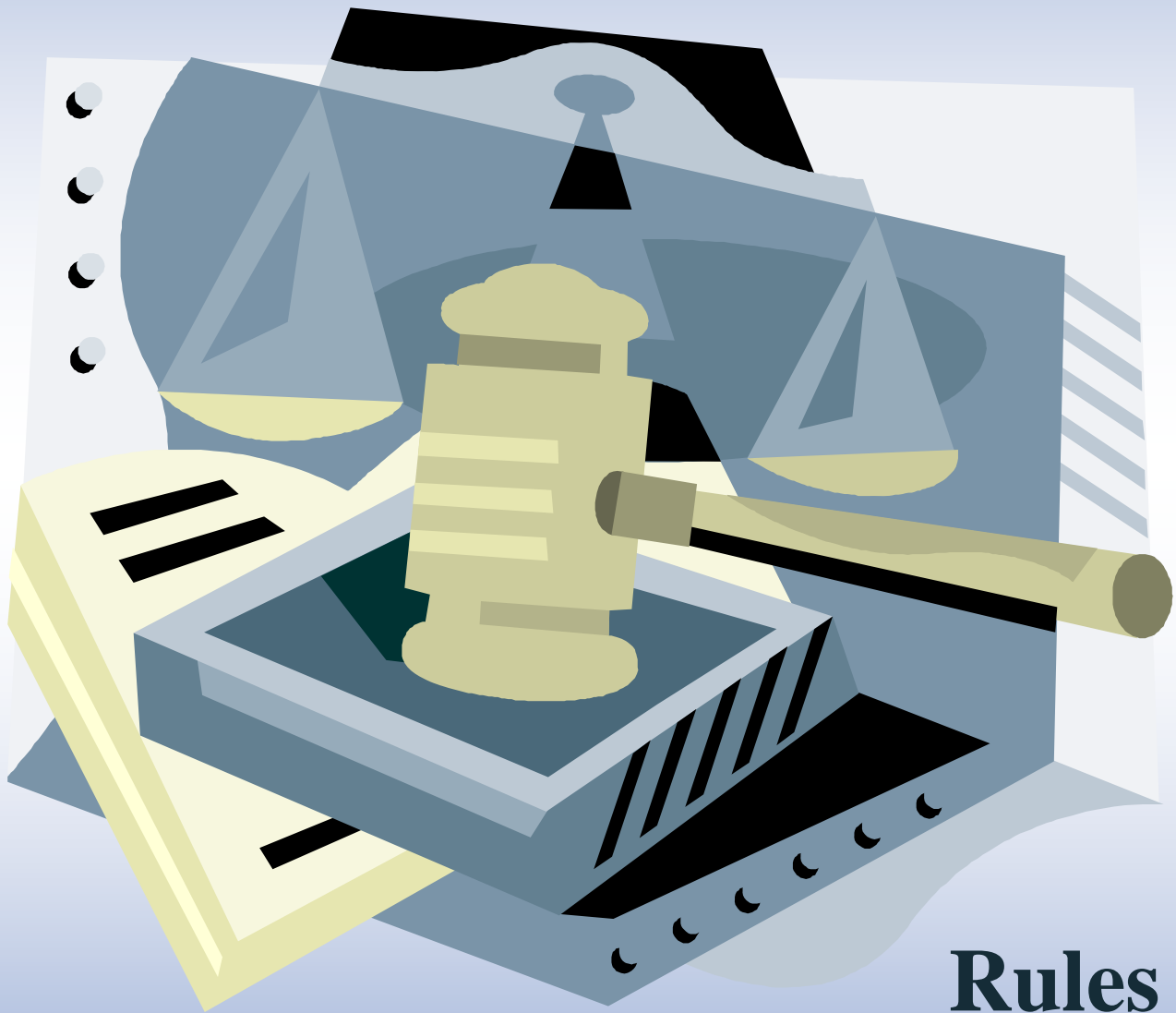


*Assessment Appeals Board  
And  
Hearing Officer*



**Rules  
Of  
Procedure**

*Adopted by the Orange County  
Board of Supervisors June 23, 2015*

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**In accordance with Article XIII, Section 16 of the California Constitution, these Rules are adopted by the Orange County Board of Supervisors to govern Assessment Appeals Boards and Assessment Hearing Officers of the County of Orange, State of California, and any Assessment Appeals Board panel appointed pursuant to Revenue and Taxation Code Section 1620 *et seq.***

*Visit our web site at  
<http://www.ocgov.com/cob>*

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## **FUNCTION AND JURISDICTION OF BOARD AND HEARING OFFICERS**

To accomplish equalization, Assessment Appeals Boards and Hearing Officers conduct hearings on property assessment disputes between taxpayers and the Office of the Assessor. Boards and Hearing Officers adjust property assessments, and direct the assessor to make changes, additions and cancellations to the local roll as necessary.

Hearing Officers' and Boards' basic functions are:

- To increase after giving notice, or to lower after receiving an application, individual assessments in order to equalize assessments and to determine the allocation of value on the local tax assessment roll; and
- To review and adjust penalty and escaped assessments on the local tax assessment roll except escaped assessments made pursuant to Revenue and Taxation Code Section 531.
- To determine the classification of property, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property being exempt from taxation.

Hearing Officers and Assessment Appeals Boards have no power to assess, or re-assess property, but can only hear and determine whether the assessor and staff have impartially performed their duties, and equalize the valuations made by them. Boards and Hearing Officers hear and decide issues relating to property valuation, and some legal issues relating to property assessment. Boards and Hearing Officers act in a quasi-judicial capacity and may only act on the basis of evidence presented to them.

Boards and Hearing Officers cannot:

- Grant or deny exemptions or consider whether exemptions were improperly denied;
- Raise or lower the entire assessment roll;
- Extend the time for filing applications for equalization;
- Remove or waive penalties for delinquent payment of taxes;
- Reduce an assessment because the property was destroyed, damaged or depreciated after the lien date of the year in question;
- Change tax rates;
- Consider a taxpayer's ability to pay in making its determination.

## **RULE NUMBER 1 – STATE LAW**

Each and every provision of the California Constitution, the California Revenue and Taxation Code and Property Tax Rules of the California State Board of Equalization are adopted and incorporated into these Rules. Statements in these Rules describe procedures and requirements of the Orange County Assessment Appeals Board and Assessment Hearing Officers and may not reflect all legal requirements that govern assessment appeals. If there is any conflict between these Rules and any California constitutional or statutory provision the constitutional or statutory provision will supersede and invalidate any conflicting Rule provision.

## **RULE NUMBER 2 - DEFINITIONS**

For the purpose of these Rules, the following words shall have the meanings set forth below:

**“Appeal” or “Application”** means a completed “Assessment Appeal Application” form filed with the Clerk of the Assessment Appeals Board.

**“A.P.N.” or “Parcel Number”** means the Assessor’s Parcel Number assigned to identify every parcel of real property in the County. The A.P.N. will appear on all correspondence received from the assessor relating to that particular property parcel.

**“Applicant”** means a taxpayer who has filed an “Assessment Appeal Application” form.

**“Application/Property Previously Adjudicated”** means that all or a portion of an assessment was heard and considered previously by another Assessment Appeals Board or Hearing Officer. See Rule 5 – Application, Section I for Assessment Appeals Board’s assumptions and requirements.

**“Assessee”** is the person to whom property tax is assessed.

**“Assessed Value,”** means the property value established by the county assessor using various appraisal techniques and/or methods.

**“Assessment Number”** is the number assigned by the assessor to identify unsecured property such as boats, aircraft, business property, leased property, etc.

**“Assessor”** is the assessor of the County of Orange.

**“Authorized Agent”** is one who is directly authorized in writing by the applicant to represent the applicant in an assessment appeals proceeding using an Orange County prescribed Agent’s Authorization Form COB305A. *NO other type of attached authorization will be accepted.*

**“Bill Number”** is the same as assessment number.

**“Board”** is one of the Assessment Appeals Boards of the County, including any special alternate Assessment Appeals Board appointed according to California law.

**“Board Member”** is a member of the Assessment Appeals Board appointed by the Board of Supervisors.

**“Brief or Briefs”** is a written document submitted to an Assessment Appeals Board presenting a legal argument.

**“Continuation”** is the continuance of a hearing to another date after formal evidence and/or testimony has been received from one or more of the parties. The same Assessment Appeals Board Panel must hear the continued matter.

**"County"** is the County of Orange.

**"Code"** is the California Revenue and Taxation Code.

**"Chair"** is the Chair of the Assessment Appeals Board.

**"Clerk"** is the Clerk of the Assessment Appeals Board.

**"County Legal Advisor"** is an attorney from the Office of the County Counsel for the County of Orange.

**“Equalization”** is the determination by the Assessment Appeals Board of the correct full value for the property.

**"Escape Assessment"** is an assessment on property which belonged on the local roll, but was not included in a proper assessment.

**“Full Cash Value”** or **“Fair Market Value”** is the value provided in sections 110 and 110.1 of the Revenue and Taxation Code

**"Full Value"** is the value provided in Section 110.5 of the Revenue and Taxation Code.

**"Hearing Officer"** is an individual appointed by the County Board of Supervisors pursuant to Section 1636 of the Revenue and Taxation Code to conduct hearings on assessment appeals.

**"Lien Date"** is the date that all taxable property is assessed annually for property tax purposes as of 12:01 a.m. on January 1. It is referred to as the lien date because on this date the taxes become a lien against all real property assessed on the secured roll.

**“Local Roll”** is the list of all property within the County that is assessed by the assessor.

**“Mail(ed)”** is a term which can be defined as delivered by U.S. postal service; special courier service; facsimile; or other means. Pursuant to California Evidence Code Section 641, a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.

**"Party"** is the applicant; applicant’s properly authorized agent and the assessor.

**"Person Affected”** or **“Party Affected”** is any person or entity having a direct economic interest in the payment of property taxes for the valuation date that is the subject of the proceedings, including the property owner, a lessee required by the property lease to pay the property taxes, and a property owner who acquires an ownership interest after the lien date but is responsible for payment of property taxes for the lien date that is the subject of the application.

**“Postponement”** or **“Rescheduled”** is the resetting of a hearing date by either or both of the parties prior to the submission of formal evidence or testimony relating to the issues of the assessment appeals application.

“**Restricted Value**” is a value standard other than full cash value prescribed by the Constitution or by statute authorized by the Constitution.

“**Rules**” are the Orange County Assessment Appeals Board and Hearing Officer Rules of Procedure.

“**Supplemental Assessment**” is an assessment to establish changes in value due to changes in ownership or new construction, which occurred after the local roll was compiled.

“**Waiver-1604(c)**” is a document that waives the requirement that an appeal be heard within the statutory 2-year period. This executed document may be required when requesting an alternate hearing date, appeal was incomplete, requesting to reopen an appeal when denied for lack of appearance, or any other applicant request/action that would impede the County’s ability to hear and decide an appeal within the 2-year period.

“**Waiver-45 day Hearing Notice**” is used when an applicant may want to have multiple appeals heard at the same time and there is insufficient time to provide the Hearing Notice with the statutory 45 day period for one or more of the appeals. It should be noted that both parties (applicant and assessor) must agree to and execute a Waiver – 45 day Hearing Notice.

### **RULE NUMBER 3 – AUTHORIZATION AND DIRECTION TO CLERK**

The clerk is authorized and directed to take all actions and to do all things necessary to comply with and carry into effect each and every provision of these Rules as well as all other provisions of law which relate to assessment appeals. The clerk is also directed to make all required or beneficial forms, brochures, pamphlets and other information available to the public on the Clerk of the Board website and at their physical location for the convenience of Orange County taxpayers. The clerk is further directed to review all assessment appeals-related information annually and to make such modifications as may be necessary to ensure all information is current and accurate and approved by the State Board of Equalization when required.

### **RULE NUMBER 4 – LIMITED JURISDICTION OF HEARING OFFICER**

- A. Statutes governing the authority of Hearing Officers are found in California Revenue and Taxation Code Sections 1636 *et seq.*
- B. While Assessment Appeals Boards can conduct hearings on Applications of all types and amounts, Hearing Officers may conduct hearings only on Applications where:
  - The applicant is the assessee and has filed a timely application under Section 1603 of the Revenue and Taxation Code;
  - The applicant has requested that the hearing be conducted by a Hearing Officer;

- The property which is the subject of the Application is a single family dwelling, condominium or cooperative, or a multiple family dwelling of four units or less regardless of value.
- C. These Rules of Procedure apply to Hearing Officers, except where specifically noted otherwise.
- D. The decision of the Hearing Officer is final and may not be appealed to the full Board. The Board has no authority to amend, deny, return, or reconsider the decision of the Hearing Officer. Findings of Facts are NOT available at hearings before a Hearing Officer.

### **RULE NUMBER 5 - APPLICATION**

No change in assessment can be made unless an "APPEAL APPLICATION" form is filed with the clerk, according to the procedures described in this Rule. An "Appeal Application" is also known as an "assessment appeal."

- A. **WHO MAY FILE.** An Application may be filed by a property owner or by the owner's spouse, parent, child, registered domestic partner, or authorized agent, corporate officer or designated employee, or by any person having a direct economic interest in the payment of the property taxes. If the Application is made by an authorized agent other than an attorney licensed to practice in this State, or by a relative mentioned in Rule No. 23, paragraph A, the "Authorization" portion of the Application form must be fully completed and signed by the person affected. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted. If the applicant is a corporation, the "Authorization" must be signed by an officer or individual authorized by the corporation. Said corporate authorization may be requested by the clerk to ensure appropriate execution of appeal. If the application is made by an attorney licensed in the State of California who has been retained and authorized by the applicant to file the application, contact information must be provided that includes the attorney's name, address and telephone number. Attached Agent Authorization forms are permitted with the initial application by completing and attaching an Orange County prescribed Agent's Authorization Form COB305A. *NO other type of attached authorization will be accepted, unless it conforms to State Board of Equalization Rule 305(a).*
- B. **SIGNATURE AND VERIFICATION.** The Application must be submitted on the Application form currently prescribed for Orange County and is available on the Clerk of the Board's website or in the offices of the clerk. The Application must be signed by the applicant or his authorized agent with declaration under penalty of perjury that the statements made in the Application are true.



C. **WHERE FILED.** The Application must be filed with the Clerk of the Assessment Appeals Board. **Appeal Application forms may not be filed by facsimile transmission.**

D. **FORMS AND CONTENTS.** The Application forms used to file assessment appeals are prescribed by the State Board of Equalization. A *separate* Orange County Application form must be filed for each property assigned an individual Assessor's Parcel Number and/or Assessment Number for each tax roll year being appealed. Any required attachments (such as assessment notices or tax bills) must be included with the Application form.

To be valid, completed Applications *must* include **all** the following applicant-provided information:

- Name and actual mailing address of the applicant; and
- Name and mailing address of the applicant's agent, if any; and
- A description of the assessed property sufficient to identify it on the local roll. The 8-digit "A.P.N." (Assessor's Parcel Number) for secured property which appears on all correspondence mailed by the assessor and/or the assessment number for unsecured property; and
- The applicant's opinion of the full value of the property on the valuation or lien date (January 1) of the year being challenged. If filing an application with multiple facts/issues of value, separate opinions of value must be provided as part of the application; and
- The taxable value on which the assessment of the property was based (shown on the notice of assessment or tax bill); and
- The facts relied upon to support the claim that the Board should order a change in the assessed value of the property or waiver of penalty; and
- The original signature of the applicant or his or her authorized agent.

Applications that do not include all the above information are invalid due to incompleteness and cannot be acted upon by the Board or Hearing Officer.

E. **INCOMPLETE STATUS.** The clerk is directed to promptly notify each applicant, and/or his/her authorized agent if applicable, of the missing information that results in an application's incomplete status and invalidity. The clerk's notice shall contain an explanation of the deficiency, a request for the missing information to correct the deficiency, and a warning that unless the missing information is provided within 30 days from the date of the notice, the

application will be denied as incomplete, the appeal will be closed and no further action will be taken.

If the missing information is provided to correct the deficiency within the 30-day period, the application will be deemed valid upon condition that the applicant or authorized agent executes a 1604(c) Waiver Agreement form waiving the two-year statutory deadline for hearing appeals under Revenue and Taxation Code Section 1604(c).

**F. TIME FOR FILING.** To be considered valid, an application must be filed with the clerk during the appropriate filing period prescribed by Revenue and Taxation Code Section 1603.

**1. Regular Filing Period.** The filing period for a regular assessment is from July 2 to November 30, inclusive. During the July 2 through November 30 filing period, applicants may file:

- Decline in value appeals
  - Base year value appeals
  - Personal property appeals
  - Appeals of exempt value allocations
  - Annual Property Statement penalties assessed under R & T Code Sections 463, 503 and 504.
- An application filed by personal delivery must be received at the clerk's office no later than 5:00 p.m. of the last day of the filing period.
  - An application filed by mail that has the postage prepaid, is properly addressed and bears a U.S. postmark date no later than the last day of the filing period shall be deemed to have been filed timely. If the postmark date is later than the last day of the filing period, the clerk may nevertheless find that the application was filed timely if satisfactory proof, such as a Post Office certificate of mailing, is presented to show that the application was mailed within the filing period. If an application is being mailed near the filing deadline, it is highly recommended that a certificate of mailing be obtained and kept for the sender's records.
  - An application filed by mail that bears both a private business postage meter postmark date and a U.S. postmark date will be deemed to have been filed as of the date that is the same as the U.S. postmark date, even if the private business postage meter date is the earlier of the two postmark dates.

- If November 30 falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within “the time period beginning July 2 and continuing through and including November 30.” If on the dates specified in this paragraph the County’s offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this paragraph.
- An application filed electronically by individuals who are registered with the clerk and who have electronically submitted a timely application using the county clerk’s online system.

2. **Assessments Made Outside the Regular Assessment Period.** Appeals of supplemental assessments, and roll corrections made outside the regular assessment period must be filed with the clerk no later than 60 days after the date on which the assessee was notified of the assessment by the assessor’s office.

(a) **Other Appeals Outside Regular Assessment Period.** Applications for other changes of assessment made outside the regular assessment period must be filed as follows:

- **Calamity or Misfortune Appeals.** An appeal application made because the property was damaged by misfortune or calamity must be filed no later than six months after the notice date on the assessor’s Notice of Reassessment Due to Calamity or Misfortune mailed to the assessee. To calculate the six month period use the notice date and count six months forward to the same day, e.g. Notice date of January 10<sup>th</sup>, filing period would end July 10<sup>th</sup>.
- **Escaped Assessment Appeals.** When the assessor discovers property that was not assessed or was under assessed as a result of a business audit or other form of discovery, the property is subject to an escape assessment. The taxpayer has 60 days from the date of the **final** Notice of Enrollment of Escaped Assessment to file an application appealing the assessment. Final Notice constitutes one of the following:
  - Notice of Enrollment of Escaped Assessment. A Notice of “Proposed” Assessment does *not* constitute final notice; or

- Notice of audit results. In the event the audit adjustments will not create a tax bill or will result in a refund to the assessee.
- **Penalty Assessment Appeals.** When a penalty is assessed by the assessor for failure to file or for the fraudulent filing of Change of Ownership Statements (COS) under Revenue and Taxation Code Section 482, the taxpayer has 60 days from the date of notification of the penalty to file an application appealing the assessment or 60 days from the Tax Bill where the penalty is shown, whichever is earlier

**G. FILED UNTIMELY STATUS.** When any application is received by mail or personal delivery on a date which is *after* that application's applicable filing deadline, the clerk is directed to promptly notify the applicant and/or his/her authorized agent of the untimely filing status that results in a clerk's inability to accept. The clerk's notice shall contain an explanation of the untimely filing, a request for evidence of timely filing if any is available, and a warning that unless evidence is presented to demonstrate the timely filing of the application within 30 days from the date of the notice, the application will be rejected by the clerk for as untimely filed and the appeal will be closed.

If evidence (such as a certificate of mailing, signed delivery receipt or the like) is provided within the 30 day period which, in the clerk's judgment, adequately demonstrates the timely filing of the application, the application will be deemed valid upon condition that the applicant or agent executes a 1604(c) Waiver Agreement form waiving the two-year statutory deadline for hearing appeals under Code Section 1604(c).

If evidence is provided within the 30 day period which, in the clerk's judgment *does not* adequately demonstrate the timely filing of the application, or the applicant refuses to execute any required declarations and/or 1604(c) Waiver Agreement, the clerk shall consider the application as untimely filed. The appeal will then be closed without any further action. The applicant may appeal the action of the clerk in writing within 30 days of the notice of rejection and have the matter calendared before the Board for a hearing on the merits of the timeliness of the appeal. Upon appeal, a final determination of timeliness will be made by the Board. The applicant will be given notice of the hearing date and time where he or she will have the opportunity to present evidence. If the Board determines that the evidence demonstrates that the application was filed within the appropriate time requirements, the Board will declare the application filed timely and the application will be scheduled for a hearing on the merits of the appeal at a future date. If the Board determines that the application was *not* filed within the appropriate time requirements, the

Board will deny the application for lack of jurisdiction to hear any application that was untimely filed and the appeal will be closed.

**H. ESCAPE – AUDIT FILINGS.** If the result of an audit discloses property subject to an escape assessment and the applicant not only wishes to contest the assessment of the personal property but the original assessment of the real property pursuant to Revenue and Taxation Code 469(b) (3), providing it has not been previously adjudicated by an Assessment Appeals Board, the following filing procedures are required:

1. If unsecured and secured properties are valued separately then separate applications must be filed for the secured and unsecured properties.
2. If unsecured and secured properties are jointly assessed on the secured roll then only one application is required.

**I. PERSONAL PROPERTY ASSESSMENTS AND PREVIOUSLY ADJUDICATED PROPERTY/APPLICATIONS.** In order to ensure that property/applications are thoroughly and completely considered during the hearing process and that previously adjudicated property can be properly identified, it shall be the determination of the Board that all appeals on assessments brought before the Board are completely and totally considered and deliberated upon, including every item, category, or class of property, or portion of thereafter, during the hearing are provided for in the determination of value. This shall include all stipulations agreed upon by both the assessor and the applicant or the applicant’s authorized agent. In the event it is the desire of the applicant or applicant’s authorized agent or assessor to exclude consideration by the Board of any item, category, or class of property or any portion of thereafter under consideration by the Board, it shall be the sole responsibility of the applicant or applicant’s authorized agent or assessor to **clearly identify** in writing and on the hearing audio record exactly what “is or is not” being considered by the Board and what “is or is not” excluded in the assessment being considered before the Board’s final determination of value. Any item, category, class of property or portion of thereafter, not specifically identified by the applicant or applicant’s authorized agent or assessor in writing and on the audio record and not specifically identified as NOT under consideration shall be considered accepted and not challenged by the applicant or applicant’s authorized agent or assessor and shall be accepted as enrolled.

**J. DUPLICATE OR PREVIOUSLY ADJUDICATED APPEALS.** Pursuant to R & T Code Section 1603.5 (a) & (b) the clerk may only accept the first appeal received and may reject all other duplicate appeals. Thus, any appeal received that has been previously adjudicated will be considered a duplicate of the adjudicated appeal. Any appeal received that corrects or amends a previously filed appeal that is received within the same filing period will be deemed the

corrected/amended appeal (see Rule 6 A). The rejection by the clerk of a duplicate appeal is not appealable to the Assessment Appeals Board or Hearing Officer.

- K. CONSOLIDATION OF APPLICATIONS.** The Board, on its own motion or on a timely request of the applicant(s) or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation. The Board may also direct the clerk to consolidate applications that meet this criteria.

### **RULE NUMBER 6 – AMENDMENTS AND CORRECTIONS**

The intent of this rule is to allow taxpayers who are unfamiliar with the property equalization process an opportunity to correct or amend an application as long as they fall within the guidelines set forth in this Rule. It is not the intent to allow the taxpayer or their agents to request additional relief or relief different in nature from that originally requested. For example, an applicant appealing an escape assessment cannot amend an application at a hearing to include an appeal of a base year value. Further, it is the Board's discretion to allow or disallow any amendments. The guidelines are as follows:

**A. BEFORE EXPIRATION OF THE FILING PERIOD:**

- An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which the application might have been timely filed.

**B. AFTER THE FILING PERIOD HAS EXPIRED:**

- An invalid application may be corrected in accordance with Rule 5(e).
- The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
- Upon request of the applicant or the applicant's authorized agent, the Board in its discretion may allow the applicant to make amendments to the application such as allowing applicant or the applicant's authorized agent to state additional or alternate facts claimed to seek a reduction in assessment of the property shown on the application.
- The applicant or the applicant's authorized agent shall state the reasons for the request, which shall be made in writing and filed with the clerk prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.

- As a condition to granting a request to amend an application, the Board shall require the applicant to sign a written 1604(c) Waiver Agreement extending the 2-year period provided in Revenue and Taxation Code Section 1604(c).
- If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued or postponed by the Board for no less than 45 days, unless the parties mutually agree to a different period of time.

**C. AT THE HEARING,**

- An applicant or an applicant's authorized agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.
- An applicant may, however, revise the opinion of value stated in his or her application because the opinion of value relates only to the quantum or amount, and not the type of relief requested. Additionally, the clerk shall allow a reasonable period of time in which to correct inaccuracies and to provide missing information.

**RULE NUMBER 7 - EXCHANGE OF INFORMATION**

- A. REQUEST BY APPLICANT OR ASSESSOR.** An exchange of information may assist both parties in understanding the bases for their differing opinions of value. When the assessed value of the property in question, before any exemption deduction (such as a homeowner's or veteran's exemption) is applied, is \$100,000 or less, the applicant may request an exchange of information with the assessor. When the assessed value of the property in question, before deduction of any applicable exemption, is more than \$100,000, either the applicant **or** the assessor may request an exchange of information.

The request must be made in writing **to the clerk** and **to the other party** at any time prior to 30 days before the hearing on the application. The party initiating the exchange must provide his or her opinion of value along with any evidence supporting their proposed value. It should be noted that the clerk does not require a copy of the valuation information but should be advised of documents exchanged. The request must contain the basis of the requesting party's opinion of value as well as the following:

- **Comparable Sales Data.** (If the opinion of value is to be supported with evidence of comparable sales. See Rule No. 21; paragraph B (1) for additional information about admissible comparable sales data.)

- Income Data. (If the opinion of value is to be supported with evidence based on an income study. See Rule No. 21; paragraph B (2) for additional information about admissible income data.)
- Cost Data. (If the opinion of value is to be supported with evidence of replacement cost. See Rule No. 21; paragraph B (3) for additional information about admissible cost data.)

**B. DATA TO THE OTHER PARTY.** If the party requesting an exchange of information has submitted the data required above within the specified time period, the other party must mail a response at least 15 days prior to the hearing. The response must set forth the basis of the other party's opinion of value, and must comply with Rule No. 21, paragraph B. The responding party is required to mail the response to the address shown on the application or to the assessor directly, whichever is appropriate, with notification to the clerk that they have responded to the exchange, along with a listing of documents exchanged in their response.

**C. PROHIBITED EVIDENCE; NEW MATERIAL CONTINUANCE.** Whenever information has been exchanged as described in this Rule, the parties may not introduce new evidence unrelated to the evidence covered in the exchange unless both parties consent to the introduction of the new evidence. However, at the hearing, each party may introduce new material that is directly related to the information previously exchanged. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time so that he or she may gather and present a response to the new material at a future hearing.

**D. TRANSMISSION OF EXCHANGED DOCUMENTS.** For purposes of determining the date upon which the exchange was deemed initiated, the operative date shall be the date of postmark as affixed by the US Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information. The initiating party and the other party shall be required to complete the exchange of information process at least 10 days prior to the hearing.



## **RULE NUMBER 8 - NOTICES**

All notices required or permitted by these Rules shall be in writing.

- A. CLERK'S NOTICE OF HEARING.** Once a complete application is timely filed, the clerk will schedule the appeal for hearing as soon as possible and will send a notice to the applicant or his authorized agent by mail directed to the address shown in the application. The notice will give the date, time and place of the hearing. The notice will be given at least 45 days before the scheduled hearing date unless a shorter notice has been stipulated to by the assessor and the applicant or his authorized agent pursuant to Section 1605.6 of the Revenue and Taxation Code. The clerk will also notify the assessor of the date, time and place of the hearing. If the hearing is rescheduled or continued for any reason, whether at the request of the applicant, assessor, Board or Hearing Officer, a 10 day notice shall be given for the rescheduled hearing unless waived by the parties or rescheduled/postponed or continued to a specific date and time at a hearing where both parties are present.

The clerk may request that the assessor and the applicant or his authorized agent provide written time estimates and statements of readiness to enable the clerk to schedule major appeals when the parties are ready for hearing, and to set aside enough time in the schedule for each case to be heard in one block of time. If the parties have not responded with time estimates and statements of readiness at least 21 days before the scheduled hearing date, the Board may reschedule or continue the hearing to a specific date and time. The clerk will make every effort to accommodate requests for specific hearing dates and times if requests are submitted by stipulation signed by all parties and accompanied by a 1604(c) Waiver Agreement form to extend the 2-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c).

- B. REPLY NOTICE** - Included with the Notice of Hearing shall be a Reply Notice to be returned to the clerk to either confirm the applicant's or his authorized agent's attendance at the hearing, request a one-time postponement, or withdraw the application scheduled for hearing. This reply notice must be returned to the clerk and submitted at least twenty-one (21) days prior to the hearing date. If the reply notice is not postmarked, faxed or e-mailed at least twenty-one (21) days prior to the hearing date, and if the applicant is present on the date of the hearing, the Board shall reschedule the hearing to a later date unless the Board is advised that both the assessor and applicant or his authorized agent have agreed to move forward with the value hearing.

C. **NOTICE OF INCREASE OF ASSESSMENT ON BOARD'S OWN MOTION.** If proposing to raise an assessment on its own motion without an application for reduction pending before it, the Board will give notice of the hearing to the assessee and assessor not less than 20 days prior to the hearing unless notice is waived by the assessee or his authorized agent in writing in advance of the hearing or orally at the time of the hearing. A shorter notice may also be stipulated to by the assessor and assessee or his authorized agent. The notice shall be mailed to the assessee at his latest address on file in the assessor's records.

D. **ASSESSOR'S NOTICE OF INTENT TO REQUEST A HIGHER VALUE.** When the assessor intends to request at the hearing that the Board or Hearing Officer find a higher assessed value than was placed on the roll and intends to offer evidence to support the higher value, the assessor must notify the applicant or his authorized agent in writing by personal delivery or by mail directed to the address given in the application, with a copy forwarded to the clerk, at least 10 days before the hearing.

To facilitate hearings of this nature, the assessor must initially establish that the appropriate notice was given to the applicant not less than 10 days before the hearing. The assessor shall also be requested by the Board or Hearing Officer to make the first presentation of evidence.

The applicant may not abandon or withdraw their appeal upon receipt of assessor's notice of intent to request a higher value without the consent of the assessor.

E. **NOTICE OF BOARD'S DECISION.** The Board or Hearing Officer may announce the decision to the applicant and the assessor at the conclusion of the hearing or may take the matter under submission. In either event, the clerk will notify the applicant and the assessor of all Board and Hearing Officer decisions. The notice to the applicant or his authorized agent will be mailed to the address given in the application within 10 days after the decision or in any event, no longer than 120 days following the conclusion of the hearing.

F. **TIMEFRAME FOR ALL NOTICES TO APPLICANT.** The clerk shall provide the applicant and assessor with an initial "Notice of Hearing" no less than 45 days prior to the scheduled hearing unless the applicant or applicant's agent and the assessor stipulate orally or in writing to a shorter notice period. All subsequent notices of hearing shall be provided with a minimum of 10 days notice pursuant to R & T Code Section 1605.6.

All notices, other than the initial "Notice of Hearing" sent to the applicant and or assessor shall provide a minimum of 10 days notice.

## **RULE NUMBER 9 – PUBLIC HEARINGS**

Board and Hearing Officer hearings are open to the public. If, however, evidence to be presented will include trade secrets (e.g., formulas, manufacturing processes, etc.) that the applicant wishes to remain confidential, the trade secrets portion of the hearing may be closed to the public upon the applicant's request. Transcripts and/or exhibits that disclose any trade secrets will be maintained by the clerk in a confidential manner both during and after the hearing and decision. Upon conclusion of the evidentiary portion of the hearing, the Board or Hearing Officer may take the matter under submission and deliberate in private in reaching a decision. The decision of the Board or Hearing Officer, however, shall be announced "on the public record." Neither party shall be allowed to communicate on an ex parte basis with the Board. Acting upon proper evidence before it, the Board shall determine the full value of the property, including land, improvements, and personal property that is the subject of the hearing. The determination of the full value shall be supported by a preponderance of the evidence presented during the hearing.

The applicant must appear personally at the hearing or be represented by an agent. If the applicant is represented by an agent, the agent must be thoroughly familiar with the facts pertaining to the matter before the Board. Any person who appears at the hearing representing the applicant shall provide the clerk with an executed agent's authorization. If the appeal was electronically submitted or the authorization provided with the appeal was a "copy," the Board may ask the agent to present the original at the time of hearing. Individuals exempt from this are California licensed attorney retained by the applicant; co-owner of the property; officer, or authorized agent of the corporation; or husband, wife, son, daughter or parent of the applicant.

## **RULE NUMBER 10 – PREHEARING CONFERENCE**

A. This Rule establishes the Boards' ability to conduct prehearing conferences. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues and scheduling a date for the Board to consider evidence on the merits of the application. A prehearing conference may be set by the clerk at the request of the applicant or applicant's authorized agent, the assessor, or at the direction of the Board.

- If the request is by the applicant or the applicant's authorized agent, the applicant shall be required to execute a 1604(c) Waiver Agreement, indefinitely extending the 2-year statutory deadline.

- The assessor or the Board shall NOT request a prehearing conference if the application is within 120 days of expiration of the statutory 1604(c) deadline, unless the applicant has on file with the clerk an executed 1604(c) Waiver Agreement.
  - Any such request for a prehearing conference shall be in writing and shall clearly outline the issues, purpose and intent of the hearing and the estimated length of the hearing so that each party may adequately prepare. The requesting party shall provide the clerk and other party with a summary of issues to be addressed.
  - No other issue(s) may be raised at the hearing unless all parties agree orally or in writing to additional specific issues of discussion.
- B.** The clerk shall set the matter for a prehearing conference and notify the applicant or the applicant's authorized agent, the assessor and Board counsel of the date, time and place of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period. The notice shall include a copy of the requesting party's written request.
- C.** All initial briefs or other written material to be presented at the prehearing conference shall be submitted to the clerk and other parties (e.g. assessor, applicant/authorized agent, Board counsel) no later than 15 days prior to the scheduled conference.
- D.** All response briefs are to be submitted to the clerk and other parties (e.g. assessor, applicant/authorized agent, Board counsel) no later than seven days prior to the commencement of the scheduled conference.
- E.** In its discretion, the Board may require the requesting party to submit prehearing or post-hearing briefs or statements to identify and/or clarify issues material to the appeal.
- F.** The Board may direct a party to prepare an order(s) resulting from the decisions/conclusions made by the Board at the prehearing conference. Said order(s) shall be submitted to the clerk and other parties (e.g. assessor, applicant/authorized agent, Board counsel) no later than 15 days prior to the commencement of the hearing to determine value or as determined and directed by the Board. Decisions/conclusions made by the Board at the Prehearing Conference shall be stipulated and not reconsidered or reheard at the time of the hearing to determine value.

## **RULE NUMBER 11 – POSTPONEMENTS/RESCHEDULES, CONTINUANCES**

*Postponing/Rescheduling* a hearing means that the Board or Hearing Officer adjourns a hearing (before the presentation of *any* evidence) and designates a future date and time for the initial presentation of evidence on the same appeal. Rescheduling of hearings is discussed in paragraph A below. *Continuing* a hearing means that the Board or Hearing Officer adjourns a hearing, following the submission of evidence and testimony, and designates a future date and time to continue the hearing. Continuance requirements are discussed in paragraph B below. In other words, a hearing may be **postponed/rescheduled** before any formal evidence or testimony has been presented. Once any portion of evidence has been presented to the Board or Hearing Officer, and it is determined that additional information is needed by the Board or the appeal is modified after evidence is considered and the assessor requests a continuance, it must be continued, not postponed or rescheduled and must be heard by the same Assessment Appeals Board Panel or Hearing Officer.

### **A. POSTPONING/RESCHEDULING OF HEARING (BEFORE EVIDENCE IS PRESENTED).**

The clerk is authorized to grant one written request by either the applicant or the assessor to postpone/reschedule a hearing date provided the written request is received by the clerk no later than **10** days prior to the scheduled date of the hearing, **and** the following requirements are met:

#### **1. POSTPONEMENTS/RESCHEDULES REQUESTED BY APPLICANT.** No request to reschedule can be granted by the clerk to the applicant in advance of the hearing **UNLESS:**

- An executed 1604(c) Waiver Agreement form to extend the 2-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c) is on file or is filed with the clerk; and
- No previous request to reschedule by the applicant has been granted; or
- The applicant and assessor mutually agree to the need for additional time. The clerk shall attempt to reschedule all second requests to a date certain.

#### **2. POSTPONEMENTS/RESCHEDULES REQUESTED BY ASSESSOR.** No request to postpone/reschedule can be granted by the clerk to the assessor in advance of the hearing **UNLESS:**

- An executed 1604(c) Waiver Agreement form to extend the 2-year statutory deadline for hearing appeals pursuant to Code Section 1604(c) is on file with the clerk; or
- The request is not made within the last 120 days of the two-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c).

**3. POSTPONEMENT/REQUESTED BY BOTH ASSESSOR AND APPLICANT PROVIDING:**

- The hearing is rescheduled to a specific designated date which is within the 2-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c); or
- Both parties indicate that rescheduling of the hearing date will afford the opportunity for additional negotiation between the parties that could result in a valuation agreement and a 1604(c) Waiver Agreement executed by the applicant is on file with the clerk.

**B. CONTINUANCE OF HEARING (ONCE EVIDENCE HAS BEEN PRESENTED).**

**1. CONTINUANCE REQUESTED BY APPLICANT.** At the Board's or Hearing Officer's discretion, on the date of the hearing a matter may be continued if so requested by the applicant following the introduction of evidence provided:

- A 1604(c) Waiver Agreement form is on file or is filed by the applicant; and
- The applicant provides *good and reasonable cause* why a continuance should be granted.

**2. CONTINUANCE REQUESTED BY ASSESSOR.** At the Board's or Hearing Officer's discretion, on the date of the hearing a matter may be continued if so requested by the assessor provided:

- The request is not made within the last 120 days of the 2-year statutory deadline for hearing appeals pursuant to Code Section 1604(c); and
- The hearing is continued to a specific designated date which is within the 2-year statutory deadline for hearing appeals pursuant to Code Section 1604(c); and
- Following the introduction of evidence, the assessor demonstrates *good and reasonable cause* that a continuance should be granted.

**3. CONTINUANCE ON BOARD'S OWN MOTION.** Following the introduction of evidence, the Board or Hearing Officer may continue a hearing to allow additional time for the presentation of evidence, or to obtain additional evidence, or whenever, in their discretion, a continuance is beneficial or required, provided:

- The continuance is not within the last 120 days of the 2-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c); and
- The hearing is continued to a specific designated date which is within the 2-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c); or

- An executed 1604(c) Waiver Agreement form to extend the 2-year statutory deadline for hearing appeals pursuant to Revenue and Taxation Code Section 1604(c) is on file or is filed with the clerk.

### **RULE NUMBER 12 - REQUEST FOR FINDINGS OF FACTS**

- A.** Findings of Facts are summaries of the Board's decision and may be requested by an applicant or the assessor.
- B.** Findings of Facts are NOT available for hearings held by Hearing Officers. A request before a Hearing Officer will be deemed a waiver of findings. Unless stipulated on an applicant's appeal or a request subsequently made in writing and submitted to the clerk or orally requested prior to the commencement of the Board hearing, the right to Findings of Facts will be deemed waived. Appropriate deposit fees per property parcel/economic unit must be paid prior to the commencement of the hearing. Fees are based on the current composite rate for County Counsel as determined by the Auditor-Controller each year utilizing the Countywide Cost Allocation Plan. Deposits are based on the following:
1. For single-family residences of \$500,000, or less in assessed value, a flat fee equal to two hours of the County Counsel composite rate as set by the Auditor-Controller each year utilizing the Countywide Cost Allocation Plan (CWCAP).
  2. For single-family residences above \$500,000 in assessed value and for all other appeals e.g. business personal property/fixtures, commercial, industrial, rental properties (secured and unsecured), water craft, aircraft, possessory interest, etc. an initial deposit equal to five hours of the County Counsel composite rate due upon a request for findings. The time expended by the assigned County Counsel will be billed accordingly and any balance due shall be required before the findings are released. The hourly rate shall be the County Counsel composite rate set by the Auditor-Controller each year utilizing CWCAP. Any unused deposit will be returned.
  3. Contact the clerk for the current composite rate or visit the clerk's web site at [www.ocgov.com/cob](http://www.ocgov.com/cob)

4. It should be noted that the total cost for the findings occasionally exceed the initial deposit and the party requesting findings will be required to pay this additional amount before the findings will be released. Written findings shall disclose the Board's findings on all material points raised in the application and at the hearing. The County shall provide findings within 45 days after the final determination of the Board is entered into the record pursuant to Rule 325 of the State Board Property Tax Rules, and shall accompany them with a notice that a request for an audio transcript of the hearing must be made within 60 days after the final determination.
- D** If the party requesting findings withdraws his or her request before the conclusion of the hearing (*before the Board renders a decision*); any fee paid will be refunded. Once the requesting party withdraws its request for findings, the other party may request findings either orally or in writing, provided he or she does so before the conclusion of the hearing. Once this occurs, the new requesting party will be obligated to pay for the findings prior to the conclusion of the hearing.
- E.** If the required fee is not paid to the clerk at or prior to the conclusion of the hearing by the party making the request, findings will be deemed waived by both parties. In every hearing, whether or not findings have been requested, the clerk will provide the parties with a written notice of decision.
- F.** In accordance with subparagraph C. above, an audio transcript of the proceedings of the proceedings may be requested within 60 days of determination. Such request must be in writing to the clerk and shall include the appropriate fee.
- G.** If the Board fails to make findings upon request, or if the findings are found by a reviewing court to be so deficient that a remand to the Board is ordered, the action of the Board shall be deemed to be arbitrary and capricious within the meaning of Section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the County for the services necessary to obtain proper findings. The dollar limitation set forth in Section 800 of the Government Code shall not apply to an allowance of attorneys' fees pursuant to this section.



**RULE NUMBER 13 - CHALLENGE FOR CAUSE OF A BOARD MEMBER**

- A. The applicant, applicant's authorized agent, or the assessor, may file with the clerk a written statement objecting to the hearing of a matter before a member of the Board or a Hearing Officer. Copies of the objection must be served upon the parties and upon the member or Hearing Officer being challenged. The statement must give the reason(s) for disqualification of the member or Hearing Officer. The statement shall be filed with the clerk at the earliest practicable opportunity after discovery of the facts relating to the request for disqualification, and in any event before presenting any issue of fact by either party in the appeal hearing before such member or Hearing Officer.
  
- B. The clerk will provide copies of the procedure used to challenge a Board Member or Hearing Officer upon request. The procedures shall comply with Revenue and Taxation Code Section 1624.4 and Code of Civil Procedure Section 446.

**RULE NUMBER 14**

**APPLICATION FOR EQUALIZATION BY MEMBER, ALTERNATE MEMBER, HEARING OFFICER, COUNTY COUNSEL OR CLERK OF THE BOARD STAFF**

- A. Pursuant to State Board of Equalization Rule 308.6, Applications Required to Be Heard by Alternate Assessment Appeals Boards.
  - 1. The following applications for equalization filed pursuant to Sections 1603 or 1605 of the Revenue and Taxation Code shall be heard by a special alternate Assessment Appeals Board consisting of three persons appointed by order of the Presiding Judge of the Superior Court in the county in which the applications are filed.
    - a. An application filed by a person listed in paragraph 2 of this subdivision in a county in which the person serves or is employed; and
    - b. An application in which the person listed in paragraph 2 of the subdivision represents his or her spouse, registered domestic partner, or child that is filed or pending in a county in which the person specified in paragraph 2 of this subdivision serves or is employed.
  - 2. This paragraph includes:
    - a. A current member of an Assessment Appeals Board or any alternate member;
    - b. A current assessment Hearing Officer;
    - c. A current employee of the office of the Clerk of the Board of Equalization or Assessment Appeals Board; and

- d. A current employee of the county counsel who advises the Assessment Appeals Board or represents the county assessor before the Assessment Appeals Board
  
- B. Referral to an alternate Assessment Appeals Board in another County. The clerk of the Board has discretion to refer an application for hearing to a special alternate Assessment Appeals Board, convened to hear the application, consisting of three members who are qualified and in good standing in another California county, in lieu of having the Superior Court appoint a special alternate Assessment Appeals Board to hear the application. applications may only be referred to a county if that county's clerk of the Assessment Appeals Board has consented to accept the referral.
  1. Pursuant to this Section, if a special alternate Assessment Appeals Board is created that consists of Assessment Appeals Board members from another county, the clerk is authorized to pay each member of the board at the level of compensation they would receive in their home county, plus compensation for mileage expenses at the current IRS mileage rate.
  
- C. Subject Matter.
  1. A special alternate Assessment Appeals Board member may hear only the application or applications for equalization set forth in the Superior Court order appointing such member.
  2. If the clerk of the Board refers an application or applications to an actively serving Assessment Appeals Board in another county pursuant to subdivision (b), the Board may hear only the application or applications set forth in the transmittal document prepared by the clerk of the board of the county in which the application or applications were filed.
  
- D. Qualifications for Appointment. Any person shall be eligible for appointment as a special alternate Assessment Appeals Board member who meets the qualifications set forth in Section 1624 of the Revenue and Taxation Code.
  
- E. Restrictions on Appointment and Grounds for Removal. Sections 1624.1 and 1624.2 of the Revenue and Taxation Code shall be applicable to the appointment and removal of a special Assessment Appeals Board member.

### **RULE NUMBER 15 - SELECTION OF BOARD CHAIR**

Each Board shall select one of its members to act as Chair and to preside over the hearing, beginning on the first Monday in September and shall continue to make such selections as necessary to hear and determine all assessment issues before them. No member may be selected as Chair unless he or she has served as a Board member for at least six months and successfully completed the mandatory State Board of Equalization training, the Orange County New Board Member training provided by the clerk, filed their Conflict of Interest Form 700 and taken the required AB 1234 Ethics Training.

### **RULE NUMBER 16 – QUORUM AND VOTE REQUIRED**

No hearing before the Board shall be held unless a quorum is present. No decision, determination, or order shall be made by the Board by less than a majority vote of all the members of the Board who have been in attendance throughout the hearing. If a hearing takes place before a Board consisting of an even number of members and they are unable to reach a majority decision, the application shall be reheard before the full Board. In matters where a case has been held before less than a full Board, the parties may stipulate that the absent members may read, listen or otherwise become familiar with the record and participate in the vote.

If either party so demands, a hearing must be held before a full 3-member Board. In the event that only a quorum is present and the applicant demands a hearing, the Board shall request that the applicant execute a 1604(c) Waiver Agreement, extending the 2-year expiration date if the demand precludes the matter from being heard within the statutory 2-year period. If the applicant does not agree to execute the waiver agreement, and the application will expire within 120 days, the Board may deny the applicant's demand for a hearing before a full 3-member Board.

### **RULE NUMBER 17 – ASSESSMENT APPEALS BOARD AND HEARING OFFICER TRAINING**

To ensure that members of the Board and Hearing Officers are knowledgeable on the statutes, rules, policies and administrative procedures within their jurisdiction, all members are required to attend the following training:

- Every person newly appointed as a Board member shall successfully complete training conducted by the State Board of Equalization prior to the commencement of his or her term on the Board or as soon as is reasonably possible within one year of appointment. A member who does not complete this mandated training as stated above shall complete the training within 60 days of the

date of the notice by the clerk advising the member that his/her failure to complete the training constitutes resignation by operation of law. If the member fails to comply within the 60 day period, the member shall be deemed to have resigned his/her position on the Board.

- Every new Board member and Hearing Officer must file an assuming office Conflict of Interest Form 700.
- Upon appointment and every even numbered year thereafter, Board members must take the AB 1234 mandatory Ethics Training and provide the clerk with a certificate of completion.
- Every Board member and Hearing Officer shall attend a maximum of one training sessions established by the clerk. At least one make-up session will be offered for each training to accommodate member schedules. Failure to attend can result in non scheduling of member until make-up occurs.
- A training session shall constitute up to 8-hours of training and members will be compensated at the rate of \$100 for attendance.

#### **RULE NUMBER 18 - PROCEEDINGS RECORDED**

All Board and Hearing Officer hearings will be recorded unless the Board rules that all or a portion of the hearing involves trade secrets. Any party may purchase a copy of the recording within 60 days of the Board or Hearing Officer's final decision on the appeal. In addition to the audio record, an applicant or authorized agent may choose to have the hearing recorded by a stenographic transcriber, and must provide the clerk with a copy of the transcript free of charge as soon as it becomes available. Upon request, the clerk will make arrangements for the stenographic transcriber services provided the request is made not less than 10 days before the hearing date, and that the requesting party pays, in advance, all associated fees.

#### **RULE NUMBER 19 - EXHIBITS**

Exhibits, maps, letters, papers, documents, charts, power point presentations, etc. to be submitted by an applicant or the applicant's agent as evidence in an appeal shall **NOT** be accepted prior to the hearing and should **NOT** be attached to an application. If such attachments are filed with an application by the applicant and inadvertently accepted by the clerk, the clerk **cannot** be responsible for maintaining them in the appeal file and they will NOT be forwarded to the assessor, Board or Hearing Officer. Neither party shall deliver any such exhibits, maps, etc. to members of the Board or to a Hearing Officer prior to being marked for identification and received into evidence **at the time of the noticed hearing unless otherwise directed by the Board**. Both the applicant and the assessor must submit **six** copies of each written exhibit to be offered into evidence during Board hearings. **Four** copies of each written exhibit must be submitted into evidence during hearings before a Hearing Officer.

**RULE NUMBER 20 – DOCUMENTS ACCEPTED BY FACSIMILE OR ELECTRONIC FILING**

- A. Boards and Hearing Officers shall accept written documents transmitted by facsimile machines and shall treat signatures produced by facsimile transmission as original signatures providing all the following requirements are met:
- The applicant or authorized agent sending the faxed document causes the transmitting facsimile machine to print a transmission record of each faxed document;
  - The faxed document and all material information within the document is legible and readable;
  - The faxed document is furnished to the clerk within the time constraints detailed below; and
  - The assessor is present to answer the Board's questions, if any, concerning the document.
- B. To be accepted, documents transmitted by facsimile must be received no later than 5:00 p.m. of the business day which is at least 10 business days before the scheduled hearing date for the application, or the final date upon which the document may otherwise be provided to the clerk. For example, if the application is scheduled for hearing at 9:00 a.m. on Wednesday, March 16th, or if Wednesday, March 16<sup>th</sup> is the last date upon which a letter requesting reconsideration of the application may be provided to the clerk, the signed document must be provided to the clerk not later than 5:00 p.m. on Wednesday, March 2th. If March 16th were a Monday, the signed document must be provided to the clerk by 5:00 p.m. on Tuesday, March 1.
- C. Examples of documents which may be transmitted by fax include: Stipulation forms, 1604(c) Waiver Agreement forms, letters requesting the reopening of an appeal previously denied for failure of the applicant to appear at the scheduled hearing, Withdrawals, Agent Authorization or Authorization/Revocation/Substitution of Attorney/Agent forms, etc.
- D. Under no circumstance will the “Appeal Application” form be accepted by facsimile transmission, and any such form received by facsimile transmission will not constitute a valid filing.
- E. By choosing to deliver a document by fax transmission, the applicant or agent represents that the original signed document is in his or her possession or control, and that he or she has made no material alteration to the document form or its data **as furnished to the applicant** or agent by the clerk or the Assessor's Office. The applicant or their authorized agent shall produce the original of any faxed document upon request and/or the log showing successful transmission
- F. In the event a dispute arises regarding the timeliness of filing any document, it is the applicant's or authorized agent's responsibility to provide the Board with all relevant evidence which must

include the transmission record and the originally signed copy of the document which the applicant or authorized agent transmitted or caused to be transmitted by fax.

## **RULE NUMBER 21 – EVIDENCE/BURDEN OF PROOF**

### **A. BURDEN OF PROOF**

The burden of proof is subject to exceptions set by law; it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant proceed to present independent evidence relevant to the full value of the property or other issue(s) presented by the application.

The assessor has the burden of proof in the following instances:

- The imposition of a penalty assessment.
- Owner-occupied single-family dwelling or an escape assessment, providing the applicant supplied all information to the assessor as is required by statute.
- Values which exceed the purchase price at the time of a change in ownership

If the applicant has presented evidence, and the assessor has also presented evidence, then the Board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his/her duties is not evidence and shall not be considered by the Board in its deliberations.

### **B. ADMISSIBLE EVIDENCE**

1. **COMPARABLE SALES DATA.** If the opinion of value is to be supported with evidence of comparable sales, the properties sold should be described by the Assessor's Parcel Number (APN), street address, or legal description sufficient to identify them. For every comparable property presented as evidence the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property should be presented.

Comparable sales *cannot* include any sales that occur more than 90 days *after* the date for which value is being estimated (“the 90-day rule”). In many cases, the date for which valuation is being estimated is the lien date, January 1. These are referred to as decline in value appeals. If the January 1 lien date is the date in question, the 90-day rule means that comparable sales *after* March 31<sup>st</sup> (April 1st in leap years) will be inadmissible

evidence, and may *not* be used to support an opinion of value for an appeal. Comparable sales that occurred more than 90days *before* the lien date of January 1 in the year appealed may be admitted into evidence, with sales closest in time to the lien date being given the most weight, all other things being equal.

Comparable sales may need to be adjusted to be reasonably compared to the subject property, e.g. additional value added if the comparable sale does not include a pool and the subject property does include a pool; value added or deleted for square footage, age, condition, etc.

2. **INCOME DATA.** If the opinion of value is to be supported with evidence based on an income study, the gross income, expenses, and capitalization method and the rate or rates employed should be presented.
  
3. **COST DATA.** If the opinion of value is to be supported with evidence of replacement cost, the following should be presented:
  - With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.
  - With regard to machinery and equipment: the date of installation, installed cost, and any history of extraordinary use.
  - With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

#### **RULE NUMBER 22 - EXAMINATION OF APPLICANT BY BOARD; STIPULATION**

No reduction of an assessment can be made unless the applicant or his authorized agent attends a hearing scheduled before a Board or Hearing Officer, offers evidence, under oath, regarding the value of the property, and answers all questions pertinent to the inquiry. An exception to this requirement is if a written stipulation is filed with the Board, signed by the assessor and the county legal advisor on behalf of the county and the applicant or the authorized agent making the application, which includes the full value and assessed value of the property and the facts upon which the reduction in value is premised, the Board may, at a public hearing:

- Accept the stipulation, and by doing so, waive the appearance of the applicant or the authorized agent and change the assessed value in accordance, or
- Reject the stipulation and schedule or reschedule the application for hearing.

An applicant who chooses to transmit a signed stipulation form by facsimile transmission should return the signed stipulation to the assessor with adequate time for the assessor to forward the stipulation to the clerk. If a stipulation is *not* received by the clerk within the time limitations set forth in Rule 20 above, the applicant or agent *must appear at the scheduled hearing* or the application shall be denied by the Board for nonappearance. If the executed stipulation also includes a waiver of the 2-year statute and a waiver of the 45-day hearing notice, once received by the assessor, the stipulation can be immediately transmitted to the clerk for review and placed on an agenda for review and approval by the Board at a hearing date earlier than was originally scheduled.

### **RULE NUMBER 23 - APPEARANCE AT HEARING**

#### **A. PERSONAL APPEARANCE BY APPLICANT; APPEARANCE BY REPRESENTATIVE.**

The applicant must appear personally at the hearing except as otherwise provided in these Rules, or be represented by an authorized agent, attorney, corporate officer or employee, co-owner, family member, or registered domestic partner mentioned in paragraph B below who shall be thoroughly familiar with the facts pertaining to the matter before the Board or Hearing Officer. Any person, other than an attorney at law, purporting to act as agent for the applicant must have been authorized in writing by the applicant's completion of the "Agent's Authorization" section of the Application form or use of the clerk's Agent's Authorization Form No. 305-A. No other authorization form will be accepted at the time an application is filed.

If the application was initially filed by the applicant, any person (other than an attorney, corporate officer, co-owner, registered domestic partner, or family member mentioned in paragraph B below) who appears on behalf of the applicant at the hearing must first file with the clerk the applicant's written authorization for representation of the applicant at the hearing. If the application when filed initially authorized a person other than the person who purports to represent the applicant at the hearing, a written authorization signed by the applicant must be provided to evidence the applicant's consent to the change in representation. The clerk shall provide forms for this purpose.

If an assessment appeals application is filed by an licensed California attorney representing the applicant without the applicant's authorization signature, the attorney signing the application or an attorney from his/her law firm are the only individuals authorized to take action on, receive information, or represent the applicant at an assessment appeals hearing.

Attorneys NOT licensed in California cannot execute an assessment appeal on behalf of their applicant. The applicant must authorize any non-California attorney to represent them as their



agent by signing the Agent Authorization section on the form or by filing and executing the clerk's COB 305 or 306 forms.

If an assessment appeal application is filed electronically and certified demonstrating that an applicant has a current, signed Agent Authorization Form No. COB 305-A on file or the authorized agent filed a "copy" with the original application, the applicant or the authorized agent may be required to produce that original document at the scheduled noticed hearing.

- B. **APPEARANCE BY MEMBERS OF FAMILY.** A husband may appear for his wife, or a wife for her husband, and sons and daughters for parents or vice versa or registered domestic partners who have their State certification on file with the clerk may appear for one another. No written authorization is required provided adequate evidence exists to prove the relationship.
- C. **PROPERTY IN COMMON OWNERSHIP.** If the property is held in joint or common ownership or in a co-ownership, the presence of the applicant or any one of the owners constitutes a sufficient appearance. No written authorization is required provided adequate evidence exists to prove joint ownership or co-ownership.
- D. **APPEARANCE BY CORPORATION.** Where the applicant is a corporation, the corporation shall make an appearance by the presence of an attorney or of any duly authorized officer or employee who is knowledgeable on the matters before the Board.
- E. **STIPULATIONS.** Properly executed stipulations for reductions in assessments will be accepted by the Board or Hearing Officer for consideration and shall be deemed as full and complete consideration of the entire assessment unless any portion is specifically excluded pursuant to Rule 5 – Application, Section I.
- F. **ELECTRONICALLY FILED APPLICATIONS.** The Clerk of the Board may allow individuals to register with the clerk to create and electronically file appeals. Electronically filed appeals utilize random pin numbers issued to an individual or company for the purpose of filing and electronically submitting appeals. Registered individuals are responsible for all appeals filed using their issued pin number and must abide by the rules establishing electronic filing or may be denied access to the clerk's electronic system for filing appeals.

## **RULE NUMBER 24 – AGENT AUTHORIZATION, REVOCATION, SUBSTITUTION**

### **A. INITIAL AGENT AUTHORIZATION.**

An applicant who wishes to authorize a firm or individual who is not a licensed California attorney, registered domestic partner, parent, child, or spouse, must:

- Complete and sign Section 2 of the Application for Changed Assessment Appeal form, or
- May use an attached authorization by completing and executing an Orange County prescribed Form COB305A.
- If filing electronically, applicant's authorized agent may certify that they have in their possession a current, signed authorization form COB305-A which will be produced upon request.
- Authorizations must be executed by the applicant and must be timely. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted. All authorizations shall include the date of execution by the applicant.

### **B. APPLICATIONS FILED BY AN ATTORNEY ON BEHALF OF AN APPLICANT.**

- If an assessment appeal application is filed by a licensed California attorney representing the applicant without the applicant's authorization signature, the attorney signing the application or an attorney from his/her firm are the only individuals authorized to take action on, receive information, or represent the applicant at an assessment appeals hearing.
- If, after the timely filing of an assessment appeal application made by the applicant, the applicant retains a licensed California attorney to represent them, the applicant or their attorney must complete and execute an Authorization/Revocation/Substitution of Attorney/Agent Form COB306.

### **C. REVOCATION, SUBSTITUTION OF AN AGENT.**

An applicant who wishes to cancel or revoke the previous authorization of an agent, or who wishes to substitute a new agent for a former agent previously authorized, must complete an "Authorization/Revocation/Substitution of Attorney/Agent" form COB306 and file it with the clerk. Unless a "Authorization/Revocation/Substitution of Attorney/Agent" form has been appropriately executed and filed, all correspondence regarding the appeal will be sent to the agent first authorized to act on the applicant's behalf who will remain the authorized agent for the application, and may settle by stipulation, withdraw or otherwise control the appeal.

Authorization/Revocation/Substitution of Attorney/Agent forms shall be provided free of charge by the clerk upon request and shall be available on the Clerk of the Board's website at <http://ocgov.com/gov/cob/forms/>.

#### **RULE NUMBER 25 - SUBPOENAS**

- A. The clerk is authorized and empowered to issue subpoenas for the attendance of witnesses or the presentation of documentary evidence at a hearing upon the request of an applicant or the assessor in advance of, or at the time of the hearing. Boards and Hearing Officers can also issue subpoenas on their own motions. Forms and instructions for issuance of the requested subpoenas will be provided to the requesting party by the clerk.
- B. The party requesting the subpoena is responsible for serving it and for paying any witness fees, service fees and mileage. An application for a subpoena for the production of books, records, maps and documents must be supported by an affidavit as described by Section 1985 of the Code of Civil Procedure. No subpoena can be issued for the purpose of taking a deposition. The requesting party shall be responsible for providing proof of service for all subpoenas issued at the request of the clerk or Board.
- C. If a party who has received a subpoena fails to comply with its requirements, the Board will refer the matter to the County legal advisor who will initiate enforcement procedures in Superior Court.

#### **RULE NUMBER 26 - WITHDRAWAL**

- A. An Application may be withdrawn at any time prior to or at the time of the hearing upon written request signed by the applicant or the authorized agent, unless the assessor has given the applicant a written notice of an intention to recommend an increase in the assessed value of the property. The assessor's notice must be given at least 10 days prior to the hearing, and a copy of the notice must be filed with the clerk. If the notice has been timely given and filed, withdrawal of the application may be affected only with the consent of the assessor.
- B. Withdrawal forms will be accepted by facsimile transmission and are effective as of the date of execution.
- C. Withdrawals are final and will conclude any further action on the appeal. No conditional withdrawals will be accepted.

**RULE NUMBER 27 – RECONSIDERATION AND REHEARING**

- A. **BOARD / HEARING OFFICER DECISIONS FINAL.** The decision of a Board or Hearing Officer upon an application is final. The Board cannot change or reconsider the recommendation or value decision of a Hearing Officer and a Hearing Officer likewise may not reconsider a Board decision. Any appeal filed which has been previously adjudicated by the Board or Hearing Officer shall be deemed a duplicate appeal by the Clerk.
- B. **LACK OF APPEARANCE RECONSIDERATION.** In accordance with a procedure adopted by the Board, the clerk is authorized and directed to reopen and reschedule for value hearings appeals previously denied for lack of appearance of the applicant when all the following conditions are met:
1. The appeal was denied solely on the grounds that the applicant failed to appear at the duly noticed and scheduled hearing on the application; and
  2. The applicant files a written request for reconsideration of the denial for failure to appear within 60 days from the date of mailing of the notification of denial; and
  3. In the clerk's judgment, the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement of the hearing.
  4. The applicant has filed and executed a 1604 (c) waiver of the 2-year statute. When an, application has been denied for lack of appearance and a request to reopen has been granted, the Board will take final action on the appeal at the subsequent scheduled hearing regardless of the appearance of the applicant.

The clerk shall administratively deny all requests that do not meet the all of the above conditions. Upon administrative denial by the clerk, the applicant may appeal the decision within 30 days of the notice of denial and have the matter calendared before the Board for a hearing on the merits of the request for reconsideration issue only. The Board may reopen and take evidence upon an application denied solely because of the lack of appearance of the applicant or applicant's agent to determine whether the request for reconsideration was timely filed, whether there was reasonable justification for the failure of the applicant to appear at the scheduled hearing and whether there is an executed 1604 (c) waiver on file with the clerk.

- C. **CLERICAL ERROR.** Boards and Hearing Officers may reopen applications on their own motions to correct any errors made in computing the subject property's value or any administrative errors discovered after the hearing. In these instances, the clerk shall provide a summary of the error and a recommendation for correction to the Board.

**RULE NUMBER 28 – 1604 (c) WAIVER AGREEMENTS AND CANCELLATION POLICY**

- A. 1604(c) Waiver Agreements are unconditional and extend the two-year statutory time frame in which applications may be heard. These agreements may be canceled by providing written notice of intent to cancel the extension and serving written notice upon the clerk. The notice must include:
- The complete name of the applicant;
  - The appeal application number provided by the clerk;
  - The Assessor's Parcel Number (APN) and/or Assessment Number; and,
  - The applicant or applicant's agent of record original signature and date signed, mailing address and phone number.
- B. If all information above is included in the written notice to cancel the waiver agreement, the clerk shall, within 10 working days of receipt of written notice to cancel waiver agreement, issue a *Notice of Receipt of Cancellation of Waiver Agreement* to the applicant.
- C. The appeal will be scheduled for hearing within 120 days from the date of issuance of the Notice of Receipt of Cancellation of Waiver Agreement if the 2-year period has expired or if the 2-year period will expire within the 120 days. If the issuance of the Notice of Receipt of Cancellation of Waiver Agreement will not expire within 120 days, the normal two-year filing deadline will be in effect. Applicants will be advised under separate notice of the exact date and time of the hearing.
- D. In the event the cancellation request is incomplete, the clerk shall within 10 working days of receipt of written notice to cancel waiver agreement, forward a request for additional information to the applicant. The request must be complete prior to issuance of the Notice of Receipt of Cancellation of Waiver Agreement and commencement of the 120 day period.