RESOLUTION NO._____

RESOLUTION ADOPTING RULES OF NOTICE AND PROCEDURE FOR THE LASSEN COUNTY ASSESSENT APPEALS BOARD

WHEREAS, Lassen County Board of Supervisors established, in approximately 1991, an Assessment Appeals Board to serve as its County Board of Equalization; and

WHEREAS, the California Constitution and the California Revenue and Taxation Code allow for the adoption of local rules of notice and procedure related to matters before the local board of equalization; and

WHEREAS, the Lassen County Assessment Appeals board has no established rules of notice and procedure; and

WHEREAS, any such rules of notice and procedure must be adopted by the County Board of Supervisors in order to be effective; and

WHEREAS, the Lassen County Assessment Appeals Board unanimously believes that adoption of such rules would be beneficial to the orderly administration of assessment appeals.

NOW, THEREFORE, BE IT RESOLVED THAT ; the attached proposed rules of notice and procedure are hereby adopted by the Lassen County Board of Supervisors.

The foregoing Resolution was adopted at a regular meeting of the Board of Supervisors of the County of Lassen, State of California, held on the 20th day of February, 2018, by the following vote:

AYES:_____

NOES:_____

ABSTAIN:_____

ABSENT:_____

_____
CHRIS GALLAGHER, Chairman
Lassen County Board of Supervisors

ATTEST:
JULIE BUSTAMANTE
Clerk of the Board

BY: _____
MICHELE YDERRAGA, Deputy Clerk of the Board

I, MICHELE YDERRAGA, Deputy Clerk of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing resolution was adopted by the said Board at a regular meeting thereof held on the 20th day of February, 2018.

_____
Deputy Clerk of the Board of Supervisors
County of Lassen

LASSEN COUNTY ASSESSMENT APPEALS BOARD

RULES OF NOTICE AND PROCEDURE

The California Constitution and the California Revenue and Taxation Code allows for the adoption of local rules of notice and procedure related to matters before County Boards of Equalization. The authority to adopt said local rules of notice and procedure is vested with the County Board of Supervisors.

The Board of Supervisors adopted these rules in open session on February 20, 2018. These rules are made effective and shall apply to all pending appeals and all subsequent filings as of this date, the date of adoption. This document rescinds and replaces all previously enacted Assessment Appeals Board rules and procedures for the County of Lassen.

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PART I INTRODUCTION

The Assessment Appeals process can be complicated. There are many laws, regulations, and case decisions that apply to the process. The Assessment Appeals Board is obligated to follow these laws, rules, and case decisions. Wherever possible though, the Assessment Appeals Board will make the process informal to the degree it can.

In an effort to promote an understanding as to what to expect at assessment appeal hearings, the following publication contains a condensed summary of laws, rules, and regulations which can be found in various locations in state law and administrative regulation and that pertain to this process.

It should also be noted that while this "Rules of Notice and Procedure" contains restatements of state law and regulation, it also provides local rules of practice which are applicable to assessment appeal hearings in Lassen County. To the degree that any local rule adopted and set forth herein is inconsistent with state law or regulation, the state rule controls.

The assessment appeals process is governed by substantive and procedural law derived from constitutional provisions and implemented by statutes, regulations, and local rules. General principles of legal construction determine the proper order of precedence accorded those laws to ensure that they do not exceed the authority granted and are not inconsistent with other fundamental principles of law. It is important for the applicant to know that the Assessment Appeals Board has an obligation to apply these constitutional provisions, laws, and regulations and familiarity with them will assist the applicant in understanding what to expect from this process.

Preemption refers to the exclusive power of a legislative body to legislate in certain areas so as to preempt the legislative or rulemaking authority of a subordinate political subdivision. Whenever the State Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned. For example, in those areas where the State Legislature has enacted statutes, counties have no authority to adopt local rules in conflict with those statutes.

A ***regulation*** is a rule or order, which interprets or implements a validly enacted statute to carry out the intent of the law and to guide an agency in the uniform application of the law. An agency or other governmental body has no power to adopt a regulation in conflict with or which alters or violates a statute. In addition, an agency or other governmental body may not adopt a regulation for which there is no constitutional or statutory authority.

Although constitutional requirements of procedural due process do not require that an assessment appeal involve a trial before a court, a proceeding before an administrative officer or board is constitutionally adequate only if the basic requirements of notice and

opportunity for hearing are met.

United States Constitution

The assessment appeals process, though a function of state law, derives from federal constitutional principles of due process. The 14th Amendment of the United States Constitution requires that no state "shall ... deprive any person of life, liberty, or property, without due process of law." In the context of assessment appeals procedures, the United States Supreme Court has held that the due process clause does not require that the notice of and opportunity to contest an assessment must be given prior to the making of the assessment. Due process requires only that, prior to the tax becoming final and irrevocable, the taxpayer is afforded a hearing on the assessment before a body such as an appeals board which is duly constituted for such a purpose.

California Constitution

Consistent with due process principles, section 16 of article XIII of the California Constitution specifically authorizes the creation of one or more county boards for the purpose of equalizing assessments of individual properties and briefly describes their function of equalizing values on the local roll. Section 16 delegates authority to the county board of supervisors to provide resources for the essential administrative functions of appeals boards and to "adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision" of applications. When rules conflict with statutes, the statutes prevail.

Revenue and Taxation Code

The Revenue and Taxation Code implements the constitutional provisions applicable to assessment appeals and other property tax matters. The property tax statutes relative to appeals are set forth in Division 1, Part 3, Chapter 1, Article 1, of the Revenue and Taxation Code. The assessment appeals provisions fall principally within sections 1601 through 1645.5. Those sections provide the basic framework of the assessment appeals process and are intended to promote fair and uniform procedures. In addition, the Revenue and Taxation Code sections may incorporate and follow the provisions of other code sections as necessary to carry out the purposes of the assessment appeals procedures. For example, section 1611.6 adopts the definition of the term ***arbitrary and capricious*** set forth in Government Code section 800.

Property Tax Rules

Title 18, Public Revenues, Division 1, Chapter 1 of the California Code of Regulations, in part, are the body of regulations that implement and interpret the statutes governing the role and function of assessment appeals boards and boards of equalization. This set of regulations is commonly referred to as the Property Tax Rules and each section is designated as a "Rule" followed by the California Code of Regulations section number.

Property Tax Rule 1 expressly provides, in pertinent part, that "[t]he rules in this subchapter govern assessors when assessing, county boards of equalization and assessment appeals boards when equalizing..." Rules 301 through 326 make up the main body of rules governing appeals boards' procedures.

Local Rules

Article XIII section 16 of the Constitution specifically directs county boards of supervisors to adopt rules of notice and procedure to facilitate the work of local appeals boards under the county's control and to ensure uniformity in the processing and decision of applications before those local appeals boards. Local rules are valid if they are not expressly prohibited by section 16, are not preempted by or in conflict with statutes or regulations, and comport with due process. Local rules are identified by "Local Rule" followed by a number found in this document.

Litigation of Assessment Appeal Cases

A party who is dissatisfied with a local appeals board's decision may bring an action in superior court, the state trial court, challenging that decision. The superior court may reverse the appeals board on legal issues and remand or send back the case to the appeals board with instructions, or the court can decide the case itself in those instances where no issue of valuation remains to be determined. Unless the case is further appealed, the appeals board must rehear the appeal and is bound by the court's instructions to follow the court's interpretation of the law. Superior court decisions, while lacking value as legal precedent, are nonetheless binding on the parties before the court.

Appellate Court Decisions

A published opinion made by the California Court of Appeal, the intermediate level appellate court in California, in a particular appellate district, and for which no conflicting published opinion of law exists in another appellate district of the state, is binding on all trial courts, and other inferior forums, including administrative tribunals such as appeals boards, in all judicial districts. Occasionally, district courts of appeal take contrary positions on the same legal issue and, for that reason the California Supreme Court may grant a petition for review to decide the issue and to resolve the conflict. Until the California Supreme Court grants review of conflicting appellate decisions in different appellate districts, the decision of law of each particular appellate court is binding authority only within that appellate district. The conflicting appellate decision from another appellate district may, nonetheless, be persuasive in appellate districts that have not rendered a decision on the matter.

California Supreme Court opinions interpreting California law are binding on all appeals boards as the law of the state. If the matter in dispute involves issues of federal constitutional or statutory law, it may be appealed to federal court. In the event that a federal court accepts the case and renders a decision interpreting California law, that

interpretation supersedes all other interpretations and must be followed by all courts and administrative tribunals, such as local appeals boards.

PART II COUNTY ASSESSMENT APPEALS ADMINISTRATION

RULE 1 Meetings of the Assessment Appeals Board

The Lassen County Assessment Appeal Board shall meet on the third Monday in July of every year to equalize the assessment of property on the local roll. At the beginning of this July meeting, the Board shall select, by majority vote, a chair and vice-chair to preside over meetings for the following year. The Board shall thereafter continue to meet, from time to time, until the business of equalization is concluded.

RULE 2 Notice of Meeting of the Assessment Appeals Board

While not subject to the Ralph M. Brown Act Open Meeting Law, agendas of the meetings of the Assessment Appeals Board shall be nonetheless posted seventy-two (72) hours in advance of any meeting identified in said agenda. This notice shall be posted on the bulletin board located immediately outside the office of the Clerk of the Assessment Appeals Board (County Clerk's Office) in the lobby of the Lassen County Historic Courthouse located at 220 S. Lassen St., Susanville, California.

RULE 3 Function of the Assessment Appeal Board

The function of an appeals board is to determine the full value of property or to determine other matters of property tax assessment over which the appeals board has jurisdiction.

To that end, the State Board promulgated Property Tax Rule 302 which enumerates the functions of an appeals board as follows:

1. To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll.
2. To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing.
3. To hear and decide penalty assessments, and to review, equalize, and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1.
4. To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.
5. To determine the allocation of value to property that is the subject of the hearing.
6. To exercise the powers specified in sections 1605.5 and 1613 of the Revenue and Taxation Code.

Except as provided in number 4 above, the board has no jurisdiction to grant or deny exemptions or to consider an allegation that a claim for exemption from property taxes has been improperly denied.

The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

In the process of determining the value of property, an appeals board is generally limited to the evidence presented by the assessor and taxpayer. An appeals board may, on its own motion, request the assessor or taxpayer to provide specific evidence and may examine the assessor and taxpayer on evidence they present; however, the appeals board members should not individually obtain evidence on their own, or consider evidence provided by individual board members.

An appeals board's decision is final and may not be reheard by the board even if requested by the assessor or taxpayer. Furthermore, an appeals board may not reconsider or rehear its own decision on an application unless a court so orders, except as provided in Property Tax Rule 326.

On appeal, a court's review of an appeals board's findings of factual issues is limited to a determination of whether the appeals board's findings were supported by substantial evidence presented at the appeals hearing. An appeals board's factual determination of value may not be set aside by a reviewing court unless it was fraudulent, arbitrary, involved an abuse of discretion, or unless the board failed to follow standards prescribed by the Legislature. However, an appeals board's findings on legal issues (including the valuation method used by an appeals board) are subject to complete review by a court on appeal.

An appeals board has no jurisdiction to grant or deny exemptions, to decide disputes involving tax rates, local governmental budgets, tax bills, tax policy, and has no authority to consider a taxpayer's ability to pay in making its determination.

RULE 4 Clerk of the Board

In Lassen County, the clerk of the board of supervisors is also the clerk of the assessment appeals board. While the clerk has responsibilities directly supportive of the functions of the board of supervisors, the duties discussed here are those associated with assessment appeals proceedings only.

Some of these responsibilities include:

- Provide public notice of appeals board meetings to equalize assessments.
- Accept applications from taxpayers seeking a reduction in property tax assessments.

- Ensure that applications meet the requirements of Property Tax Rule 305 for completeness and timeliness and are on the State Board of Equalization prescribed form.
- Respond to taxpayers' inquiries regarding their applications as well as hearing procedures.
- Schedule hearings.
- Monitor training for assessment appeals board members.
- Provide needed information to the hearing officer or appeals board members for the hearing.
- Provide a copy of each application and request for amendment of an application to the county assessor.
- Administer an oath to all individuals presenting evidence at the hearing.
- Maintain copies of evidence presented at the hearing.
- Tape-record, report, or videotape the hearing.
- Record the final decision of the board.
- Provide a copy of the tape recording or a transcript of the hearing to applicants who request it upon payment of the appropriate fee.
- Transmit findings of fact when requested.
- Issue subpoenas at the direction of the board.
- Deliver to the county auditor a statement of all changes made by the board during the preceding calendar month with an affixed affidavit.
- Certify the last day of the regular filing period and notify the State Board of Equalization as to whether the last day of the regular filing period for the county will be September 15 or November 30.

RULE 5 County Assessor

The Assessor, in person or through a deputy, will attend all hearings of the county board and may make any statement or produce evidence on matters before the county board. It is the responsibility of the Assessor (or an appointed deputy) to prepare for the hearing by reviewing the information on the application. The Assessor should be prepared to answer questions posed by the applicant and the appeals board members during the hearing, and to present evidence to support the Assessor's opinion of value.

PART III FILING AN APPLICATION FOR CHANGED ASSESSMENT

RULE 6 Persons Who May File an Application

An assessment appeal application may be filed by the property owner, the property owner's spouse, parents or child, an authorized agent or any other person affected. This person becomes known as the applicant. Property Tax Rule 305 states:

> (a)(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who

has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application.

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

RULE 7 Application by Person Affected

Person affected is not limited to a property owner or the person who paid the property taxes. Any person having a direct economic interest in the payment of the property taxes is a person affected for purposes of filing an assessment appeal.

For example, a lease of commercial property may require that the tenant pay the property taxes for that property during the term of the lease. In this example, the lessee, as the person contractually responsible for payment, and the lessor, as the owner of property against which the tax becomes a lien, have a direct economic interest in the payment of those taxes. For purposes of filing an assessment appeal, the lessee or the lessor is a person affected.

Person affected does not, however, include all holders of leasehold interests. In the example of an apartment building where the tenants do not directly pay the property taxes, they do not have a direct economic interest and, therefore, are not ***persons affected***.

A property owner who acquires an ownership interest after the lien date is a ***person affected*** because such an owner is responsible for payment of the property taxes and, thus, has a direct economic interest.

RULE 8 Application by an Agent

If an assessment appeal application is filed by an agent—other than a California-licensed attorney authorized by the applicant to file the application—written authorization of agency, signed by the person affected, must be included on or with the application form. The ***Application for Changed Assessment*** form prescribed by the State Board of Equalization has an area designated for the agent's authorization. If an agent (other than a California-licensed attorney) is filing an application on behalf of an eligible applicant, this section of the form must be completed and signed by the applicant, or an agent authorization may be attached to the application, before the application may be accepted as complete and valid by the clerk of the board. If the applicant elects to attach an agent authorization to the application, the attached authorization will include the following:

1. The date the authorization statement is executed;
2. A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;

3. The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;
4. The name, address, and telephone number of the specific agent who is authorized to represent the applicant; the agent may be either a named individual or a firm or agency representing the applicant;
5. The applicant's signature and title;
6. A statement that the agent will provide the applicant with a copy of the application.

If a photocopy of the original authorization is attached to the application, the appeals board may require the agent to submit an original signed authorization. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

The applicant should promptly notify the clerk of the board in writing when a new agent has been substituted for the current agent.

RULE 9 Application by a Relative

Property Tax Rule 317 lists the family members who may appear at an assessment appeals hearing to represent a relative. Property Tax Rule 317, subsection(e), states: A husband may appear for his wife, or a wife for her husband, and sons or daughters for parents or vice versa.

When any of the individuals listed above file an Application for Changed Assessment and sign the application in place of the eligible relative, they become the applicant for purposes of the hearing.

RULE 10 Application by a Business Entity

If the applicant is a corporation, limited partnership, or a limited liability company, the application may be signed by an officer or authorized employee of the business entity. The term ***officer of the corporation*** refers to one who has been elected, or whose office is provided for by the articles of incorporation or the by-laws. More specifically, section 312 of the Corporations Code enumerates those officers required of a corporation as "a chairman of the board or a president or both, a secretary, a chief financial officer...." In addition to the required officers, a corporation may provide for other officers as necessary to carry out its business.

RULE 11 Application by an Attorney

A ***party affected*** or his or her agent, as used in section 1603(a), does not include an attorney who files an assessment appeal application without prior direct authorization from the person affected. An application, signed and filed by an attorney, is valid only if

the attorney has been directly retained by the applicant and authorized by that person to file an assessment appeal application. By signing an application, an attorney acknowledges that he or she has been retained and authorized as stated in the certification required by section 1603(f).

RULE 12 The Application Form

As provided in section 1603(a) and Government Code section 15606(d), the State Board of Equalization prescribes the assessment appeal application form. Currently, this form is titled Application for Changed Assessment. This form is free of charge to applicants.

Applicants or their agents must furnish the following information on the Application for Changed Assessment:

1. The name and mailing address of the applicant. Agents may not furnish their own mailing address in place of an applicant's actual mailing address.
2. The name and mailing address of the applicant's agent, if any.
3. A description of the property which is the subject of the application sufficient to identify it on the assessment roll.
4. The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.
5. The roll value on which the assessment of the property was based.
6. The facts relied upon to support the applicant's claim that the board should order a change in the assessed value or classification of the property.
7. Signatures.

An application that does not show the above items is invalid and should not be accepted by the board. Conversely, an application which shows the foregoing items is valid and no additional information is required of the applicant on the application form. If an applicant files an incomplete application, the clerk of the board will allow an applicant additional time to provide the required information. Board clerks should provide prompt notice to an applicant that an application is incomplete and therefore invalid. Applicants shall be given a reasonable time with which to correct identified errors or omissions. Disputes concerning the validity of an action shall be resolved by the board.

RULE 13 Assessment Appeal Filing Periods

To be considered valid, an application must be filed with the clerk of the board during the appropriate filing period. Applications must not be submitted directly to the assessor's office for initial review and processing. The appeals board is an independent entity whose function is to resolve disputes between the assessor and taxpayers and a conflict of interest may result if the assessor's office takes an active role in the processing of applications.

An application which is not filed within the appropriate filing period must be rejected as untimely, and in such circumstances, an appeals board has no jurisdiction or authority over the matter except to deny the application for untimeliness. Assessment appeals filing periods are established by statute and vary according to the type of assessment under appeal.

Because the Lassen County Assessor does not, as a matter of local practice and exercise of discretion, notice assessee's by August 1 of each year, as described by section 619, of the assessed value of their real property as it appears on the secured roll, the close of the regular filing period is extended from September 15 to November 30 by operation of law, unless November 30 falls on a Saturday, Sunday, or legal holiday, in which case the regular filing period closes at the end of the next business day.

The majority of applications for changed assessment will be filed during this time. There are, however, other applicable filing periods that may apply dependent, as mentioned above, on the type of the assessment being appealed. These may include supplemental assessments, escape assessments, roll corrections, penalty assessments and calamity reassessments. The filing periods for these assessments vary as do exceptions that may exist to those filing periods.

Once again, it is incumbent on the applicant to adhere to the appropriate filing period for the type of assessment being appealed from. Failure to timely file the respective application for changed assessment will result in rejection of the application.

RULE 14 Proof of Filing Date

Under normal circumstances, an application mailed with a postmark on or before the final filing date established by statute will be deemed to be timely filed. Revenue and Taxation Code Section 166 states:

> (a) Whenever a taxpayer is required to file any statement, affidavit, application, or any other paper or document with a taxing agency by a specified time on a specified date, such filing shall be deemed to be within the specified period if it is sent by United States mail, properly addressed with postage prepaid, and bears a post office cancellation mark of the specified date, or earlier within the specified period, stamped on the envelope, or on itself, or if proof satisfactory to the agency establishes that the mailing occurred on the specified date, or earlier within the specified period.

An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates.

Although most applications will be received timely by the clerk of the board, some may not. With respect to an applicant who states that he or she mailed an application on or before the filing date, but the clerk has no record of receiving such an application, section 166 requires that the applicant provide a statement or affidavit asserting a timely filing within one year of the deadline applicable to the original filing:

> (d) Any statement or affidavit made by a taxpayer asserting such a timely filing must be made within one year of the deadline applicable to the original filing; provided, however, that this subsection shall not apply to any statement or affidavit asserting the timely filing of a property statement or to any statement made by the taxpayer in connection with an escape assessment imposed pursuant to Section 531.

Section 166 indicates that statements or affidavits may constitute proof of filing, but whether a statement or affidavit alone is sufficient proof in a given situation is a matter for the appeals board to decide. In addition to the statements or affidavits, the clerk of the board should evaluate all relevant evidence which might or might not support the contention that an application was filed timely.

RULE 15 Signatures

In order for an application to be considered valid and complete, all of the information on the application must be verified by the applicant or the applicant's agent under penalty of perjury. Thus, the original or digital signature of the applicant or the applicant's agent must appear on the application as required; a photocopied or rubber-stamped signature is not acceptable.

Government Code section 16.5 authorizes the use of and prescribes guidelines for digital signatures (electronic signatures). A digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. Section 16.5 provides in part:

> (a) In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:
>
> 1. It is unique to the person using it.
> 2. It is capable of verification.
> 3. It is under the sole control of the person using it.
> 4. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
> 5. It conforms to regulations adopted by the Secretary of State....

The clerk of the board has discretion in applying the signature requirements of section 1603 and Property Tax Rule 305. If the clerk believes an electronic filing and digital signature are sufficient to reflect compliance with the statute and rule, then the filing may be accepted as valid.

The use of facsimile is prohibited in regards to the filing of an Application for Changed Assessment.

RULE 16 Amending and Correcting Assessment Appeal Applications

An applicant (or agent) has the right to amend an application anytime until 5:00 p.m. on the last day upon which the application might have been timely filed; e.g., until 5:00 p.m. on September 15 for applications filed during the regular filing period, or until 5:00 p.m. on November 30 when the county assessor does not send value notices pursuant to section 1603 by August 1. After the applicable filing period has expired, the following limitations apply:

- An application may be corrected by the applicant following notification by the clerk of a deficiency in the original application.
- An application may be amended by the applicant provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
- An application may be amended, at the discretion of an appeals board, if requested in writing by the applicant and filed with the clerk of the board prior to any scheduled hearing, or an amendment may be requested orally at the hearing. An appeals board may allow an amendment that states additional facts claimed to require a reduction of the assessment that is the subject of the application. For example, an appeals board has the authority to grant a request to amend an application from an appeal of a decline in value for a specified lien date to an appeal of the base year value as of that lien date, providing the property is still eligible for equalization pursuant to section 80. A base year application may be filed during the first year of enrollment on the current local roll, not on the supplemental roll, or during the three succeeding years.

However, no request to amend an application may be granted after the conclusion of the hearing, even if the final determination is deferred until a later date following deliberation.

RULE 17 Withdrawal of an Application

An applicant can withdraw an application at any time prior to a hearing. However, if the assessor has indicated that evidence to support a higher value will be introduced at the hearing, the applicant will not be allowed to withdraw the application without the concurrence of the assessor.

If an applicant withdraws an application that has also been designated as a claim for refund, the applicant should be advised that withdrawal of the application will also constitute withdrawal of the claim for refund.

The withdrawal of an application is effective and final when entered by the clerk. Thus, where notice or request for withdrawal has been given or made by the applicant and entered by the clerk, the matter with respect to which the application was filed is deemed concluded and there is no reconsideration.

Withdrawal forms submitted by facsimile transmission are acceptable under this local rule.

RULE 18 Retention of Records

The clerk is responsible for maintaining the records of all appeals hearings held with a hearing officer or before appeals boards, including evidence presented during the hearings. The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents.

PART IV PRE –HEARING RULES AND PROCEDURES

RULE 19 Copy of Application, Amendment and Correction to the Assessor

The clerk shall transmit to the assessor a copy of each application for a change in assessment and each written request for amendment or correction that is received. A reasonable time shall be allowed before the hearing for the assessor to obtain information relative to the property and the assessment thereof.

RULE 20 Use of Facsimile Signatures

The board will accept a facsimile of an applicant's original signature on a stipulation if the stipulation will result in a reduction of the assessed value of the applicant's property, and the assessor represents to the board that it has made reasonable efforts to obtain the stipulation with the applicant's original signature but has been unsuccessful.

"Reasonable efforts" means a least three separate attempts by a combination of mail, e-mail, telephone or other common means of communication to request that the applicant furnish the stipulation with an original signature to the assessor.

"Facsimile of an applicant's signature" means an exact reproduction of the applicant's physical signature appearing on a document transmitted by fax, scan, e-mail, or some other reliable means of copying and transmitting a document.

RULE 21 Multiple Applications

When multiple applications are filed for a single property, e.g., for several different tax years, then, whenever possible, the clerk should consolidate the applications into one hearing. This consolidation generally results in greater convenience for the taxpayer, the assessor, and the appeals board. Property Tax Rule 305, subsection (h), provides:

> The board, on its own motion or on a timely request of the applicant or applicants 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.

If portions of the property appealed are heard separately, an appeals board must ensure that property is neither double assessed nor escaping assessment. This can be accomplished by reviewing the findings upon which the first hearing's value conclusion is based prior to determining a value in the second hearing.

In some cases, the most appropriate valuation of a property is as a single unit, with the total value allocated among the components. In such cases, separate hearings are not appropriate. Applications which have multiple issues, some of which may be dispositive of the entire application, may be bifurcated by the appeals board at the request of the parties.

RULE 22 Hearing Notice

Section 1605.6 sets forth the requirements for the appeals hearing notice which the clerk of the board must provide to the applicant and to the assessor. After the filing of an application for reduction of an assessment, the clerk will set the matter for hearing and notify the applicant (or agent) in writing by personal delivery or by depositing the notice in the United States mail directed to the address given in the application. The notification must be given not less than 45 days prior to the hearing; however, the assessor and the applicant or the applicant's designated representative may agree to a shorter notice period. If requested by the assessor or the applicant, the clerk may electronically transmit the notice to the requesting party.

RULE 23 Failure to Give Notice of Intent to Appear

If the applicant does not affirmatively indicate his/her/its intention to appear at the hearing, by so specifying on and timely returning to the clerk (postmarked at least 21 days prior to the hearing date) the Hearing Date Confirmation Notice provided with the notice of hearing, the Assessor will not be required to present a case should the applicant make an appearance on the day of the hearing.

If the applicant does not appear, under standard Board practice, the application will generally be denied for lack of appearance. If the applicant does appear and has not

complied with the above paragraph, at the Assessor's request, the hearing will be continued to a later date sufficient to allow the Assessor time to prepare a presentation.

The Board recognizes that this policy could, on occasion, cause inconvenience to an applicant. However, it is an applicant's responsibility to conduct his/her/its appeal with appropriate attention to timelines. An applicant can easily avoid any inconvenience or unnecessary cost by returning the Hearing Date Confirmation Notice on time, or, in the rare case in which there should be a legitimate problem in that respect, by arranging for a postponement well in advance of the hearing date. Hence inconvenience to or additional expense for an applicant who fails to comply with the above procedural requirement will not be considered as grounds for relief from this policy.

RULE 24 Hearing Notice by a Board on its Own Motion

An appeals board has the authority to raise an assessment on its own motion without an application for reduction pending before it. But before the board can take such action, it must first set the matter for hearing and give notice of the hearing not less than 20 days prior to the hearing unless such notice is waived by the assessee (or the assessee's agent) in writing in advance of the hearing or orally at the time of the hearing or a shorter notice is stipulated to by the assessor and the assessee (or agent).

RULE 25 Assessor Request for a Higher Value

After the filing of an application, the assessor may request, pursuant to section 1609.4, that the board determine a higher assessed value than that placed on the roll and offer evidence to support the higher value. In this instance, the chairperson of the appeals board must determine whether or not the assessor gave notice in writing to the applicant (or agent) of this proposed action. If notice and a copy of the evidence the assessor is presenting to the board has been supplied to the applicant (or agent) at least ten days prior to the hearing, the assessor may introduce the evidence at the hearing.

The assessor's notice to the taxpayer advising of a proposed increase in assessed value is frequently known as a ***raise letter***.

RULE 26 Hearing Postponements

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a

request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant.

While a clerk may, for the sake of administrative convenience and efficiency, consider the scheduling preferences of the assessor's office, it remains the clerk's responsibility to confirm validity of applications and to make final scheduling decisions.

RULE 27 Request for Continuance

The board may continue a hearing to a later date. If the hearing is continued, the clerk will inform the applicant (or agent) and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice. There are two primary reasons for continuing a hearing:

> New information introduced at the hearing—if new material relating to the information received from the other party during an exchange of information is introduced, the other party may request a continuance for a reasonable period of time.
>
> Amendment of an application—If the appeals board grants a request to amend an application, upon request of the assessor, the hearing on the matter will be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

If the applicant requests a continuance within 90 days of the expiration of the two-year limitation period provided in section 1604, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely. The applicant has the right to terminate the extension agreement upon 120 days written notice.

RULE 28 Pre-hearing Conference

The purpose of a pre-hearing 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 pre-hearing 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.

1. 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.
2. The assessor or the Board shall NOT request a pre-hearing conference if the application is within one hundred and twenty (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.
3. Any such request for a pre-hearing 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.
4. No other issue(s) may be raised at the hearing unless all parties agree orally or in writing to additional specific issues of discussion.

The clerk shall set the matter for a pre-hearing conference and notify the applicant or the applicant's authorized agent, the assessor and Board counsel of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than thirty (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.

All initial briefs or other written material to be presented at the pre-hearing conference shall be submitted to the clerk and other parties (e.g. assessor, applicant/authorized agent, Board counsel) no later than fifteen (15) days prior to the scheduled conference.

RULE 29 Inspection of Assessor Records

Section 408 allows an assessee, or a representative of the assessee, to inspect records at the assessor's office regarding the assessment of his or her property, as well as market information regarding any comparable properties that the assessor used in the valuation of the assessee's property. The assessee or representative may inspect or copy all information, documents, and records, including auditors' narrations and work papers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any applicable penalties and interest. The assessor is prohibited by law from disclosing market information that relates to the business affairs of another taxpayer unless the assessor is provided with a written waiver from that taxpayer allowing the assessor to disclose the information.

Information obtainable under section 408 is relevant to a determination of value and may be introduced at an appeals hearing. Assessors are expected to comply with an assessee's reasonable request pursuant to that provision. If an assessor fails to permit the inspection or copying of materials or information pursuant to a section 408 request, and the assessor introduces any requested materials or information at an appeals hearing, the applicant or representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604 for a period of time equal to the period of continuance.

A taxpayer has a right to inspect their records under section 408 whether or not an appeal has been formally filed.

RULE 30 Information from Taxpayer Records

Section 441, subdivision (d), requires a taxpayer to make available to the assessor, for assessment purposes, information or records regarding the taxpayer's property or any other personal property located on premises the taxpayer owns or controls. The assessor may obtain details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value. Under this section an assessee is required to provide factual as well as ***interpretive data*** relevant to an estimate of the fair market value of the assessee's property. This information includes but is not limited to the following:

1. Books and records, or inspections of the subject property that disclose acquisition or construction costs, income and expense data, construction details, or physical condition.
2. The basis or bases, whether due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value, such as a changed physical environment, changed income and expense experiences and capitalization or yield rate expectations, or new market comparables events, recent appraisals, etc.

Taxpayers are expected to comply with an assessor's reasonable requests pursuant to that provision; thus, both the assessor and the taxpayer should be able to make use of and present the same information at hearings. In the event that a taxpayer withholds requested information, subdivision (h) of section 441 provides:

> If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

Timely receipt of the information requested by the assessor is critical to the efficient management of the assessor's appeal caseload. Each 441(d) letter from the assessor contains reasonable time periods for applicants to respond. If information is obtained after the stated deadlines it will be classified by the assessor as ***untimely received*** and will not be considered by the assessor before the hearing. Consequently, and pursuant to subdivision (h) above, if the applicant or agent presents untimely received information as evidence at the hearing, the assessor will have the right to request a continuance and extend the two-year time period.

RULE 31 Audits of Taxpayer's Records

The assessor may obtain information regarding assessable fixtures and business tangible personal property of any profession, trade, or business by conducting an audit pursuant to sections 469 or 470. Section 469 requires an assessor to audit the books and records of a profession, trade, or business at least once every four years if the locally assessable fixtures and business tangible personal property owned, claimed, possessed, or controlled by the taxpayer engaged in that profession, trade, or business has a full value of $400,000 or more.

Section 470 provides that a person owning, claiming, possessing, or controlling property subject to local assessment will, upon request by the assessor, make available for review business records relevant to the amount, cost, and value of the property.

The assessor may conduct an audit under sections 469 or 470 regardless of whether or not an application has been filed.

RULE 32 Formal Exchange of Information

Section 1606 and the interpretive regulation Property Tax Rule 305.1 set forth the exchange of information provisions whereby either the applicant or, if the assessed value of the property exceeds $100,000, the assessor may initiate a request for an exchange of information and evidence supporting each party's opinion of value. Section 1606 does not require an exchange of the details of the evidence to be presented at the hearing but, rather, only requires that the information exchanged provides reasonable notice to the other party concerning the subject matter to be presented through the testimony of witnesses and evidence.

The request for an exchange of information, whether initiated by the applicant or the assessor, may be submitted to the clerk of the board at the time of the filing of the application, or to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information, will control. The party initiating the exchange must provide his or her valuation information for the other party at the time the request for an exchange of information is initiated. If the request is submitted to the clerk of the board, the clerk will forward the request and the valuation information provided to the other party.

If one party initiates a request for information and the other party does not comply within the specified time, the appeals board may grant a postponement for a reasonable period of time. The postponement will extend the time for responding to the request. If the appeals board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may

comment on evidence presented by the other party but will not be permitted to introduce other evidence unless the other party consents to such introduction. If the noncomplying party has the burden of proof, nothing in this regulation will shift that burden to the other party, and there will be no requirement for the complying party to submit evidence to the board for comment.

COMPARABLE SALES DATA

If the opinion of value is to be supported with evidence of comparable sales, these sales must be described by the assessor's parcel number, street address, or legal description sufficient to identify them. Information for each comparable sale must include the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

The comparative sales approach is preferred when reliable sales data are available. This approach is based upon the premise that the fair market value of a property is closely and directly related to the sales prices of comparable properties sold under open market conditions. Characteristics of comparability include such things as size, quality, age, condition, site, amenities (e.g., view), zoning, and governmental restrictions.

INCOME DATA

If the opinion of value is to be supported with evidence based on an income study, the assessor and applicant must present the gross income, the expenses, and the capitalization method and rate or rates employed.

The income approach to value is typically used when the property under appraisal is purchased in anticipation of a money income it will produce. This is the preferred approach for the appraisal of land when reliable sales data for comparable properties are not available.

COST DATA

If the opinion of value is to be supported with evidence of replacement cost, the assessor and the applicant must present:

- 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, replacement 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.

The cost approach is used in conjunction with other value approaches and is the preferred approach when neither reliable sales nor income data are available. In the cost approach, the value of an improved property is determined by adding the estimated land value and the estimated cost new of the improvements, less depreciation. The cost approach can also be used to estimate the value of personal property.

If the party requesting an exchange of data has submitted the information required within the specified time, the other party must submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The responding party must provide information conforming to the requirements set forth in section 1606 with respect to comparable sales, cost, or income information. If the assessor is the respondent, he or she is required to submit, or submit to the clerk for mailing, the response to the address shown on the application or on the request for exchange of information, whichever is filed later.

The initiating party and the other party will use adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

Whenever a formal exchange of information has taken place, the parties may introduce evidence only on matters that were exchanged unless one party consents to introduction of additional evidence proposed to be admitted by the other party.

At the hearing, either party may introduce new material relating to the information received from the other party during an exchange of information. If a party introduces such new material at the hearing, the other party, upon request, will be granted a continuance for a reasonable period of time.

RULE 33 Subpoenas

Property Tax Rule 322 allows an applicant or the assessor to request that the appeals board issue a subpoena for attendance of witnesses at a hearing, and/or to produce books, records, maps, and documents relevant to the issues raised in the application. Additionally, the appeals board may issue a subpoena on its own motion. Subpoenas will be restricted to compelling the appearance of a person or the production of things at the hearing and will not be utilized for purposes of prehearing discovery.

A Property Tax Rule 322 subpoena may not be issued unless an appeal has been formally filed or a hearing set by the appeals board on its own motion or investigation.

RULE 34 Recusal and Disqualification of Board Members

Every board member should endeavor to maintain the integrity of the appeals process by disqualifying himself or herself from participating in proceedings when appropriate. In this regard, section 1624.2 provides:

> No member of an assessment appeals board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of or a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his judgment in the proceeding. Violation of this section shall be cause for removal under Section 1625 of this code.

Additionally, members of the Assessment Appeals Board are subject to the California Political Reform Act (Government Code section 81000 et seq.) The Political Reform Act imposes obligations on public officials, including members of an assessment appeals board, to promote decision making in a fair and unbiased manner, to promote transparency in government, and to foster public trust in government. The obligations that are imposed by law relate to campaign finance (likely irrelevant in this application), and conflicts of interest. The conflict of interest rules are complicated and it is the obligation of each member of the assessment appeals board to adhere to them.

The assessor or the applicant may challenge the participation of an appeals board member in any proceeding. A written statement objecting to the hearing of a matter before a member of the board and setting forth the facts constituting the ground of the disqualification of the member must be filed with the clerk of the board. The statement should be submitted at the earliest practicable opportunity after discovery of the facts on which the disqualification is based, and in any event prior to commencement of a hearing on any issue of fact before the challenged member. The clerk will provide copies of the statement to all parties of the hearing, as well as the board member alleged in the statement to be disqualified.

Within 10 days after filing of the statement or 10 days after being served with the statement, whichever is later, the challenged appeal board member may file with the clerk an answer consenting to the proceeding being heard by another board member or denying the allegations contained in the statement and setting forth any additional relevant facts. If the challenged board member does not consent to the disqualification, the question of the member's disqualification will be heard and determined by a member other than the challenged member who is agreed upon by the parties who have appeared in the proceeding, or, in the event the parties fail to agree within five days after the expiration of the time allowed for the challenged member to answer, by a member assigned to act by the clerk of the board.

RULE 35 Board Members Representing Applicants

Section 1624.3 bars current board members or alternate members from representing applicants for compensation. Section 1624.3 states:

> No current member of an assessment appeals board, nor any alternate member, may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the board member or alternate member serves.

RULE 36 Application Filed by Board Member

An application filed by a board member, or an application in which a member will represent his or her spouse, parent, or child, must be transferred to an appeals board of an alternate county for hearing in that alternate county. A member must notify the clerk when the member files an application or when the member intends to represent his or her spouse, parent, or child in an assessment appeal matter.

RULE 37 Employees of the Clerk of the Board Representing Applicants

No current employee of the office of the clerk of the board may represent an applicant for compensation on any application for equalization filed pursuant to section 1603.

RULE 38 Applications Filed by Employees of the Clerk of the Board

An application filed by an employee of the clerk of the board, or an application in which the employee will represent his or her spouse, parent, or child, must be transferred to an appeals board of an alternate county for hearing in that alternate county. The employee must notify the clerk when the employee files an application or when the employee intends to represent his or her spouse, parent, or child in an assessment appeal matter.

RULE 39 Assessor Employees Representing Applicants

An employee of the County Assessor who was employed as of the effective date of the assessment that is the subject of the application may not represent an applicant on any application for equalization filed pursuant to Section 1603.

RULE 40 Applications Filed by Assessor Employees

An application filed by an employee of the assessor must be transferred to an appeals board of an alternate county for hearing in that alternate county. The employee must notify the clerk when the employee files an application.

RULE 41 County Legal Counsel Representing Applicants

An employee of the county counsel who advises the assessment appeals board or represents the assessor before the assessment appeals board may not represent an applicant on an application for equalization filed pursuant to Section 1603.

RULE 42 Applications Filed by County Legal Counsel

An application filed by an employee of the county counsel who advises the assessment appeals board or represents the assessor before the assessment appeals board must be transferred to an appeals board of an alternate county for hearing in that alternate county. The employee must notify the clerk when the employee files an application.

PART V HEARING RULES AND PROCEDURES

RULE 43 Appearance by the Applicant

The applicant must appear personally at the hearing or be represented by an agent unless the applicant's appearance has been waived by the board. If the applicant is represented by an agent, the agent must be thoroughly familiar with the facts pertaining to the matter before the board. The board may require confirmation that the applicant is properly represented at the hearing.

RULE 44 Stipulation in Place of Appearance and Testimony

An appeals board may not increase or lower any assessment without a hearing, and may act only on the basis of the evidence presented by the parties. However, section 1607 does provide a means whereby a board may accept a written stipulation and waive the attendance of the applicant at the hearing. Section 1607 reads in part:

> ... in the event there is filed with the county board a written stipulation, signed by the assessor and county legal officer on behalf of the county and the person affected or the agent making the application, as to the full value and assessed value of the property which stipulation sets forth the facts upon which the reduction in value is premised, the county board may, at a hearing, (a) accept the stipulation, waive the appearance of the person affected or the agent and change the assessed value in accordance with Section 1610.8, or (b) reject the stipulation and set or reset the application for reduction for hearing.

Although many counties frequently use this stipulation process, an appeals board is not required to accept a stipulation. The appeals board is required to find the correct full value of the subject property. If the board is satisfied that the data presented in a stipulation constitute a reasonable basis for the full value, the board should accept the stipulation in the interests of promoting administrative efficiency and lessening the burden on taxpayers and government. If the basis for the stipulation is unclear or does not appear to be consistent with California property tax law, the appeals board should

demand an adequate explanation and, if such an explanation is not produced, the board should reject the stipulation and set the matter for hearing. The appeals board must, of course, follow the mandatory hearing notice provisions of section 1605.6.

RULE 45 Swearing in of the Parties and Witnesses

All testimony will be taken under oath or affirmation. The clerk or hearing officer will administer an oath to both parties to the hearing, as well as to anyone who will give evidence during the hearing.

Every person who willfully states anything which he or she knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of an application to reduce any tax or assessment, is guilty of a misdemeanor.

RULE 46 Announcement of the Property and Issues

At the commencement of the hearing, the chair or the clerk will announce the number of the application and the name of the applicant. The chair will then determine if the applicant (or agent) is present.

1. If neither (applicant or agent) is present, the chair will ascertain whether the clerk has notified the applicant of the time and place of the hearing.
2. If the notice has been given and neither the applicant nor an agent is present, the application will be denied for lack of appearance, or, if good cause for the nonappearance is shown of which the board is timely informed, the board may postpone the hearing.
3. If the notice has not been given, the hearing will be postponed to a later date and the clerk directed to give proper notice to the applicant.

RULE 47 Requests for Findings of Fact

Section 1611.5 and Property Tax Rule 308 provide the means whereby an applicant or an assessor may request written findings of fact of a hearing. Such a request must be made before the hearing begins (see Chapter 9). Property Tax Rule 308 states in part:

> If an applicant or the assessor desires written findings of fact, the request must be in writing and submitted to the clerk before commencement of the hearing. The requesting party may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons the request at this time, the other party may orally or in writing renew the request at the conclusion of the hearing and accompany the request with payment of the required fee or deposit.

The county may charge a reasonable fee for preparation of the findings of fact. If a fee is required, the fee must be paid prior to the end of the hearing as described in the local

rules of practice. The fee information must be included on the county's Application for Changed Assessment form.

RULE 48 Informal Hearing Process

Appeals hearings are conducted informally so that both the taxpayer and assessor can proceed without an attorney. The proceeding must allow both the applicant and the assessor a reasonable opportunity to be heard. For that reason, hearings must be conducted according to procedures designed to guarantee each party's right to fundamental fairness and due process. Due process requirements are not met unless the taxpayer is accorded a full and fair hearing both in substance as well as in form.

Property Tax Rule 313 prescribes the basic procedural requirements of hearings as follows:

- A full and fair hearing will be accorded each application.
- The appeals board may act only upon the basis of proper evidence admitted into the record.
- There will be reasonable opportunity for the presentation of evidence, for the cross examination of all witnesses, for argument, and for rebuttal by each party.

Furthermore, a reasonable opportunity to be heard includes such basic considerations as effective communication between the parties and the board members. For example, when either the taxpayer or the assessor presents information in a manner that is not clear, an appeals board member should ask for clarification so that he or she understands the point or information that is being presented. If there is a language barrier, a reasonable attempt must be made by the appeals board to ascertain what is being said.

An appeals hearing is not a contest of which party can make the most professional or persuasive presentation. The appeals process serves only to determine the proper full value of property.

In an appeals hearing, there are few formal rules of discovery and few formal procedures for admitting evidence. The board members may accept evidence from either the applicant or the assessor at any time during the hearing and in any manner deemed appropriate by the board, i.e., written evidence, maps, illustrations, testimony, etc. However, presentation of evidence should be controlled and directed in an orderly manner by the board chair. When necessary and appropriate, board members should ask for clarification as to the purpose for which the evidence is being introduced. The board may admit and consider any evidence that has some bearing on the question before it and is not otherwise objectionable. Evidence relative to the veracity of witnesses, such as prior inconsistent statements or testimony from an appeals hearing or court action, should be admitted by the appeals board. Should any such evidence include confidential information, it should only be admitted with the permission of the affected parties, or be

deleted prior to introduction.

When an appeals board declares evidence inadmissible, it should be prepared to make a succinct reasoning for the disallowance of the evidence. The clerk of the board should maintain a copy of all admitted evidence presented at the hearing.

RULE 49 Presentation of Evidence

It is the responsibility of the board chair to guide the hearing process; generally, most hearings are informally structured. Typically, a hearing should proceed as follows:

- The party who is required to give evidence first makes a presentation.
- The other party and/or board members ask questions of the party making the presentation.
- The other party makes a presentation.
- The other party and/or board members ask questions.
- In cases where there is no pre-established burden of proof the chair will determine which party presents evidence first.

The chair should not close the evidentiary portion of the hearing until there has been a reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses and materials proffered as evidence, for argument, and for rebuttal, including questions and comments of the board members.

RULE 50 Exhibits for Use as Evidence at the Hearing

Exhibits, maps, letters, papers, documents, charts, etc. to be submitted by an applicant or the applicant's agent as evidence in a hearing 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 or for forwarding them 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.*** Both the applicant and the assessor must submit Seven (7) copies of each written exhibit to be offered into evidence during Board hearings.

RULE 51 Burden of Proof

Evidence Code section 115 defines ***burden of proof*** as "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." The party with the burden of proof is required to establish the existence or nonexistence of a fact by producing evidence that satisfies a required standard. The application of the burden of proof is described in Property Tax Rule 321 as follows:

(a) 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 present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) 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 or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

RULE 52 Preponderance of Evidence Standard

Unless otherwise provided by law, the required standard of proof in California is proof by a preponderance of the evidence. This standard also generally applies to assessment appeal proceedings. Thus, with respect to the assessor's presumption of correctness and its exceptions, the party with the burden must prove his or her case by a preponderance of the evidence. A preponderance of evidence is usually defined "in terms of probability of truth" and as evidence which, when weighed against evidence offered in opposition to it, "has more convincing force and the greater probability of truth."

RULE 53 Clear and Convincing Evidence Standard

There are certain legal presumptions applicable in property tax assessment matters in which the required standard of proof is that of clear and convincing proof. The clear and convincing standard is a higher standard than preponderance of the evidence and has been held to require evidence "so clear as to leave no substantial doubt." In other words, a preponderance calls for probability while "clear and convincing proof demands a high probability."

RULE 54 Standard for Admissible Evidence

Rule 313, subsection (e), provides, in part:

> Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

Relevant evidence is defined as:

> Evidence tending to prove or disprove an alleged fact. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 55 Applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) to Assessment Appeal Hearings.

Section 11319 of the California Business and Professions Code, Division 4. Part 3 states the following:

> Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes.

Under this rule any appraisal, written or oral, submitted as evidence for a hearing from a state licensed appraiser must comply with all relevant aspects of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal.

RULE 56 Use of Lender Appraisals for Tax Purposes.

According to the ethics rules applicable to appraisers enunciated in the Uniform Standards of Professional Appraisal Practice, the results of an appraisal are confidential. This rule states the following:

An appraiser must not disclose: (1) confidential information; or (2) assignment results to anyone other than:

- The client;
- Persons specifically authorized by the client;
- State appraiser regulatory agencies;
- Third parties as may be authorized by due process of law; or
- A duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.

Assignment Results are defined as "an appraiser's opinions and conclusions developed specific to an assignment." Parties who receive a copy of an appraisal report as a consequence of disclosure requirements ...do not become intended users of the report unless they are specifically identified by the appraiser at the time of the assignment. Consequently, when the applicant or the applicant's agent is not the appraiser's client, the confidential nature of the appraiser-client relationship prohibits the use of lender-engaged reports, or similarly engaged reports without specific written authorization from the client.

When applicants submit appraisal reports that do not explicitly authorize their use for tax purposes, the assessor will file a letter with the client of the appraisal report requesting authorization for use before relying on such reports. If the client does not provide the assessor with written authorization, the assessor will not rely on the report and request the board to prohibit its use in the hearing.

RULE 57 Purchase Price Presumption

Section 110 sets forth the ***open market*** conditions upon which are based full cash value or fair market value of real property—the standard for assessed value of real property in California. That section further provides in part:

> ... (b) For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other....

Thus, the party asserting that the full value is other than the purchase price paid bears the burden of proving that the sale was not an open market transaction. Furthermore, that party must establish by a preponderance of evidence that the price paid would have been different if the sale had taken place under open market conditions.

Property Tax Rule 2 states that this presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. ***Significantly more or less means*** a deviation of more than 5 percent of the total consideration.

Subsection (a) of Property Tax Rule 2 states, "[w]hen applied to real property, the words 'full value,' 'full cash value,' 'cash value,' 'actual value,' and 'fair market value' mean the prices at which the unencumbered or unrestricted fee simple interest in the real property (subject to any legally enforceable governmental restrictions) would transfer...." Private restrictions or encumbrances on real property, such as below-market leases, are not properly considered when determining the fair market value of that property for property tax assessment purposes. Consequently, the purchase price of property, even if the sale occurred under *open market* conditions, may not be a valid indicator of the fair market value of that property if the purchase price was affected by private restrictions such as below-market leases.

The purchase price presumption applies to all property types and transfers with the exception of the following:

1. The transfer of any taxable possessory interest.
2. The transfer of real property when the consideration is in whole, or in part, in the form of ownership interests in a legal entity (e.g., shares of stock) or the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity.
3. The transfer of real property when the information prescribed in the change in ownership statement is not timely provided.

RULE 58 Presumption Regarding Enforceable Restrictions

Section 402.1 provides generally that the assessor must consider any enforceable restrictions in determining the value of property. Where enforceable restrictions exist, subdivision (b) creates a rebuttable presumption "that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses." Subdivisions (d) and (e) impose further requirements upon assessors when valuing enforceably restricted property under circumstances in which the presumption has not been rebutted and under circumstances in which it has been rebutted.

RULE 59 Limitations on the Use of Sale Transactions

The preferred method of arriving at the assessed value of a property is through the use of market data that represents arm's-length, open market sales, of both the subject property and of comparable properties (when such data is available), that are near in time to the valuation date of the subject property.

Property Tax Rule 324 specifies the nature of the evidence that appeals boards may consider regarding comparable sales:

> (d) When valuing a property by a comparison with sales of other properties, the board may consider those sales that, in its judgment, involve properties similar in size, quality, age, condition, utility, amenities, site location, legally permitted use, or other physical attributes to the property being valued. When valuing property for purposes of either the regular roll or the supplemental roll, the board shall not consider a sale if it occurred more than 90 days after the date for which value is being estimated. The provisions for exclusion of any sale occurring more than 90 days after the valuation date do not apply to the sale of the subject property.

The prohibition against considering sales of properties other than the subject property occurring more than 90 days after the date for which value is being estimated is mandatory on appeals boards. Attempting to submit evidence of such sales is the most common error among parties. The valuation date—the date used as the basis for determining the value of the property—depends upon the reassessment event:

- For change in ownership and new construction, the valuation date is the date of the transfer resulting in a change in ownership or the date the new construction was completed.
- For declines in value or construction in progress, the valuation date is the lien date, January 1 of the current assessment year.
- For misfortune or calamity in counties which have adopted ordinances pursuant to section 170, the valuation date is the date the property sustained damage or destruction due to misfortune or calamity.
- For misfortune or calamity in counties which have not adopted ordinances, the valuation date is the lien date, January 1 of the current year.

Reliability of data may vary considerably. Even relatively poor data can fairly be considered as shedding light on the value if it is the best or only data available. Generally, appeals boards should admit comparable sales information, provided the sales occurred prior to or within 90 days following the valuation date, and appropriate adjustments to those comparable sales have been made.

There are no statutes or regulations regarding the timeliness of valuation data other than those relating to comparable sales data. In general, an appeals board should consider data available to the market in general (which is presumably available to the assessor) as of the lien date; or in the case of a change in ownership or new construction, the date of transfer or completion; or for a calamity or misfortune, the date of the calamity or misfortune.

PART VI DECISION RULES AND PROCEDURES

RULE 60 Disposition of Issues

An appeals board must render a decision on each application over which it has jurisdiction after a properly conducted hearing on the matters in issue. The decision may be rendered at the conclusion of the hearing, or the decision may be deferred to a later time after deliberation. Unless the hearing is bifurcated, the decision must be complete and dispose of all issues raised in the application that are within the jurisdiction of the board. The decision of an appeals board with regard to specific valuations and methods of valuation is equivalent to the findings and judgment of a trial court.

RULE 61 Quorum and Vote Required

Property Tax Rule 311 prohibits an appeals board from making a decision unless a quorum of the members is present. "A hearing must be had before a majority of the members of the board; a hearing before less than a majority may constitute a denial of due process." The decision must be arrived at by a vote of the members. Property Tax Rule 311 provides:

> 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.

RULE 62 Definition of Value

The first consideration is obtaining a clear definition of value acceptable for the purpose of the appraisal. In California, the value standard for property tax purposes is full cash or fair market value. The constitutional requirement of ***fair market value*** is defined as follows:

> It provides, in other words, for an assessment at the price that property would bring to its owner if it were offered for sale on an open market under conditions which neither buyer nor seller could take advantage of the exigencies of the other.
>
> It is a measure of desirability translated into money amounts ... and might be called the market value of property for use in its present condition.

In most cases, an appeals board is obligated to find the fair market value as of the assessment date (the lien date or the date of change in ownership or completion of new construction).

However, there are circumstances in which an appeals board is required to find a full value that is different from fair market value. For example, an agricultural property may be subject to a California Land Conservation Act contract and must be assessed on its income-producing capability using a statutorily specified capitalization rate. For this type

of property, the dispute between the assessor and taxpayer typically involves the income-producing capability of the property rather than the fair market value of the property.

RULE 63 Definition of Property Rights

The second consideration is obtaining a clear definition of the property rights or interests that are to be valued, which includes identifying the appraisal unit. In most cases, the identification of the appraisal unit is obvious and causes few or no problems. For example, single-family homes are typically sold in combination with the land. Buyers and sellers negotiate for the land and the buildings as a unit and not separately.

In some cases though, the identification of the appraisal unit may not be as obvious. For example, unimproved residential subdivision lots owned by one person may be sold individually or in groups. Also, a farm property may consist of several parcels that could be sold separately or as a single farm unit. Unit of appraisal decisions should be based on consideration of ownership, use, location, and, most importantly, highest and best use. For example, there could be a sale of a farm that consists of several parcels. Although the taxpayer may appeal the value of a single parcel, the appeals board would be justified in reviewing the value of the entire farm. Even though the taxpayer files an appeal on only a portion of the property, the appeals board on its own motion or at the request of the assessor may equalize the entire property.

In addition to the above examples, in some instances the property being appraised includes rights other than the fee simple rights such as grazing rights, mining rights, and air rights. When there is disagreement between the applicant and the assessor regarding the identification of the property being appraised, the appeals board must resolve the dispute in accordance with property tax laws.

RULE 64 Determination of Proper Appraisal Methods

The third consideration is determining the proper method, or methods, by which the value should be estimated. An appeals board is bound by the same principles of valuation that an assessor is legally required to follow when determining the fair market value of the protested property.

Rule 32 above discusses the three generally recognized approaches to value: comparative sales approach, cost approach, and income approach. A considerable amount of appraisal judgment may be necessary when using any of the valuation approaches. The appeals board will be provided with the appraisal method or methods used by the assessor. In some instances, the applicant will also provide the board with an appraisal of the subject property, which may not be based on the same appraisal method(s) used by the assessor.

The appeals board must determine the fair market value by utilizing the appraisal method or methods most appropriate for the type of property in dispute. In addition, the board must determine whether the method(s) used was properly applied, considering the type of

property assessed and any governmentally imposed land use restrictions, by examining the factual data, the presumptions, and the estimates relied upon.

RULE 65 Procedural Due Process

Prior to and during the conduct of a hearing and in the process of reaching a decision, an appeals board must act to guarantee fundamental fairness to all parties by ensuring the requirements of ***procedural due process*** are met. In the administrative hearing context, due process requires that, at a minimum, each party receives adequate notice and opportunity for hearing. Failure to afford all parties the right to fundamental fairness by denying due process constitutes grounds for judicial review.

Denial of procedural due process may result from defects in the composition of the board, or in the manner in which the board conducts a hearing. Examples of denial of procedural due process that have been held to invalidate equalization proceedings include:

- One-person hearings
- Refusal to allow reasonable opportunity for cross-examination
- Refusal to permit reasonable argument
- Ex parte communication concerning an appeal with any members of the appeals board regarding the appeal by any party (or his or her representative).

RULE 66 Use of Confidential Assessor Information

Confidential documents, as described in sections 408 and 451, obtained by the assessor while discharging the duties of his or her office may not be disclosed to the public or competitors of the taxpayer unless a court so orders. If the confidential information relates to the applicant, it may be used in the course of the appeals hearing.

RULE 67 Rules of Thumb

A ***rule of thumb*** is a perception based on experience or practice rather than on evidence or knowledge. Rules of thumb, or preconceived conclusions, are inappropriate in an assessment appeals hearing. Examples of inappropriate rules of thumb include such things as:

- Swimming pools never add in value what they cost.
- Property in the south part of the county is not as valuable as the rest of the county.
- Homes on a corner are always worth more.

RULE 68 Weight of the Evidence

At the conclusion of the hearing, the board members must assimilate all the evidence presented to them. In order to evaluate the evidence and render a decision, the members

must determine the weight each piece of evidence merits. Weight is not based on quantity, but rather depends on credibility, that is, the effect of the evidence in inducing belief. The presumption that the assessor has properly performed his or her duties is not evidence and will not be considered by the board in its deliberations.

The qualifications of the person presenting testimony and other evidence is only one factor to be considered in determining the weight to be given to that testimony and other evidence. The assessor's information should not be given more credence for the sole reason that "the assessor makes appraisals for a living." Conversely, testimony of an "expert witness" for a taxpayer should not be deemed more credible merely based on his or her title.

RULE 69 Sufficiency of the Information to Make a Decision

In order for the appeals board members to properly adjudicate any matter before them, they must be presented with sufficient information to render a decision. Board members should be diligent in asking for clarification in areas of uncertainty. A decision should not be based on inconclusive evidence. If, in the opinion of the board, not enough evidence was provided during the course of the hearing to make a decision, the board may continue the hearing so that information they believe is pertinent may be assembled and brought before them.

RULE 70 Use of Personal Knowledge by Board Members

There are two types of personal knowledge that appeals board members may possess:

1. Knowledge about properties in the county based on past experiences or facts gained by virtue of having lived in the area for a period of time.
2. Knowledge of a technical or professional nature gained through education and in the course of one's profession.

An appeals board member is prohibited from using personal knowledge as described in Number 1 above in rendering a decision on a protested property value. The fact that a member is familiar with the appealed property, or privy to rumors about the appealed property, must not influence a member's evaluation of the evidence presented during the hearing.

On the other hand, use of technical and professional knowledge is not only permitted, it is quite desirable. Board members with accounting, appraisal, legal, and real estate backgrounds typically have a better understanding of appraisal, legal, and complex business issues and are, therefore, usually more adept at the decision-making process; however, use of technical and professional knowledge must be applied to the evidence presented during the hearing. The Legislature recognized the benefits of professional knowledge for appeals board members when it enacted minimum eligibility requirements.

RULE 71 Board Decision

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 board shall consider evidence of value derived by the use of any of the legally permissible valuation methods. It shall determine whether the method(s) used was (were) properly applied, considering the type of property assessed, governmentally imposed land use restrictions, and any recorded conservation easements as described in Civil Code section 815.1 et seq., by examining the factual data, the presumptions, and the estimates relied upon.

The board shall also determine the classification, amount, and description of the property that is the subject of the hearing, the existence of a change in ownership or new construction, or any other issue that is properly before the board, or that is necessary to determine the full value of the property. The board shall provide to the clerk such details as are necessary for the implementation of the board's decision.

The board's authority to determine the full value of property or other issues, while limited by the laws of this state and the laws of the United States and usually exercised in response to an application for equalization, is not predicated on the filing of an application nor limited by the applicant's request for relief. When an application for review includes only a portion of an appraisal unit, whether real property, personal property, or both, the board may nevertheless determine the full value, classification, or other facts relating to other portions that have undergone a change in ownership, new construction or a change in value. Additionally, the board shall determine the full value of the entire appraisal unit whenever that is necessary to the determination of the full value of any portion thereof. The board is not required to choose between the opinions of value promoted by the parties to the appeal, but shall make its own determination of value based upon the evidence properly admitted at the hearing.

An appraisal unit of property is a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that is specifically designated as such by law.

The board, the applicant, and appraisal witnesses shall be bound by the same principles of valuation that are legally applicable to the assessor.

When valuing a property by a comparison with sales of other properties, the board may consider those sales that, in its judgment, involve properties similar in size, quality, age, condition, utility, amenities, site location, legally permitted use, or other physical attributes to the property being valued. When valuing property for purposes of either the regular roll or the supplemental roll, the board shall not consider a sale if it occurred more than 90 days after the date for which value is being estimated. The provisions for

exclusion of any sale occurring more than 90 days after the valuation date do not apply to the sale of the subject property. The board shall presume that zoning or other legal restrictions, of the types described in Revenue and Taxation Code section 402.1, on the use of either the property sold or the property being valued will not be removed or substantially modified in the predictable future unless sufficient grounds as set forth in that section are presented to the board to overcome that presumption.

When written findings of fact are made, they shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full value of the property or its components.

RULE 72 Record of Hearing

The board is required to make a record of the hearing and, upon request, will furnish the party with a tape recording or minutes at his or her expense. Request for a tape recording may be made at any time, but not later than 60 days following the final determination by the county board.

The county may charge a reasonable fee for recording and/or minutes.

RULE 73 Notice and Clarification of Decision

The board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. The decision becomes final when:

1. The vote is entered into the record at the conclusion of the hearing provided no findings of fact are requested by either party, and all parties are present at the hearing or the hearing is subject to stipulation by both parties. The county may provide a written notice of the decision.
2. A written notice of the decision is issued provided no findings of fact are requested by both party, and the decision is taken under submission by the board at the conclusion of the hearing. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. The clerk shall notify the applicant in writing of the decision of the board by United States mail addressed to the applicant or to the applicant's agent at the address given in the application.
3. A written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. If so requested by an applicant or an applicant's agent, the determination shall become final upon issuance of the findings of fact which the county shall issue no later than 180 days after the conclusion of the hearing. Such a request must be made by the applicant or the

applicant's agent prior to or at the conclusion of the hearing. If the conclusion of the hearing is within 180 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the applicant shall agree in writing to extend the two-year period. The extension shall be for a period equal to 180 days from the date of the conclusion of the hearing.

The board may request any party to submit proposed written findings of fact and shall provide the other party the opportunity to review and comment on the proposed finding submitted. If both parties prepare proposed findings of fact, no opportunity to review and comment need be provided.

RULE 74 Reconsideration and Rehearing

The decision of the board upon an application is final. The board will not reconsider or rehear an application or modify a decision. The board is prohibited from amending a final determination based on information received subsequent to the hearing. The value established by the board is conclusively presumed to be the full value of that property until such time as a reassessable event occurs, e.g., a change in ownership.

The board may, however, amend a decision to correct a ministerial clerical error, and may reopen a hearing when it was previously closed due to nonappearance by the applicant. Correcting a ***ministerial clerical error*** involves instances only when there is no occasion to use judgment or discretion, such as correcting a mathematical error made while computing the value of a property.

In instances where only a portion of a property has been equalized by an appeals board, the remainder of that property may be eligible for review by an appeals board. If, for example, additional improvements are discovered by the assessor after a property's value has been set by an appeals board, those additional improvements can be the subject of a later hearing.

The denial of an application for lack of appearance by the applicant, or the applicant's agent may be reconsidered where the applicant or the applicant's agent furnish evidence of good cause for the failure to appear and files a written request for reconsideration of the denial within 60 days of the date of mailing of the notification of denial due to lack of appearance. The written request shall set forth good cause for the failure to appear and shall be set for hearing at the reconsideration hearing. For the purposes of this procedure, ***good cause*** shall be defined to be the following:

1. The applicant or agent failed to appear because of circumstances that were beyond the control of the applicant or applicant's agent, and the applicant or agent could not appoint someone to make the appearance on their behalf; or
2. The applicant or agent had no knowledge prior to the hearing that he or she would be unable to appear as scheduled.

Professionals such as, but not limited to, attorneys, appraisers, and property tax representatives shall be held to a higher standard than non-professionals.

END