

# *Assessment Practices Survey*

**A Report on  
Assessment Appeals**

**1986**

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**ASSESSMENT STANDARDS DIVISION  
DEPARTMENT OF PROPERTY TAXES  
CALIFORNIA STATE BOARD OF EQUALIZATION**

## Memorandum

**To** : Honorable Ernest J. Dronenburg, Jr.  
Honorable Conway H. Collis  
Honorable William M. Bennett  
Honorable Richard Nevins  
Honorable Kenneth Cory

**Date** : February 1986

**From** : Gordon P. Adelman

**Subject** : A Special Study of Assessment Appeals

This comprehensive report is one of a series of special topic surveys authorized by you to supplement the Assessment Practices Survey Program. It presents the findings of our statewide survey of the local assessment appeals process. It summarizes in one place the practices and procedures employed by the county assessors, clerks of the appeals boards, boards of supervisors, and assessment appeals boards of the 58 counties. This report will direct attention to effective and ineffective procedures. It will promote uniformity among officials from one county to the next.

We are grateful to county assessors, their staffs, county clerks of the boards, and to all other county officials who cooperated in this report and thereby played a role in improving California's property tax system.

GPA:wpc

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## PREFACE

The State Board of Equalization conducts two different types of surveys of county assessment practices. The first, required by law to be made at least once every five years, involves comprehensive field and office audits performed in each county, the results of which are published as assessment practices surveys. The second type of survey focuses on assessment issues of concern to the entire California property tax community. These single-issue reports are prepared on an as-needed basis as authorized by law. A special topic survey typically involves questionnaires mailed to the 58 counties, rather than visits to county assessors' offices. When published, the results of these surveys are distributed to county assessors, elected Board Members, the Legislature, and concerned individuals in the private sector.

This survey deals with the assessment appeals process. Its purpose was to gather and interpret statistical data relating to assessment appeals and to identify problems commonly encountered during the appeals process.

This survey was conducted and written by the staff of the Department of Property Taxes. It was adopted for publication by the Board of Equalization on January 9, 1986.

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Assessment Standards Division  
Department of Property Taxes  
California State Board of Equalization  
February 1986

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## I. INTRODUCTION

In the wake of the passage of Proposition 13 in mid-1978, the role of assessment appeals agencies changed noticeably. Because assessors' base-year value estimates remain undisturbed until a change of ownership or new construction occur, the determination of the assessment appeals agency also becomes "cast in concrete."

The assessor's estimate, to withstand challenge, has to be well supported, well reasoned and, above all, accurate. In the first year of Proposition 13 (Article XIII A), 141,643 assessment roll units statewide were appealed. In subsequent years, the annual activity tapered off to between 20,000 and 30,000. In 1983-84 the activity jumped to 43,120. Since many counties hardly began their supplemental roll program in 1983-84, the increase cannot be attributed to that program.

When an assessment appeals agency modifies an assessment, the agency establishes a base-year valuation that, except for an annual CPI adjustment, remains until a change in ownership or new construction takes place. Before the advent of Proposition 13, the assessor reappraised properties periodically if not annually and the assessment appeals board heard appeals annually. The same property could be appraised annually and its assessment appealed annually. Now the determination of an appeals agency impacts on property taxes for some time after the determination. Today, the importance of an appeals agency's determination on property value should not be underrated.

The assessment appeals function is sanctioned under Article XIII, Section 16 of the California Constitution. The constitution provides that the State Legislature determine the manner and procedure the appeals activity shall take. The Legislature enacted Sections 1601 through 1641.1 to guide county boards of supervisors in the assessment appeals function. At the same time, the Legislature, through Government Code Section 15606(c), directed the State Board of Equalization to prescribe rules and regulations to govern local boards of equalization.

In turn, the State Board of Equalization established Property Tax Rules 301 through 326 of Title 18, Public Revenue of the California Administrative Code for the actual administration of constitutional, statutory, and case law concerning assessment appeals as they apply to local boards of equalization and county appeals boards.

Because of the importance of the assessment appeals function, the State Board of Equalization instructed its Assessment Standards Division to conduct an inquiry on present practices among assessment appeals agencies statewide with the ultimate purpose of publishing a special topic survey. <sup>1/</sup> This survey reflects the results of the inquiry and culminates in recommendations for standardization of the practices noted in Chapter IV.

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<sup>1/</sup> The Assessment Standards Division published five special topics surveys since 1980; "Agricultural Properties Under California Land Conservation Act Contracts" (1980); "Oil and Gas Producing Properties" (1981); "The Assessment of Newly Constructed Property and Property under Construction" (1982); "The Assessment of Property That Has Held A Change in Ownership or Control" (1984); and "A report on the Assessment of Possessory Interests" (1985).

All 58 county assessment appeals agencies responded to the inquiries. Some of the questions were geared for appeals board composition, but many of the questions applied equally to county boards of equalization and county assessment appeals boards.

In arraying the responses to the questions, we made three tabulations: one for assessment appeals boards; another for both assessment appeals boards and county boards of equalization; and another for 58 county assessors. While some questions are arrayed for 58 county responses, our discussion attempts to make the distinction of county boards of equalization and county assessment appeals boards.

## II. RESPONSES FROM THE CLERKS, BOARD OF SUPERVISORS, AND ASSESSMENT APPEALS BOARDS

The 58 counties are almost split in the number employing boards of equalization and those using assessment appeals boards. From the responses, we found 26 with appeals boards and 32 with boards of supervisors acting as boards of equalization. One county recently discontinued an appeals board arrangement and returned to a board of equalization framework. Another middle-size county is currently contemplating forming an appeals board. Still another middle-size county, while retaining its board of equalization, is contemplating the establishment of a hearing-officer position.

A number of the responses to the questionnaire are generally applicable to all 58 county boards whereas a good many responses are applicable to and meaningful only within the assessment appeals board framework. We made a tally of those responses applying to all 58 counties and then tallies separately for those applicable within either the framework of an assessment appeals board or a board of equalization. See Appendix A for the responses from all 58 counties. A total of 21 questions (questions 9-13, 15-20, 23-27, and 30-34), are applicable to all 58 appeals agencies. On the other hand, we tabulate those for assessment appeals boards apart from the above 21 questions applying to all 58 counties.

Judging from the responses, we see that "new member orientation," "general orientation," and "written procedures" are the greatest needs. Scheduled orientation of duties for new members and a periodic updating of changes in the law and the rules are elements in programs some counties make available to their board membership. To start anywhere, a written guide is a prerequisite. We find that a "written procedures guide" is the primary need with "general orientation" and "new member orientation" second and third, respectively. Needs beyond these three areas do not appear to be as important. "Continuing education" is an exception, but this need can be largely fulfilled by keeping procedure guides current.

### A. ASSESSMENT APPEALS BOARDS

#### 1. Appointments

Of the 26 Assessment Appeal Board (AAB) counties responding, members are chosen directly by the boards of supervisors in 23, by lot in 2, and by lot originally but now directly by the board of supervisors in one. Essentially, the board of supervisors chooses the members in all 26 counties. All counties responding follow either Sections 1623(c) or 1623.1 in selecting members for the assessment appeals board.

#### 2. Eligibility

Twenty-five AAB counties adhere to the eligibility requirements established in Section 1624 of the Revenue and Taxation Code. The one county indicating it does not is a small mountain county where qualified persons are not very numerous.

3. Occupations

Fifteen of the 26 responding counties have at least one lawyer represented on their assessment appeals boards; nine counties have more than one. Eighteen of the 26 counties have real estate brokers (or salespersons) represented; eleven have more than one. Thirteen counties have accountants represented on their AABs; five have more than one accountant. Fourteen have appraisers sitting on their AABs; nine have more than one appraiser.

Other representative occupations include real estate developer, retired business persons, ministers, retired military, firemen, retired judges, and former bank presidents.

4. Education

Twenty counties have college graduates currently seated on their AABs; seventeen have more than one represented. Six show post-graduate educations. Only two counties reported members having only high school educations.

5. Advertising

Eighteen of the 26 reporting AAB counties advertise to fill impending vacancies on the AABs; some of the advertising takes the form of a bulletin-board posting of vacancies or an informal word-of-mouth declaration of impending vacancy.

6. Compensation

Of the 26 reporting AAB counties; two report paying \$50 per day to each board member; eight report \$70 to \$80 per day; 13, \$100; one, \$150; and two report \$200 per day. The median compensation is \$100 per day, the average \$94.

While the compensation is "per diem," one county indicated that the day is abbreviated, e.g., 9:00 a.m. to 1:00 p.m. The attitude expressed by board members ranged from "it's a community privilege and the compensation is irrelevant" to "it's costly to me, I wish the compensation were higher." Either attitude can motivate the member not to seek a reappointment. Retirees tend to stay longer.

7. Clerk of the Board

The clerk of the board of supervisors serves as the clerk of the assessment appeals board in six of the AAB counties. The duties are delegated to another clerk in 19 counties. In one smaller AAB county, the senior assessment clerk sits as clerk of the assessment appeals board.

8. Objection to an Appeals Board Member

Only in 10 of the 26 reporting AAB counties has the assessor or the appellant used Section 1624.4 of the Revenue and Taxation Code to object to a member sitting on a particular appeals hearing. Of those 10 counties, the assessee-appellant has been the one to object in six counties; either the assessor or the appellant in two; the assessor in one; and the board member abstained voluntarily in one county. Overall, the instances are so few in number to be virtually a rarity. Sixteen county AABs have not experienced an objection to an AAB member.

## B. HEARING OFFICERS

### 1. Hearing Officer & AAB

In eight AAB counties, hearing officers continue to supplement the functions of assessment appeals boards. In at least one county, the hearing officer function has been abandoned, while in another county where the board of supervisors sits as an appeals agency, the hearing officer function supplements the board's equalization operation. Another medium-size county is currently contemplating the hearing officer function as a supplement to its board of supervisors' equalization operation.

We asked four questions (numbers 8, 14, 28, and 29) relating to the hearing officer's function. The replies of the counties with hearing officers (eight with AABs, one with the board of supervisors) are tabulated.

### 2. Appointment of Hearing Officers

The board of supervisors in eight AAB and one non-AAB counties selects and appoints hearing officers; in one (Los Angeles) the position is acquired through civil service examination.

### 3. AABs Operate Under Sections 1641 or 1641.1

Five of the nine counties with hearing officers indicate they operate under Section 1641 of the Revenue and Taxation Code; two indicate they operate under Section 1641.1. The same counties operate either under Sections 1640 or 1640.1; both, respectively, correspond to 1641 to 1641.1; the wording is different but the effect is nearly the same.

Section 1640.1 automatically "entitles" the protesting party in the appeal to go from a hearing officer's decision to a full hearing before the AAB. Section 1641.1 requires one of the parties (appellant or assessor) to request a rehearing before the AAB. The AAB has the choice of accepting or rejecting the hearing officer's recommendation. In six counties, the hearing officer's decision prevails and no further hearing is provided.

The legislation of these four sections seems redundant in effect but a careful reading produces some fine (but hardly momentous) distinctions. Whereas, Section 1640.1 opens up a second hearing process, Section 1641.1 allows the assessment appeals board or board of equalization to accept without further testimony the hearing officer's recommendation. The two sections give the board of supervisors two options to follow. Operating under Section 1640.1, the appeals agency may find itself with more time and work, whereas Section 1641.1 allows the appeals agency to summarily screen and accept the hearing officer's recommendation and thereby eliminate a second hearing.

In some instances the hearing officer function has become literally ineffective where the assessment appeals board reserves the right to rehear the hearing officer's recommendation (Section 1640.1). If each hearing officer is challenged, conceivably each appeal could be reheard entirely. Frankly, a rehearing option defeats the purpose of the hearing-officer function. The workload for the appeals agency is not abated, the schedule falls behind, and many appeals are "awaiting decision." We favor the provisions of Section 1641.1 of the Revenue and Taxation Code whereby the appeals board reserves the right to decide to rehear. This has some restrictions on rehearing without closing the door on a higher appeal to the Board.

#### 4. Rejection of Hearing Officer's Recommendation

Three counties with AABs and one county with the board of supervisors sitting as a board of equalization allow the assessor to reject the hearing officer's recommendation. Yet none of these four counties experienced a rejection from the assessor; in all of the instances where the AAB rehears the hearing officer's decisions, the appellant initiates the action. The period from January 1, 1983 to the date of these responses, July-August 1984, however, presents a very short work history under Section 1641.1 as amended by the Statutes of 1982 (Chapter 660).

#### C. ALL 58 COUNTIES - RESPONSES

Twenty-one questions were designed to be answered by all appeals agencies, whether AABs or boards of equalization. We discuss the responses to these questions.

#### QUESTION 9:

"Does your property tax appeals agency have:

"(a) An up-to-date procedures manual to guide the members?"

YES 34; NO 22; (NO RESPONSE 2)

Although an overwhelming number (34 out of 58) responded affirmatively, a good number of counties are without a written procedures manual. We see a need for a model and point to the excellent manual San Diego County uses. A copy is reproduced in the appendix. Seventeen AAB counties have manuals, nine, do not.

"(b) A prescribed training seminar to orient and guide new members of your appeals agency?"

YES 5; NO 52; (NO RESPONSE 1)

Among the AAB counties, four responded affirmatively, 22 negatively. Again, a possible need is demonstrated for a structured classroom technique. The procedures manual mentioned earlier can be an important, if not vital, part of the classroom orientation.

"(d) A continuing education program?"

YES 6; NO 47; (NO RESPONSE 5)

AAB counties responded four affirmatively, 21 in the negative, and one no response. Four counties (three AAB) have dollar compensation for the time spent in training.

"(e) Legal assistance from county counsel or district attorney to assist in hearing matters of jurisdiction?"

The counties with AABs responded 23 "Yes" and 3 "No." While an overwhelming number of the county appeals agencies have legal assistance, a small number do not. No appeals agency should be without legal assistance.

QUESTION 10:

". . . does your appeals agency hear and decide questions concerning:

"(a) Change of ownership?"

YES 38; NO 14; (NO RESPONSE 6)

"(b) New construction completion date?"

YES 37; NO 12; (NO RESPONSE 9)

"(c) Choice of Proposition 8 or Proposition 13 value?"

YES 39; NO 11; (NO RESPONSE 8)

"(d) Agricultural Preserve Value vs. base-year value?"

YES 27; NO 14; (NO RESPONSE 17) (48 counties under California Land Conservation Act)

These responses show that most appeals agencies are adequately informed of their jurisdictional functions. But it still remains that 11 to 14 (only 48 counties participate in the California Land Conservation Act) county appeals agencies are unaware of or abrogate their functions. Of the "Yes" response to (a), (b), and (c), approximately 20 are AAB counties. Assessment appeals agencies should be informed that they have jurisdictional functions to hear and decide these four possible areas in a dispute over valuation.

QUESTION 11:

Appeals Decisions Beyond Two Years After Application: In question number 11 we asked, had Section 1604(c) of the Revenue and Taxation Code been in effect some years earlier, "would there have been any applications where the two-year period expired before the evidence was heard? The Responses: Yes – 11; No – 44 (with 3 NO RESPONSES).

The eleven responding "Yes," although small in relationship to the 44 "No" responses, is still significant. The number of undecided appeals range from 6 to 986 per county. Nine of the eleven responding "Yes" are AAB counties, making AAB counties disproportionately high. Implementation of Section 1604(c) began January 1, 1983 when the two-year clock to hear and decide started ticking for an action deadline on appeal applications. Counties prone to put off decisions must be alerted to potential defaults for appeals agency's inaction. Exceptions to the two-year limit include instances "where the taxpayer failed to provide full and complete information" and ". . . where litigation is pending directly relating to the issues involved in the application." The undecided appeals can stem from the workload overflow from the rehearing of hearing-officer recommendations; this possibility is not rampant except for two or three AAB counties.

QUESTION 12:

"Which party presents his case first in non-residential properties?"

ASSESSOR 7; APPELLANT 51.

The seven counties where the assessor begins the testimony are small and rural. One of the seven is an AAB county, but the great majority are following the instructions of Property Tax Rule 313(c) and 321(a) where the appellant has the burden of proving the assessment to be incorrect on non-residential property. The appellant should be first in presentation except when owner-occupied residential property is involved.

QUESTION 13:

Recording of Proceedings: All but one of the 58 reporting counties record proceedings. Property Tax Rule 312 mandates recording or reporting, the latter meaning stenographic reporting.

QUESTION 15:

"Do appellants use cash equivalent (creative financing) of indebtedness as a basis for assessment reduction? If so, how often?"

NEVER 10; SOMETIMES 39; FREQUENTLY 5; (4 NO RESPONSE)

With 44 counties responding affirmatively, the cash equivalent concept appears to have considerable currency among taxpayers. Its use is not necessarily a measure of sophistication. The concept can be overused and abused in unskilled hands. Not all appeals call for a cash equivalent analysis. Nevertheless, its occasional use sharpens those appraisers functioning in the assessment appeals process.

QUESTION 16:

"Do appellants use the services of an appraiser? If so, how often?"

NEVER 2; SOMETIMES 51; FREQUENTLY 4; (1 NO RESPONSE)

Fifty-five counties experience appellants' challenges supported by an appraisal and (in some instances) the testimony of an appraiser. Again the appellants' use of appraisers demonstrates some higher degree of documented support in presentations. Perhaps appellants have only to experience one hearing to realize more expertise is needed for the next hearing. Related to this question are the following questions.

QUESTION 24:

"How often does the appellant have written evidence to support his request for reduction?"

NEVER 0; OCCASIONALLY 33; FREQUENTLY 25.

"If the evidence is an appraisal, do you require that the appraiser be present to answer questions from the board members?"

YES 33; NO 24; (NO RESPONSE 1)

Overwhelmingly, in the experience of equalization hearings, the appellant uses written evidence to support his request for reduction. The major distinction is whether the presence of the appraiser is required to support a written appraisal. Fifty-seven of the 58 responding counties answered; thirty-three counties require the appraiser's presence, 24 do not.

Among the AAB counties, all 26 counties have experienced appellants using the services of appraisers. The 26 responding AAB counties report that the appellant presents written evidence to some degree; however, only 14 AAB counties require the appraiser to be present. The "appraiser-presence requirement" seems to have a counterproductive aspect for the appellant. If the written evidence or appraisal has gaps or is too summary, understandably, the presence of the author-appraiser will serve to clarify. But the presence of a qualified or designated appraiser can be expensive – so expensive as to outweigh the potential recoup of possible future reductions in taxes.

QUESTION 17:

"Are night sessions of the appeals board held? If so, how often?"

Out of 58 reporting counties, only three indicated an occasional night session, and usually as a carry-over from a day session. Night sessions are not scheduled as a rule in any of the reporting counties.

QUESTION 18:

"Are continuances allowed?" If so, how often?"

NEVER 1; OCCASIONALLY 41; FREQUENTLY 16

QUESTION 19:

"Who initiates the continuances most frequently?"

ASSESSOR 4; APPELLANT 52; APPEALS BOARD 1; NO RESPONSE 1.

Continuances occur in nearly every responding county and the appellant is most likely the instigator. We surmise that questions arise at a hearing requiring the appellant to gather and present additional information. Perhaps some preliminary instructions with the filing of the appeal or in a meeting with the assessor will clarify what the applicant needs to produce as evidence.

QUESTION 20:

"Does the appellant ask for an exchange of information?"

NEVER 7; OCCASIONALLY 43; FREQUENTLY 6; (NO RESPONSE 2).

Exchange of information is a "way of life" in the appeals process. (Only one AAB county has not encountered a request for an exchange.) The exchange of information contributes to a possible settlement of the appeal before a hearing begins; with some appeals, the appellant or the assessor becomes aware of new information in order to stipulate to a modified assessment.

QUESTION 23:

"Does your appeals board, deliberate or discuss the evidence with the appellant and assessor both present?"

YES 26; NO 17; SOMETIMES WITH, SOMETIMES WITHOUT 15.

Appeals agencies have the statutory option to deliberate in private but 32 (NO 17 and SOMETIMES 15) counties hold the deliberations in private. Among AAB counties, fourteen deliberate without the parties present and an additional eight AAB counties "sometimes with, sometimes without" to make a total of 22 AAB counties. An evaluation of the merits of deliberating with or without would be mixed. The actual situations where appeals agencies have mixed deliberations "with" and "without" the parties present are difficult to weigh. Deliberations "without" may be the result of the parties being unavailable at the next scheduled hearing rather than a rigid practice.

QUESTION 25:

"What percentage (most nearly) of the number of your appeals is single-family residential?"

Under 25% 2; 25% 3; 33% 3; 40% 4; 50% 6; 60% 14; 70% 6; 80% 6; 90% 3

(NO RESPONSE 1).

More than half of the counties are between 40 percent and 70 percent (AAB counties, 50 to 70 percent). When we consider the magnitude of the larger counties, both the average and median are 60 percent single-family residential. Most assessment rolls have a preponderance of residential assessment units.

QUESTION 26:

"Does your appeals board's legal counsel also advise the county assessor in the same hearing?"

YES 6; NO 44; SOMETIMES 8.

The vast majority of counties do not have the same legal counsel advising both the assessor and the board. The 14 (6 yes and 8 sometimes) exceptions are smaller understaffed county counsel offices. In some of these smaller counties, the assessor may need to seek outside noncounty legal counsel to avoid a conflict in legal advice.

QUESTION 27:

"Are appellants represented by legal counsel?"

NEVER 0; SOMETIMES 54; FREQUENTLY 4.

Every county appeals board has experienced hearings where the appellants are supported by legal counsel. No pattern is discernible in the four counties encountering frequent appellant legal representation.

QUESTION 31:

"Where the tenant pays taxes, do you allow the tenant (interested party) to request a hearing?"

YES 31; NO 18; (NO RESPONSE 9)

All of these should read "Yes." Section 1603 of the Revenue and Taxation Code uses the term "party affected" to describe the applicant making and filing an application for a reduction in the assessment of a property. "Party affected" includes the tenant who pays the taxes, in whole or in part.

### III. RESPONSES FROM COUNTY ASSESSORS

All 58 county assessors responded to a 17-question questionnaire. Some of the questions were similar, if not identical, to those sent to the county appeals clerk. By and large, the questions were designed to be responsive to the assessor's role or perceptions in appeals hearings. See Appendix B.

#### A. ACTUAL PRACTICES AND PROCEDURES

##### 1. Instructions to Assessor and Appellant

Thirty county assessors reported that either the Board or the county counsel instructed both the assessor and the appellant to arrive at a value for the total real property on recently transferred property; twenty-six assessors have not been so instructed (two county assessors did not respond). Of the latter (not so instructed), seven are appeals board counties.

##### 2. Briefing

Nearly all county assessors (53) at one time or another briefed their appeals boards on facets of appraising or property tax law. A county counsel can be expected to explain the application of a rarely-used law, but most likely, trained assessor's appraisers are in a position to know and explain rules emanating from property tax law. We did not measure the incidence of occurrence, but the response might indicate that written procedures and more educating seminars for board members are needed.

##### 3. Presentation

In approximately 35 counties, the assessor's appraiser who made the disputed appraisal presents and defends the enrolled assessment. In twelve counties the assessor or assistant assessor presents the assessor's case, and in eleven counties a specially designated review appraiser or team of appraisers represents the assessor's position.

While a strong case can be made for the appraiser who made the disputed appraisal to make the presentation, we favor a different appraiser making a review of the appraisal. Not all county assessors' offices enjoy the appraiser manpower position to make an appraisal review. But even in those county assessors' offices lacking manpower, some review by a supervisor or the assessor himself is desirable.

A review appraiser or team of appraisers is time-consuming and costly but, where it can be done, the review can also serve to measure the original appraiser's reasoning and effectiveness as an appraiser.

In any event, a review of the disputed appraisal sometime before the hearing is necessary to test the challenge of the appeal. If the prehearing review shows that the original appraiser's reasoning and judgment were sound, then the original appraiser is the likely assessor's representative. The testimony should state that an independent review had been conducted.

In some county assessors' offices, the presentation before the appeals agency is made by a supervisor, the assistant assessor, or the assessor himself. As long as these representatives act as a reviewer, the appeals process is well-served; but, where the representation before the appeals agency does not reflect a good knowledge of the property and facts surrounding its appraised value, the appeals process is not properly served.

#### 4. Increases

A considerable number (22) of assessors have increased an appealed assessment in the past year. In the review of an appealed assessment, the assessor typically looks to see if the staff has overassessed. When the assessor finds an underassessment, it may be that: (1) the staff had not formulated a value conclusion with all the facts (the selling price may have been used as sole evidence); (2) the appellant is reacting to a substantial increase in taxes and wants to show either he or she had overpaid or the purchase was a market transaction even though the price was a bargain. Sometimes the assumed debts are not considered by the appellant and sometimes by the assessor in his limited search for confirmation and facts. More often upon review, the assessor's estimate is found to be conservative; whenever the assessor increases the appealed assessment, it may well be because the staff had been too conservative and a higher assessed value is warranted.

Our responses show that the increases occur in less than 10 percent of the appeals, hardly a major occurrence.

#### 5. Exchanges of Information

All 58 county assessors exchange information with the appellant. Sixteen of the 58 assessors responded that the exchange is a frequent occurrence. We did not ask questions on stipulations – those appeals settled without a complete hearing. Statistics for 1983-84 show that up to 25 percent of the filed appeals are resolved by stipulation. The exchange of information can play an important role in the stipulation category and can lower the number going to full hearing.

#### 6. Stipulations

By the nature of the stipulation process, many appeals boards simply rubber stamp the valuation to which the assessor and the appellant have agreed. But some boards want to review carefully the stipulations before approving them. While the latter may, on the surface, have dubious merit, boards with a high sense of responsibility feel their function is engaged totally once the appeal is filed. Regardless of the argument "pro or con" on the board's intensive review of stipulations, the clerk of the board must reconcile value amounts and unfortunately ask for the assessor's clarification if the component values do not sum properly. Then, too, a stipulation may change the total property value but no one has pinpointed where the changes in the components are to be made. A filed appeal is unsettled until the clerk of the board can clearly reconcile, in writing, the stipulated value.

#### 7. Cash Equivalents

Approximately half (26) of the county assessors have demonstrated the computation of a cash equivalent of a nominal selling price to support an enrolled (or increased) value in an appeal. From our familiarity with the operations in assessors' offices, we know the practice of converting nominal selling prices to their cash equivalents does not occur in some counties. An appeals board cannot render a decision on a proper cash equivalent analysis unless an issue is made. Some appellants or their representatives are aware of the cash equivalent concept, especially with the recent wave of creatively financed transactions.

8. Low-Income Properties

Nearly half (28) of the county assessors have faced appeals on low-income apartment properties (Sections 221(d) and 236, National Housing Act). Twenty-three of the 28 county assessors were challenged with a "cash equivalent" analysis by representatives for the owners of these properties. This high incidence of appellant action on these properties may be a continuing occurrence if they transfer frequently, enough so that the assessor need be fully aware of the challenge and especially the valid application of a cash equivalent analysis.

9. Fixture Ratio

Only 14 county assessors responded that the ratio of fixtures-to-personalty value is an issue in appeals. We might have thought the current market versus factored base-year values would make an assessment classification decision vulnerable, but our responses indicate otherwise. Then, too, the appellant who challenges the ratio must be prepared to document his ratio of fixture-to-personalty value.

10. Current Market Value

A substantial number (39) of county assessors have had appeals hearings where the appellant requested a current market value which was lower than the factored base-year value on property. Twenty-one of the 39 responded that they have experience more than 10 such hearings. Some appellants are well aware of the legal provisions in making assessments; if properties are purchased for less than their assessed values, purchasers most likely will ask for a reduction in the assessments.

B. JURISDICTION

A number of county assessors reported their boards do not decide certain disputes. We asked in QUESTION 2:

"Does your board decide disputes between the assessor and appellant concerning:

	<u>Yes</u>	<u>No</u>
Change of ownership?	32	25
New construction completion date?	32	19
Current market value or factored base-year value?	35	17
Agricultural preserve value vs. current market value?"	20	26

While the numbers are not identical to the responses from representatives of the appeals agencies, the pattern is similar. Since appeals agencies have jurisdiction in all of the above items when they hear valuation appeals, the response should be unanimously "Yes" to all four questions.

Several years ago the California Courts found that appeals boards do have the right to decide legal issues such as those listed above whenever the valuation of property is at stake. <sup>1/</sup> Property tax law covers appeals boards as well as assessors. The appeals agency is an extension of the assessor's function. If the lesser of two valuations determines the legally permissible taxable value, the appeals board bears the same responsibility as the assessor. Where legal issues impinge on the determination of the taxable value of property, appeals boards have the authority to make decisions, albeit legal, in order to determine a taxable value.

The appellate court case cited on the jurisdiction of a property tax appeals agency states on pages 664 and 665 that earlier court cases have sustained the determinations of local equalization boards to consider and act on matters of law. In supporting its position, the court said:

"It is inevitable that equalization may involve legal principles defining property interests and applicable valuation principles. The existence of legal issues affects the nature and extent of review by the courts, not the jurisdiction of an equalization board. While it is held that in certain cases the taxpayer's suit for refund may be maintained without first applying to the board of equalization for relief, it is not true that he may not raise the issues before the board. (Cf. e.g., Hammond L. Co. v. County of Los Angeles (1930) 104 Cal.App. 235, 241-242 [285 P.896].)"  
<sup>2/</sup>

The court went on to state that other earlier cases had recognized the position of boards (of equalization) to decide matters of law coupled with ownership and valuation. The court cited a 1902 case where ownership was an issue; the court said:

"In an early and instructive case, Kern Valley etc. Co. v. County of Kern (1902) 137 Cal. 511, 514, [70 P. 476], the question was whether certain weirs in a canal, assessed to plaintiff, in fact belonged to Miller & Lux. The court considered the agreement between the parties. The Supreme Court said, 'it was the duty of the county board of equalization to correct the roll when its attention was properly called to the fact, as it is alleged was done.'" <sup>3/</sup>

Also the court mentioned a 1941 case where again ownership was an issue:

"Whether or not there was a bailment was the question before the board in S. & G. Gump Co. v. San Francisco (1941) 18 Cal. 2d 129 [114 P. 2d 346, 135 A.L.R. 595], as well as the issue of ownership." <sup>4/</sup>

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<sup>1/</sup> County of Sacramento v. Assessment Appeals Board No. 2, 32 Cal. App. 3d 654 (1973).

<sup>2/</sup> Ibid.

<sup>3/</sup> Ibid.

<sup>4/</sup> Ibid.

While valuation is the primary focus of a local board of equalization (or appeals board), where valuation may be dependent on ownership or change of ownership, nothing in case law appears to preclude the board's consideration of matters of law.

1. Escape Assessments

Conversely, a substantial number of county assessors responded that their boards decide appeals of escape assessments. The responses on jurisdiction shows this array.

"Does your board hear and decide appeals in:

	<u>Yes</u>	<u>No</u>
(a) Escape assessments	45	1
(b) Penalty assessments (willful or negligent)	35	9
(c) Interest applied (rate of ¾ of 1 percent per month)	5	35
(d) None of the above – it has not occurred.	9	-
(e) None of the above – the board does not have jurisdiction"	7	-

Appeals boards have jurisdiction in the first two of the items listed above. Item (c) is a legislated interest rate and cannot be arbitrated. Support is spelled out in Section 1613, Revenue and Taxation Code, and Property Tax Rule 302. The appeals agencies have no jurisdiction to change the amount of the penalty applied except to see that the penalty is properly applied.

C. SUPPLEMENTARY ROLL APPEALS

To illustrate the situation as of September 15, 1984, 51 county assessors responded that challenges to supplementary roll assessments have been filed in their counties. The number of appeals range from one to 3,400 with many intermediate and larger counties reporting 120, 185, 225, 300, 600, 800, and 995 appeals. Since supplementary roll assessments are generated as property is transferred or physically changed, the number of appeals, if proportionate, will be a continuous (rather than a cyclical) flow. One can argue that, regardless of the supplementary roll assessment function, any change of ownership or physical change in the property may ultimately lead to an appeal of the resultant assessment. This means that these appeals will naturally be made with or without the supplementary assessment roll process recently legislated. We cannot judge whether the number of appeals on supplementary roll items stems from the sudden billing of additional taxes or whether the number of appeals to a modification would be the normal amount provoked by changes in assessment. The supplementary roll assessment function is not much different than the previous lien-date reassessment. Simply stated, it is a matter of timing; the supplementary roll reassessment comes somewhat earlier and immediately after the closing of escrow or completion of new construction. Most mortgage lenders cannot and do not provide for impounds on the supplementary roll reassessments and consequently billing is directed to the assessee-purchaser. The assessee's reaction may well be sufficiently confused and pronounced to precipitate an appeal. Whether the number of appeals is enhanced by the earlier reassessment in conjectural.

Many assessors responded that the meaning and effect of the supplementary roll assessments has its greatest confusion and misunderstanding among the appellant-assessee group; some assessors see a need to educate the county appeals board. A number of assessors stated that the appeals of supplementary roll assessments have not progressed sufficiently for hearings to be held; therefore, problems related to the meaning and effect of the supplementary roll assessments cannot be ascertained. Above all, the understanding of the parties related to these assessments cannot be judged at this time.

#### D. TERM OF ASSESSMENT APPEALS BOARD MEMBERS

More than half (14 of 26) of the appeals boards limit their AAB members to three-year terms. We suspect this question could have been misunderstood to mean a total of three years. The responses to the question on longest-term member does not confirm the responses to the question on three-year terms; most county assessors responding affirmatively to the three-year limit answered the corollary question on longest term with at least a six-year tenure. Despite the response, we believe all 26 AAB counties have three-year appointments in the many reappointments.

The 26 county assessors with assessment appeals boards responded to the longevity of the longest-term member thusly:

3 years:	1
6 years:	9
9 years:	7
12 years:	3
15 years:	4
18 years:	1
No Response:	1

The information reflects a tendency to reappoint a willing member to as many three-year terms as possible. Nothing in the statutes prevents reappointment to successive three-year terms (although the initial statute provided for staggered terms of three, two, and one year(s) (Section 1623(a), Revenue and Taxation Code).

Section 1623.1 of the Revenue and Taxation Code provides the board of supervisors with some latitude in direct appointments. The statute is silent on any limitation in the number of terms a member may serve. Essentially the same three-person board could serve for successive three-year terms until death or retirement. Some observers have criticized the lack of a limit on the number of terms a member can serve; but the original staggered term provision did not preclude reappointment.

#### E. ASSISTANCE

In response to a question on what assistance the assessor and the appeals board need, the assessors (for themselves) ranked "Written Procedures Guide" and "Legal Assistance" the highest with "Supplemental Roll Assistance" a close second. As a board need, the assessors ranked "Written Procedures" the highest (24 assessors) with "Legal" and "Supplemental Roll" second and third respectively. The "Appraisal of Possessory Interests" tied for third.

#### IV. CONFORMITY WITH STATUTES AND PROPERTY TAX RULES

Although our questionnaire did not ask for a response to inquiries on the appeals boards' conformity with the Revenue and Taxation Code status or the property tax rules, in several telephone conversations we were able to spotlight a few areas where conformity tended to be elusive.

We found four areas where conformity might be difficult: (1) eligibility of nominated board members; (2) timeliness of applications for reduction in assessments; (3) "party affected" allowed to apply for a hearing; and, (4) adequacy of findings and conclusions. Naturally, there are more <sup>1/</sup> but without the responses to another questionnaire, we concentrated on these four areas.

##### A. ELIGIBILITY

Eligibility under Section 1624 of the Revenue and Taxation Code requires "five years professional experience in this state as of the following: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, or is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation." It is in the interpretation of the last phrase of this eligibility requirement where conformity is often lacking.

Although 25 (of 26) counties with assessment appeals boards responded that the county adhered to Section 1624 of the Revenue and Taxation Code, many responders, when discussing the concept of eligibility in telephone conversations, had reservations as to whether the appointing power follows the flavor and intent of the statute. One AAB county responded in the questionnaire that the "umbrella clause" in Section 1624 should be eliminated. It is not surprising that among 26 appointing powers the phrase "person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation" will be variously interpreted. We agree that either the phrase be eliminated as too ambiguous or in a property tax rule "competent knowledge" be defined and given elaboration.

##### B. TIMELINESS OF APPLICATION

Many, if not all county appeals agencies, have had difficulty with the timeliness of an application for reduction in an assessment. Most often the assessee claims he or she had not been notified of a change in assessment. Most county appeals agencies tend to be lenient when a notification of a change had not been sent.

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<sup>1/</sup> See Alfred E. Carlson v. Assessment Appeals Board I for the County of Santa Clara (167 Cal. App. 3d 1004).

One AAB county, where the notification had not been sent, uses the 60-day clock in conjunction with the tax bill as a notification. Usually "on vacation" or "new address" are not acceptable excuses for the assessee unless it is established that the notification was returned to the assessor and no other attempt was made to notify the assessee.

Another county AAB relies on Section 166 of the Revenue and Taxation Code to establish timeliness of a notification of a change in assessment. If the trail of the notification is vague, then the county AAB accepts an affidavit from the assessee professing nonreceipt.

One of the major problems in timeliness arises when the assessee places the review of the assessment in the hands of the assessor's office. If the assessor does not react to the assessment review before the expiration date to file, the assessee may claim that his right to file was abrogated. In this instance, one AAB county will use the day the assessee first contacted the assessor's office as a manifestation of intent to file--and accept a written application after the expiration date as valid.

With a change in ownership or new construction, the assessee may receive two notices of a change in assessment--one for the supplemental roll, the other for the regular (601) annual assessment roll. If these notices are sent about the same time, it is likely the assessee may confuse the 60-day period of the supplemental roll with the September 15<sup>th</sup> deadline for the regular roll. Clerks honor the application filed timely because only one application is necessary to challenge the base-year value.

From our limited information, we see a vague, hazy set of circumstances where an appeals clerk or the board itself must decide the timeliness or the intent of timeliness in an assessee's action. This is not to say the majority of applications is so involved but in the fast and furious world of statute--enacting and--revision following the passage of Proposition, administrators and assessees have been unsure of definite lines of action. Suffice to say, most administrators (clerks and boards) use either consciously or subconsciously the "liberally construed in favor of the taxpayer" portion (subsection (e)) of Section 166 of the Revenue and Taxation Code.

### C. PARTY AFFECTED

Earlier we showed that 18 of 58 county boards (5 of the 26 AAB counties) do not allow the tenant who pays the taxes to request a hearing. Under Section 1603 of the Revenue and Taxation Code, the term "party affected" (or his agent) is used to describe the person qualified to make an application to reduce an assessment.

In our discussions with State Board legal counsel, we learned that to qualify as a "party affected" the party had to pay the taxes directly to the county tax collector. This includes the tenant. The treatment is similar to the person qualified to claim a refund of taxes under Sections 5097 and 5140 of the Revenue and Taxation Code.

Now, if the question was understood and answered by all 58 county appeals agencies according to the above, and if a qualifying "party affected" has been denied, the county appeals agency has not acted legally.

#### D. FINDINGS AND CONCLUSIONS

Some assessors have shown concern over the findings and conclusions an appeals agency issues as it relates to the actual evidence submitted by the parties. Section 1611.5 of the Revenue and Taxation Code states, "...the final determinations by the board shall be supported by the weight of the evidence and, with regard to questions of value, such determinations shall be made without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of Section 1603."

Earlier in Section 1611.5, the contents are prescribed: "The written findings of fact shall fairly disclose the board's determination of all material points raised by the party in his petition and at the hearing including a statement of the method or methods of valuation used in appraising the property."

If the appeals agency, in rendering a decision on an assessment, makes little or no reference to evidence presented, the decision may suffer credibility in a court action. The evidence must be pondered and the appeals agency's findings and conclusion must rest on the evidence. The members of the appeals agency cannot consider other evidence, personal knowledge or preconceived thoughts and ideas, originating outside the hearing process.

When the thread extending from the presented evidence to the appeal's agency's findings and conclusions is broken, tangled or, in any case, untraceable, the action becomes illogical, unfounded, and possibly unlawful under Section 1611.5 of the Revenue and Taxation Code.

#### E. SUMMARY

Under Section 15606(c) and (d) of the Government Code, the State Board of Equalization has authority to "Prescribe rules and regulations to govern local boards of equalization when equalizing..." and "Prescribe and enforce the use of all forms for the assessment or property for taxation, including forms to be used for the application for reduction in assessment."

Furthermore, under Section 15606(h) of the same code, the State Board of Equalization shall: "Bring an action in a court of competent jurisdiction to compel an assessor or any city or county tax official to comply with any provision of law, or any rule or regulation of the board adopted in accordance with subdivision (c) of this section, governing the assessment of taxation of property. The Attorney General shall represent the board in such action.

"The provisions of this section are mandatory."

The State Board of Equalization urges uniformity through adherence to both the statutes of the various California codes and the Property Tax Rules of the California Administrative Code (Title 18, Public Revenue). Although we have not discussed the appeals process exhaustively, we strongly urge that the four areas we discussed above be given attention. We urgently recommend that:

- (1) Eligibility requirements for appeals board appointments be rigidly applied.
- (2) Timeliness of an application for a reduction in assessment be rigidly followed as prescribed in Sections 166 and 1603 of the Revenue and Taxation Code.

- (3) The "party affected" (as a basis for qualifying as an applicant in an assessment reduction action) be construed to include the persons (parties) who paid the property tax mentioned in Section 1603 and as further defined in Sections 5097 and 5140 of the Revenue and Taxation Code.
- (4) "Findings and conclusions" be adequately based on the evidence presented; the foundation of the appeals agency's determination is stated in Section 1611.5 of the Revenue and Taxation Code.

## V. CONCLUSIONS AND RECOMMENDATIONS

### A. COMPARISON OF RESPONSES--CLERKS AND ASSESSORS

The responses on four very similar, if not identical, questions asked of the clerks of the boards and the county assessors reflected a diversity of answers. The questions are:

<u>Topic:</u>	<u>Question Number</u>	
	<u>Clerks</u>	<u>Assessors</u>
Change of Ownership	10	2
Exchange of Information	20	7
221(d) Appeals	32	9
Cash Equivalent on 221(d)	32 (a)	10

While a majority of clerks of the board and assessors responded with the same answer to the same question, a large minority gave conflicting answers. For example, 16 county clerks and county assessors could not agree on whether their appeals agencies had jurisdiction to decide cases where a change of ownership was contested. Seven county clerks and their respective assessors did not agree on whether exchanges of information with the appellant occurred. Similarly, ten counties disagreed on whether appeals in Section 221(d) low-income housing took place. And even more, 15 disagreed on whether the appellants of the low-income housing properties used a cash equivalent analysis to support the appeals.

Perhaps the questions were misunderstood or the issues were misinterpreted, but it clearly illustrates that records are not kept or the agenda is not clear as to the issues in many counties.

### B. THE WORKING RELATIONSHIP--CLERK AND ASSESSOR

More clarification is necessary in the relationship of the appeals agency with the assessor's office. An assessment appeals agency clerk must follow legal requirements in accepting timely applications, work out proper timing for scheduling hearings and mailing notices. The assessment clerk's function is complicated and frustrating when the assessment change notice is not clearly dated, when the assessee has exhausted the time limit for appeal largely because the assessor's office has not answered its assessee's questions timely, and when the assessor solely is not ready for a hearing. Furthermore, mathematical errors the assessor's office commits in a stipulation leading to a revised assessment can become an unnecessary burden for the appeals agency clerk. These functions are not defined in the statutes or rules. With the guidance of the county counsel, the assessment appeals agency must have a good working relationship with the assessor's office and still remain independent and objective.

### C. NEEDS

The most pressing need among assessment agencies is assistance or guidance in rendering decisions. A written procedures manual is a good foundation for this guidance; however, guidance is an ever-present need. County counsels, district attorneys, periodic letters of opinion, court cases, and the publications the State Board of Equalization issues can contribute to answering the need for guidance and assistance.

## D. JURISDICTION DETERMINATION

The jurisdiction dilemma is not critical. Local appeals agencies, faced with a matter of law which, in turn, will affect a valuation, may necessarily pass on a matter of law to reach the valuation issue. Hopefully, all if not the vast majority of appeals agencies have legal counsel, but, even lacking the legal counseling, appeals agencies may decide a matter of law to determine an assessment.

We surmise that many boards have not had the issues of change of ownership or new construction completion date arise in assessment appeals hearings and perhaps the responses to the questionnaire were not indicative of the official local jurisdictional position. Whatever the circumstances conditioning the responses, the State Board of Equalization staff believes local appeals agencies may encounter and deal with matters of law in order to perform the function of determining an assessment value.

## E. A WRITTEN PROCEDURES GUIDE

To provide a basis for a written procedures manual, we have reproduced in Appendix C, a portion of Rules of Notice and Procedures of the San Diego County Assessment Appeals Board and Assessment Hearing Officers Rules. While the form and arrangement may be proper, we alert all appeals agencies who may reproduce and rely on the San Diego County manuals to recognize that recent legislation may not be included.

## F. RECOMMENDATIONS

A well-developed procedures manual and a collection of appraisal and appeal reference material will form a basis to maintain an appeals unit. Here are several suggestions on steps to be taken to maintain an appeals unit.

- (1) Establish a compilation of directives to guide the appeals agency in hearing protests. Short of a written procedures manual, a compilation of State Board directives (by topic) at least gives board members a reference guide.
- (2) Maintain a reference file of legal directives (by topic). County counsel and State Board legal opinions help to provide ongoing guidance.
- (3) Make certain the appeals agency knows its areas of administrative jurisdiction. The appeals agency is an administrative agency and has the same powers the assessor possesses. The county counsel's role in underscoring the jurisdictional powers is important.
- (4) Establish ground rules for clerks in scheduling hearings, establish firm expiration dates for filing appeals, and other policies and procedures involving the participation and role of the assessor. The county counsel should sanction the ground rules with his imprimatur to avoid a conflict relationship between the assessor and the appeals agency. While ground rules may be informally established, it is important to the continuity of the appeals process to convert the rules to writing to avoid problems when a turnover in personnel occurs.

- (5) Avoid the workload crunch where the hearing officer's decisions are subject to rehearing. Point out to boards of supervisors that in order to minimize the prospects of a complete rehearing, adopt procedures authorized by Section 1641.1 rather than 1640.1 of the Revenue and Taxation Code. To eliminate completely the rehearing of hearing officer decisions, the county board of supervisors has the option of implementing Section 1641.
- (6) Accept the applications of tenants who pay taxes as a "party affected." Tenants who pay taxes directly to the taxing agency have the right to appeal assessments. A substantial number of county boards do not allow such taxpayers to appeal, a misinterpretation of the law.
- (7) Establish firm criteria for eligibility for appeals board members. Whereas several backgrounds are delineated (e.g., law, accountancy, real estate brokerage, and appraising), the statutory provision (Section 1624, Revenue and Taxation Code) has a broad provision to allow a member of the board of supervisors to nominate a person who is believed to possess competent knowledge of property appraisal and taxation. If the county board of supervisors cannot find persons qualified in the delineated backgrounds, perhaps only then should the broad provision be invoked to fill an assessment appeals board vacancy
- (8) Appeals boards should promote the presence of the assessor's appraiser who made the protested appraisal or the special review appraiser who field reviews the property whose assessment is under appeal.
- (9) Clarify the appeals agency's role in stipulated assessments. While some appeals agencies are conscientious to the point of a detailed time-consuming scrutiny, and others simply concur with the stipulation, the "stipulated" appeal is still under the jurisdiction of the appeals agency. The appeals agency can reject a stipulation under Section 1607 of the Revenue and Taxation Code. The board has the right to assign whatever value it sees fit.

These are highlighted recommendations. We could make a list of 25 to 30 other areas to improve but they would have minor impact. Whatever meets the scheduled time requirements and still allows the assessee due process makes for a successful appeals process.

## APPENDICE

TABULATION OF QUESTIONNAIRE RESPONSES  
FROM COUNTY CLERKS OF THE BOARD

1. Are the members of your appeals board selected by:

2 (a) lot (one nomination per member of the county board of supervisors and lot selection by superior court judge, Section 1623(c) of the Revenue and Taxation Code);

23 (b) appointed by the board of supervisors directly Section 1623.1;

1 (c) originally (a) above but in replacing members upon expiration of the three-year term (b) above.

2. Does your county board adhere to Section 1624, of the Revenue and Taxation Code, establishing eligibility criteria for nomination to appeals boards and hearing officer positions?

Yes 25; No 1.

3. What occupations are represented in the appeals board members (include alternates)?

	Number
Lawyer	<u>30</u>
Real Estate Broker	<u>39</u>
Accountant	<u>18</u>
Appraiser	<u>32</u>
Other (Describe)	<u>          </u>

4. What level of education is represented among your board (include alternates)?

	<u>Number of Members</u>
High School	<u>2</u>
Some College	<u>26</u>
College Graduate	<u>65</u>
Post Graduate	<u>12</u>

5. Do you advertise or recruit when the board has a vacancy?

Yes 18; No 8.

6. What are your board members paid?

- 1 @ \$200
- 2 @ \$150.00
- 2 @ \$ 50.00
- 8 @ \$ 70.00-\$ 80.00
- 12 @ \$100.00 per day; \$\_\_\_\_\_ per half-day; other \_\_\_\_\_.

7. Under Section 1628 of the Revenue and Taxation Code, the clerk of the board of supervisors shall serve as the clerk of the assessment appeals board. In your county does this actually exist or does the clerk of the assessment appeals board report to the clerk of the board of supervisors?

- 6 (a) one and the same;
- 19 (b) delegated to another clerk who reports to the clerk of the board of supervisors;
- 1 (c) other;

8. What method of appointing hearing officers does your county follow?

- 0 contract with Office of Administrative Procedure;
- 8 appointment by the county board of supervisors;
- 1 other (Civil Service)

9. Does your property tax appeals agency have:

(a) an up-to-date procedures manual to guide the members of the agency in hearing appeals?

Yes 34; No 22; No Response 2.

(b) a prescribed training seminar to orient and guide new members of your appeals agency?

Yes 5; No 52; No Response 1.

(c) if your answer to (b) is "yes," who conducts the orientation?

1 the Chairman of the AAB; \_\_\_\_\_ the assessor's staff;

SBE 1 No Response – 2

CC-2 other (Specify). (CC = County Counsel)

(d) a continuing education program?  
Yes 6; No 47; No Response 5.

With dollar compensation?

Yes 4; No 2.

(e) legal assistance from the county counsel or district attorney to assist in hearing matters of jurisdiction?

Yes 52; No 5; No Response 1.

10. If your answer to 9(e) above is "yes," does your appeals agency hear and decide questions concerning:

	<u>Yes</u>	<u>No</u>	<u>No Response</u>
(a) change of ownership?	<u>38</u>	<u>14</u>	<u>6</u>
(b) new construction completion date?	<u>37</u>	<u>12</u>	<u>9</u>
(c) choice of Proposition 8 or Proposition 13 value	<u>39</u>	<u>11</u>	<u>8</u>
(d) Agricultural Preserve value vs. base-year value (48 CLCA Co.)	<u>27</u>	<u>14</u>	<u>7</u>

11. Section 1604(c) of the Revenue and Taxation Code provides that where the assessment appeals board fails to hear evidence on a taxpayer's application within two years of timely filing, the taxpayer's opinion of market value shall prevail. This section is applicable after January 1, 1983. If this section had been in effect some three years earlier, would there have been any applications where the two-year period expired before the evidence was heard?

Yes 10; No 44; No Response 4.

If "yes", how many \_\_\_\_\_.

12. Which party presents his case first in non-residential properties?

7 Assessor; Appellant 51.

13. Are the proceedings recorded?

Yes 57; No 1.

14. What Section of the Revenue and Taxation Code does your appeals board operate under?  
5 Section 1641; 1 combination of the two sections;  
2 Section 1641.1; 15 neither; No Response 2.
15. Do appellants use cash equivalents (creative financing) of indebtedness as a basis for assessment reduction? If so, how often?  
10 Never; 39 Sometimes; 5 Frequently; 4 No Response.
16. Do appellants use the services of an appraiser? If so, how often?  
2 Never; 51 Sometimes; 4 Frequently; 1 No Response.
17. Are night sessions of the appeals board held? If so, how often?  
55 Never; 3 Occasionally; 0 Frequently.
18. Are continuances allowed? If so, how often?  
1 Never; 41 Occasionally; 16 Frequently.
19. Who initiates the continuances most frequently?  
4 Assessor; 52 Appellant; 1 Board; 1 No Response.
20. Does the appellant ask for an exchange of information?  
7 Never; 43 Occasionally; 6 Frequently; 2 No Response.
21. Is the "Objection to a board member" Statute (Section 1624.4 of the Revenue and Taxation Code) invoked? If so, how often?  
16 Never; 10 Occasionally; 0 Frequently.
22. Who invokes the "Objection" most often?  
2 Assessor; 7 Appellant; 1 Board Member.
23. Does your appeals board deliberate or discuss the evidence with the appellant and assessor both present?  
Yes 26; No 17; Sometimes with, sometimes without 15.
24. How often does the appellant have written evidence to support his request for reduction?  
0 Never; 33 Occasionally; 25 Frequently.

If the evidence is an appraisal, do you require that the appraiser be present to answer questions from the board members?

Yes 33; No 24; No Response 1.

25. What percentage (most nearly) of the number of your appeals is single-family residential?

25% 15; 33% 3; 40% 4; 50% 6; 60% 14;  
70% 6; 80% 6; 90% 3; 100% 0; No Response 1.

26. Does your appeals board's legal counsel also advise the county assessor in the same hearing?

Yes 6; No 44; Sometimes 8.

27. Are appellants represented by legal counsel?

0 Never; 54 Sometimes (under 10%); 4 Frequently (over 10%).

28. What action does your appeals board take when it receives the hearing officer's report on an appeal to reduce/increase an assessment? The board:

6 (a) is bound by the report (Section 1640, Revenue and Taxation Code)

3 (b) allows the protesting party to be heard before the appeals board (Section 1640.1, Revenue and Taxation Code)

49 (c) not applicable – (no hearing officer)

29. In the event the assessor is dissatisfied with the hearing officer's report, does your appeals procedure allow the assessor to make a request to reject the report?

Yes 3; No 6. (Not applicable 49).

If yes, how often does the assessor make the request if the hearing officer's report is adverse to the assessor?

2 Never; 1 Sometimes; 0 Frequently.

30. Who physically inserts revisions in the Property Taxes Law Guide for the assessment appeals agency?

8 Clerk of board of supervisors;

26 Deputy clerk of board of supervisors;

12 Individual members of assessment appeals board;

12 Other.

31. Where the tenant pays taxes, do you allow the tenant (interested party) to request a hearing?

Yes 31; No 18; No Response 9.

32. Has your appeals agency heard appeals of low-income apartment properties subsidized under Sections 221(d) and 236 of the National Housing Act?

Yes 28; No 28; No Response 2.

If your answer is "yes," has the appellant or his representative achieved a reduction based on a "cash equivalent" estimate?

Yes 6; No 18; No Response 4.

33. Does your appeals agency hear a substantial number of possessory interest assessments?

3 Never; 45 Occasionally (under 10%); 8 Frequently (over 10%)  
No Response 2.

(Parenthetical "under 10%" and "over 10%" as related to total number of hearings).

34. In what area(s) does your assessment appeals agency need more help and guidance? (Show the intensity of the need using 1 as most important and 5 as least important; more than one item can have the same intensity of need; if there is no need, leave item blank). The agency needs:

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	Not <u>Ind.</u>
a. New Member Orientation	14	6	5	3	5	25
b. General Orientation	14	5	8	5	3	23
c. Written Procedures	17	5	2	3	5	26
d. Continuing Education	12	5	8	3	2	28
e. Legal Assistance	6	4	4	2	7	35
f. Eligibility Criteria	5	1	0	2	10	40
g. Hearing Schedule	8	4	5	5	2	34
h. Appraisal of low-income housing	3	3	1	1	9	41

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>Not Ind.</u>
i. Appraisal of possessory interest	3	6	5	5	3	36
j. Cash Equivalency	4	6	5	3	3	37
k. Other--One county, AAB, requested:						
(1) Expert witnesses as "Friends of the Board."						
(2) Increase chairman's pay for extra administrative duties.						
(3) Increase Board Members wages.						
(4) Give Board higher authority in selection of clerk to work with Board.						

Ag. Preserve Assistance

Definitions of:

Sale price

Date of sale

Inventory of Supplies

Jurisdiction of Board

Validity and Timeliness of Application

Authority to impose sanctions where appellant fails to produce evidence.

Rules on "party affected"

Appraisal Principles

More active role by State Board of Equalization

Understanding appraisal process

Eliminate "umbrella clause" in Section 1624 of Revenue and Taxation Code. Define the clause.

Williamson Act

Educate Judges

TABULATION OF QUESTIONNAIRE RESPONSES  
FROM COUNTY ASSESSORS

1. Does your board (or county counsel) instruct both assessor and appellant to arrive at a total (land and improvements) taxable value regardless of allocation on properties recently transferred and subject to a new base year?

Yes 30; No 26; No Response 2.

2. Does your board decide disputes between the assessor and appellant concerning:

	<u>Yes</u>	<u>No</u>	<u>No Response</u>
(a) change of ownership?	32	25	1
(b) new construction completion date?	32	19	7
(c) choice of current market value or factored base-year value?	35	17	6
(d) Agricultural Preserve value vs. current market value?	20	26	12

3. Does your board hear and decide appeals on:

(a) escape assessments?	45	1	12
(b) penalty assessments (willful or negligent)?	35	9	14
(c) interest applied (rate of ¾ of one percent per month)?	5	35	18
(d) none of the above – it has not occurred.	9		49
(e) none of the above – the board does not have jurisdiction.	7		51

4. Do you volunteer/are you requested to brief the board on a facet of appraising or property tax law that may be germane to a particular appeal?

Yes 53; No 5.

5. In the appearance before the board, who (from the assessor's office) presents the appraisal of the property on an individual appeal?

(a) the assessor or assistant assessor	11 ½
(b) the appraiser who made the disputed appraisal	34 ½
(c) a specially designated appraiser or a member of a team of appraisers designated to cover assessment appeals	11
(d) other – (Specify) – Any of above depending on issues.	1

6. Have you (in the last year) recommended an increase in the enrolled assessment once you've focused more attention on an appealed assessment?

Yes 22; No 36.

If yes, how often?

13 Occasionally (less than 10%); -0- Often (over 10%); 9 No Response.

7. Do you exchange information with an appellant?

0 Never; 42 Sometimes; 16 Frequently;

8. Have you had to demonstrate the computation of a cash equivalent of a normal selling price to support your enrolled (or revised) value in an appeal?

Yes 26; No 32.

9. Do you have appeals of low-income apartment properties subsidized under Sections 221(d) and 236 of the National Housing Act?

Yes 28; No 30.

10. If your answer is "yes," have the appellants or their representatives used a "cash equivalent analysis" to support their estimate of taxable value?

Yes 23; No 3; Not Applicable 30; No Response 2.

11. In the appraisal of commercial and industrial properties, is the ratio of fixtures to personalty (e.g., 80/20, 75/25, 60/40) an issue in appeals before the board?

44 Never; 14 Sometimes; 0 Frequently.

12. Does your board have appeals filed on supplementary assessments (Section 75 et seq.) as of September 15, 1984?

Yes 51; No 6; No Response 1.

If "yes" how many? (Approximately) 1 - 3,400

13. In presenting the meaning and effect of supplementary roll assessments in an appeals hearing, where do you find any problem?

	<u>Yes</u>	<u>No</u>	<u>No Response</u>
your staff	1	28	29
the board	10	20	28
the appellant-assessee	18	13	27
the county counsel	1	28	29

14. Have you had appeals (in the last two years) requesting a current market value based on a purchase price reflecting a market decline from a previous base-year value? (In short, a market value lower than the factored base-year value)

Yes 39; No 19.

If yes, how many?

A few (one or two) 7; Several (more than two) 1; A number (10 or more) 21; No Response 10.

15. Are members of your assessment appeals board limited to a three-year term?

Yes 14; No 12; No Response 32 (Not Applicable).

16. If a board member is allowed (or reappointed) to successive three-year terms, what longevity has any member of your board experienced?

6 years 10; 9 years 9; 12 years 4; 15 years 3;  
18 years 1; 3 years 1; 13 years 1.

17. In what areas does the assessment process (assessor and board) need more help and guidance? (Show the intensity of the need using "1" as most important and "5" as least important; more than one item can have the same intensity of need; if there is no need, leave item blank)

<u>Degree of Need</u>	<u>Assessor</u>					<u>Board</u>				
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Supplemental Roll Assistance	6	3	3	0	4	8	4	5	1	3
Fixture/Personalty Ratio	3	1	5	0	7	3	2	5	1	6
Written Procedures Guide	8	1	7	2	4	24	6	4	1	2
Legal Assistance	8	9	5	2	2	9	10	7	2	3
Means to expedite the Hearing Schedule	7	3	3	3	7	8	6	6	1	7
Appraisal of Section 221(d) and 236 low-income apartment housing	4	3	4	1	5	6	3	2	1	5
Appraisal of Possessory Interests	3	5	1	6	6	9	6	3	3	4
Cash Equivalent Analysis	0	1	7	2	7	2	4	6	2	6
Other										
Guidelines on:										
(1) Acceptable Applications										
(2) What can be heard by Board										
Finding of Facts										
Guide to establishing record for court										
Written confirmation whether applicant will appear										

AS-11A-2552A

## ARTICLE IV-B

(A new Article added by Ord. 3019 (NS) adopted 11-1-66.)

### ASSESSMENT APPEALS BOARD

**SECTION 89.01. ESTABLISHMENT OF BOARD.** There is hereby created and established in the County of San Diego pursuant to Section 16 of Article XIII of the Constitution four Assessment Appeals Boards numbered 1, 2, 3 and 4 respectively.

(Amended by Ord. 3188 (NS) adopted 4-16-68; amended by Ord. 4953 (NS) effective 8-18-77).

**SECTION 89.02. MEMBERS.** Each Assessment Appeals Board shall consist of three members and one alternate member who shall be appointed directly by the Board of Supervisors for the terms prescribed by law. Each member shall upon appointment attend and satisfactorily complete, prior to assuming office, a training course upon the State laws, State Board of Equalization rules and County rules and guidelines relating to the assessment of property taxes and the equalization thereof conducted by the office of County Counsel. Failure to attend or satisfactorily complete the training course within two months of the beginning of the member's term or of the member's appointment to fill a vacancy constitutes cause for removal and shall automatically create a vacancy on the Assessment Appeals Board. All members shall annually thereafter attend a supplemental training course conducted by the office of County Counsel to keep apprised of current developments and changes in laws, rules, procedures and guidelines relating to assessment of property taxes and the equalization thereof. If unable to attend the annual supplemental training course when scheduled, a member must listen to the recording of the supplemental training session within six weeks of the scheduled session or date of appointment. Failure to complete the annual supplemental course within the specified time constitutes cause for removal and shall automatically create a vacancy on the Assessment Appeals Board.

(Amended by Ord. 3098 (NS) adopted 8-8-67; amended by Ord. 4822 (NS) effective 2-3-77; amended by Ord. 6446 (NS) effective 10-28-82.)

**SECTION 89.03. DUTIES OF THE BOARD.** The Assessment Appeals Board shall constitute the board of equalization for the County of San Diego and shall have the power to equalize the valuation of the taxable property in the County for the purpose of taxation in the manner provided for in Section 9 of Article XIII of the Constitution.

**SECTION 89.04. COMPENSATION.** Compensation of the members of the Assessment Appeals Boards shall be as specified in the annual salary ordinance.

**SECTION 89.05. CLERICAL ASSISTANCE.** The Clerk of the Board of Supervisors shall be the Clerk of the Assessment Appeals Boards and shall provide such clerical assistance as

said boards may require. Said Clerk shall appoint employees in the office of the Board of Supervisors who are to perform duties in connection with the Assessment Appeals Boards proceedings.

SECTION 89.06. LEGAL ADVISOR. County Counsel shall provide legal advice to the Assessment Appeals Board.

SECTION 89.07. RECEIPT OF EVIDENCE OUTSIDE OF HEARING.

(a) Except as provided herein, no member of the Assessment Appeals Board shall, after an application for equalization has been filed with the County, solicit or receive evidence outside of the public hearing relating to said application.

(b) Receipt of unsolicited letters or other documents shall not constitute a violation of this Section but shall be disclosed as provided in Section 89.09.

(Added by Ord. 4822 (NS) effective 2-3-77.)

SECTION 89.08. VIEW OF PROPERTY.

(a) After an application for equalization has been filed with the County, no member of an Assessment Appeals Board shall view the subject property with a proponent or opponent of said application, or other interested parties.

(b) Where, during the course of a hearing it appears that one or more Assessment Appeals Board members desire to view the subject property, the hearing shall be continued for that purpose. When the hearing is continued and if the members of the Assessment Appeals Board so desire, they may individually view the site and shall thereafter report their observations at the continued hearing or as a body may view the site and may be accompanied by proponents, opponents, and other interested parties.

(Added by Ord. 4822 (NS) effective 2-3-77.)

SECTION 89.09. DISCLOSURE. A member who has received evidence outside of a hearing or has viewed the subject property, or is familiar with the subject property, shall fully disclose at the hearing such evidence and his observations and familiarity with the property so that the applicant, opponent, interested persons, and other members of the Assessment Appeals Board may be aware of the facts or evidence upon which he is relying and have an opportunity to controvert it. All written evidence received outside of the hearing shall be filed with the Clerk.

(Added by Ord. 4822 (NS) effective 2-3-77.)

SECTION 89.10. DISCUSSION OF PENDING MATTERS. No member of an Assessment Appeals Board shall, after an application for equalization has been filed with the County, discuss said matter with other members of an Assessment Appeals Board or with proponents, opponents, or other interested parties, except in the course of and during said public hearing and authorized private deliberations thereon. Nothing herein shall prohibit the members of the Assessment Appeals Board from discussing a pending matter with their legal advisor.

(Added by Ord. 4822 (NS) effective 2-3-77.)

SECTION 89.11. CONTACT WITH STAFF ON MATTERS FOR WHICH HEARINGS ARE REQUIRED.

(a) No member of the Assessment Appeals Board shall, after an application for equalization has been filed with the County solicit or receive any substantive information from County staff outside of the public hearing on said matter.

(b) The provisions of this Section do not apply, however, to those matters which have broad application in the County as distinguished from specific application to individual parcels of property subject of the hearing, nor do they apply to those matters which relate to only procedural aspects of the hearing process, such as anticipated dates of hearings or reasons for delays in setting hearings.

(c) Nothing herein shall prohibit the members of the Assessment Appeals Board from discussing a pending matter with their legal advisor.

(Added by Ord. 4822 (NS) effective 2-3-77.)

SECTION 89.12. MISDEMEANOR. Every member of an Assessment Appeals Board who knowingly and willfully violates any section of this Article is guilty of a misdemeanor punishable by imprisonment in the County Jail for a period not exceeding six months, or by a fine not exceeding \$500, or by both.

(Added by Ord. 4822 (NS) effective 2-3-77.)

SECTION 89.13. VACANCIES. The Board of Supervisors shall appoint replacements for the members and alternates of the Assessment Appeals Boards, upon the expiration of any term of office, or for the unexpired term, upon the occurrence of a vacancy.

(Added by Ord. 4953 (NS) effective 8-18-77.)

ARTICLE IV-C

(A new Article, titled Assessment Hearing Officer and consisting of Sections 89.20.01-89.20.05, inclusive, added by Ord. 4953 (NS) effective 8-18-77.)

ASSESSMENT HEARING OFFICER

SECTION 89.20.01. ESTABLISHMENT OF HEARING OFFICER. There is hereby created and established in the County of San Diego, pursuant to Revenue and Taxation Code Section 1636, the positions of Assessment Hearing Officer and Alternate Assessment Hearing Officer.

SECTION 89.20.02. APPOINTMENTS. Each Assessment Hearing Officer or alternate Assessment Hearing Officer shall be appointed by the Board of Supervisors. Initial appointments shall be made from among those regular members or alternate members of the Assessment Appeals Boards of San Diego County for the 1976-77 fiscal year.

SECTION 89.20.03. TERM. Each Assessment Hearing Officer and Alternate shall serve a one year term beginning on the first Monday in September, except the Assessment Hearing Officers and Alternates appointed for the 1979-80 fiscal year shall serve terms expiring on September 1, 1980. If a vacancy occurs during a term, the Board of Supervisors shall appoint a qualified person to fill each vacant position for the unexpired portion of the term.

An Assessment Hearing Officer or Alternate whose term has expired may continue to serve for up to sixty (60) days after the expiration of such term with respect to matters on which the Assessment Hearing Officer or Alternate had commenced hearing prior to the expiration of such term.

(Amended by Ord. 5583 (NS) effective 9-13-79.)

SECTION 89.20.04. DUTIES, RIGHTS AND RESPONSIBILITIES. Each Assessment Hearing Officer or Alternate shall conduct hearings on assessment protests and make recommendations to the Assessment Appeals Board in conformity with the provisions of Article 1.7, Chapter 1, Part 3, Division 1 of the Revenue and Taxation Code (commencing at Section 1636), and shall have the same rights and be subject to the same obligations and duties as the Assessment Appeals Boards or members of the Assessment Appeals Boards have or are subject to as provided in Sections 89.02 and 89.03 through 89.12 of Article IV-B of the Administrative Code of the County of San Diego.

SECTION 89.20.05. COMPENSATION. Compensation of Assessment Hearing Officers or Alternate Assessment Hearing Officers shall be as specified in the annual salary ordinance.

ORDINANCE NO. 5583 (NEW SERIES)

AN ORDINANCE AMENDING SECTION 89.20.03 OF  
THE ADMINISTRATIVE CODE OF THE COUNTY OF  
SAN DIEGO RELATING TO THE TERMS FOR  
ASSESSMENT HEARING OFFICERS AND ALTERNATES

The Board of Supervisors of the County of San Diego do ordain as follows:

Section 1. Section 89.20.03 of the Administrative Code of the County of San Diego is amended to read:

Section 89.20.03. TERM. Each Assessment Hearing Officer and Alternate shall serve a one year term beginning on the first Monday in September, except the Assessment Hearing Officers and Alternates appointed for the 1979-80 fiscal year shall serve terms expiring on September 1, 1980. If a vacancy occurs during a term, the Board of Supervisors shall appoint a qualified person to fill each vacant position for the unexpired portion of the term.

An Assessment Hearing Officer or Alternate whose term has expired may continue to serve for up to sixty (60) days after the expiration of such term with respect to matters on which the Assessment Hearing Officer or Alternate had commenced hearing prior to the expiration of such term.

Section 2. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage; and before the expiration of fifteen (15) days after its passage, it shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 14<sup>th</sup> day of August, 1979.

THOMAS D. HAMILTON, JR.

Chairman of the Board of Supervisors of  
the County of San Diego, State of California

The above ordinance was adopted by the following vote:

Supervisor Thomas D. Hamilton, Jr.	voting "Aye"
Supervisor Lucille V. Moore	voting "Aye"
Supervisor Roger Hedgecock	voting "Aye"
Supervisor Jim Bates	voting "Aye"
Supervisor Paul Eckert	voting "Aye"

ATTEST my hand and the seal of the Board of Supervisors this 14<sup>th</sup> day of August, 1979.

PORTER D. CREMANS  
Clerk of the Board of Supervisors

BY Jacquilyn Nester

Deputy

(SEAL)

SAN DIEGO COUNTY  
ASSESSMENT APPEALS BOARDS  
AND ASSESSMENT HEARING OFFICERS

GUIDELINES FOR CONDUCT OF HEARINGS  
AND  
RULINGS ON EVIDENCE

## PREFACE

These guidelines for the conduct of hearings by Assessment Appeals Boards and Assessment Hearing Officers and rulings on evidence were prepared by the San Diego County Counsel in an effort to assist members of boards in carrying out their duties. The San Diego Board of Supervisors has adopted rules relative to the filing of applications for equalization and for the conduct of hearings. These rules are almost identical with the rules adopted by the State Board of Equalization relating to local equalization of assessments made by the County Assessor and are binding on the Assessment Appeals Boards. These rules contain general provisions relating to the admissibility of evidence but do not adopt the provisions of the California Evidence Code applicable to the valuation of property in civil actions (as has been done in at least one county). As a consequence in San Diego County Assessment Appeals Boards and Hearing Officers are not bound by the technical rules of evidence applicable in valuation of property in eminent domain proceedings.

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ASSESSMENT APPEALS BOARD AND  
ASSESSMENT HEARING OFFICERS  
GUIDELINES FOR CONDUCT OF HEARINGS  
AND  
RULINGS ON EVIDENCE

I

ASSESSMENT APPEALS BOARDS

1. CONDUCT OF HEARING – ORDER OF PROCEEDINGS.

Hearings on applications should proceed as follows:

(a) Clerk announces application. The clerk shall announce the number of the application and the name of the applicant.

(b) Determine if there is a stipulation. The clerk shall inform the chairman if there is a stipulation for a reduction; otherwise, the chairman shall determine whether there is a stipulation for a reduction. In the event there is filed with the 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 cash 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 public hearing, (1) 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 (2) reject the stipulation and set or reset the application for reduction for hearing.

(c) Determine if parties present. If there is no stipulation the chairman shall inquire if the applicant or his agent is present. If neither is present, the chairman shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor his agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

(d) Swearing witnesses. If the applicant or his agent be present, they shall be sworn if not previously sworn by the clerk.

(e) Clerk describes application. The clerk shall then announce the nature of the application. If the application is for a change in assessment, the clerk shall also announce the assessed value as it appears on the local roll and the applicant's opinion of the full cash value of the property. The announcement by the clerk may be made by reference to the values as found on the applications on file unless there is objection, in which event the values shall be read into the record.

(f) Assessor's recommendation. The chairman shall then ascertain the assessor's recommendations, if any, with regard to the application and ascertain whether the applicant concurs in and is satisfied with the recommendations.

(g) Testimony under oath. All testimony shall be taken under oath or affirmation.

(h) Applicant proceeds first. The chairman shall require the applicant or his agent to present his case to the board first except in those cases (1) in which only the imposition of a penalty is at issue, or (2) when a hearing involves the assessment of an owner-occupied single-family dwelling, and the applicant has complied with Rule 305(c) and, if applicable, Rule 305.1, then the presumption in Rule 321(b) applies. In such instances the chairman shall require the assessor to present appraisal data that supports the full cash value he has determined for the property subject of the hearing. If the applicant fails to present evidence of the value of the property, the presumption that the assessor has properly performed his duties and fairly and equitably assessed the property prevails and the board shall not request the assessor to present his case. If the hearing is not terminated at this point, the assessor may then present his case.

(i) Examination of applicant or agent by board.

(1) In the absence of a stipulation signed by the applicant and by the assessor and county counsel on behalf of the county, no reduction may be made by the board unless it examines, on oath, the applicant or his agent touching the value of the property, and the applicant or agent attends and answers all questions pertinent to the inquiry.

(2) The board may, in its discretion, waive the examination of the applicant or his agent if the board and the assessor are satisfied that the issues raised by the application and the facts pertaining thereto have been fully considered by the board in previous years or fully presented in the application, and if the applicant or his agent requests such waiver in his application. The board shall consult with the assessor and shall act promptly on any request for waiver and give written notice of its decision within ten days of the filing of the application. If the board waives the examination of the applicant or his agent, it shall decide the case on the merits of the application.

(j) Rebuttal. The applicant shall be afforded an opportunity for rebuttal if the assessor makes a presentation.

(k) Fair hearing – cross-examination – argument. A full and fair hearing shall be accorded the applicant. There shall be reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses and for argument. To be admissible, evidence must be relevant, material and competent. Failure to enter a timely objection to evidence constitutes a waiver of the objection.

(1) Continuances.

(1) The board may continue a hearing to a later date. If the hearing is continued, the chairman shall inform the applicant and the assessor of the time and place of such further hearing and no further notice thereof need be given.

(2) When the board considers raising the assessment of the whole or any portion of a property after hearing an application for reduction of the assessment of the whole or a portion of the property, it shall grant a request of the applicant or his agent for a continuance of the hearing if it appears that new evidence of value was presented which, in the opinion of the board, the applicant did not have a reasonable opportunity to investigate prior to the hearing. The continuance shall be for a period of time sufficient, in the judgment of the board, to allow the applicant a reasonable opportunity to investigate such new evidence. The right to a continuance may be waived by the applicant.

(3) The clerk may, by stipulation of the parties filed at least two working days before the hearing, continue the matter to a convenient date without the necessity of board action.

(4) Continuances should not usually be granted for a period which will extend into a subsequent fiscal year. Where a continuance which will extend into a subsequent fiscal year is to be granted, the board should require the request for continuance to be in writing, should approve the continuance by formal board action and should have the board approval noted on the written request for continuance.

(m) Decision – finding and conclusions. Following the conclusion of the hearing, the board must make its decision. If prior to the hearing the applicant has requested findings of fact and conclusions of law and paid the prescribed fee before the commencement of the hearing, the board must adopt written findings and conclusions. The decision of the board is final and it may not change its decision.

Authorities:

--State Board Rules, Sections 308, 313, 316, and 326\*

--San Diego County Rules, Sections 8, 13, 16, 26, and 101\*\*

--Revenue and Taxation Code, Sections 167, 1607, 1608, 1610, and 1611.5

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\* Refers to Rules of the State Board of Equalization, Title 18, California Administrative Code.

\*\* Refers to Rules of Notice and Procedure adopted by the Board of Supervisors of the County of San Diego.

2. FUNCTIONS OF BOARD.

(a) Jurisdiction. The functions of the board are:

(1) To increase after giving notice, or lower upon application, individual assessments in order to equalize assessments on the local tax assessment roll.

(2) To review, equalize, and adjust penal and escaped assessments on that roll, except escaped assessments made pursuant to Revenue and Taxation Code Section 531.1.

Section 463, Revenue and Taxation Code, provides in part:

“If the assessee establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement within the time required by Section 441 was due to reasonable cause and not due to willful neglect, it may order the penalty abated, provided the assessee has filed with the county board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.”

(3) To exercise the powers specified in Section 1613 of the Revenue and Taxation Code.

The board acts in a judicial capacity and may act only on the basis of evidence. The board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied. The board has no legislative power.

(4) To determine classifications of property and to segregate values of property when appropriate.

(5) To determine its own jurisdiction.

Authorities:

--San Diego County Rules, Section 2

--State Board Rules, Section 302

--Security-First National Bank v. County of Los Angeles (1950) 35 Cal.2d 319, 320-321; City and County of San Francisco v. County of San Mateo (1950) 36 Cal.2d 196; United States v. Superior Court (1941) 19 Cal.2d 189; County of Sacramento v. Assessment Appeals Board No. 2 (1973) 32 Cal.App.3d 654; Midstate Theatres, Inc. v. Board of Supervisors (1975) 46 Cal.App.3d 204

(b) Determine full value and apply ratio. The primary function of the board is to determine the full value of the property prescribed by Revenue and Taxation Code Section 1610.8, which provides:

“After giving notice as prescribed by its rules, the county board shall equalize the assessment of property on the local roll by determining the full value of an individual property and by reducing or increasing an individual assessment as provided in this section. The full value of an individual property shall be determined without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of section 1603.

“The applicant for a reduction in an assessment on the local roll shall establish the full value of the property by independent evidence. The records of the assessor may be used as part of such evidence.

“The county board shall make a determination of the full value of each parcel for which an application for equalization is made.”

(c) Lack of jurisdiction. The board has no jurisdiction to:

- (1) Grant or deny exemption.
- (2) Raise or lower the entire assessment roll.
- (3) Extend the time for filing applications for equalization.
- (4) Remove or waive penalties for delinquent payment.
- (5) Reduce assessment because property was destroyed, damaged or depreciated after lien date, except where expressly authorized by statute.
- (6) Determine whether property is taxable or assessable or in which jurisdiction or tax code area it is assessable.
- (7) Change tax rates.
- (8) Reduce assessments because of inability of taxpayer to pay or because taxes have increased.
- (9) Receive or hear any petition for a reduction in an escaped assessment made pursuant to Section 531.1 (incorrect exemption) or a penal assessment levied in respect thereto, or to reduce such assessments.

Authorities:

- San Diego County Rules, Sections 2, 5, and 24
- State Board Rules, Sections 302, 305, and 324
- Revenue and Taxation Code, Sections 170, 1603, 1604, and 1610.8

Note: The board does have jurisdiction to order abatement of penalties prescribed in Revenue and Taxation Code Section 463 for failure to file property statements within the time required by Section 441, where failure was due to reasonable cause and not due to willful neglect. (See Paragraph 2(a) (2).)

### 3. DEFINITIONS OF VALUE.

(a) All property is taxable and shall be assessed at the same percentage of fair market value. The value to which the percentage is applied shall be known for property tax purposes as the full value.

Authorities:

--California Constitution, Article XIII, Section 1(a)

(b) Full value means fair market value, full cash value or such other value standard as is prescribed by the Constitution or in the Revenue and Taxation Code under the authorization of the Constitution.

Authorities:

--Revenue and Taxation Code, Section 110.

(c) Full cash value or fair market value means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of other and both will knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes.

Authorities:

--Revenue and Taxation Code, Section 110

(d) In addition to the meaning as cited in the Revenue and Taxation Code, the State Board of Equalization has defined the words full value, full cash value, cash value, actual value, and fair market value to mean the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

Authorities:

--State Board Rule No. 2, California Administrative Code, Title 18, Section 2

#### 4. HIGHEST AND BEST USE.

The determination of full value or fair market value should be based upon the property's highest and best use, except where the Constitution or a statute prescribes otherwise. The highest and best use of property is the most advantageous and valuable use to which it is adaptable, taking into consideration the present and reasonably foreseeable future, business conditions, and wants of the surrounding community.

Authorities:

- Revenue and Taxation Code, Section 110.5; California Constitution, Article XIII, Section 1(a)
- City of Los Angeles v. Hughes (1927) 202 Cal. 731
- California Condemnation Practice, C.E.B., Section 3.23

#### 5. IMPLEMENTATION OF PROPOSITION 13.

(a) Base year values. For purposes of California Constitution Article XIII A, Section 2, Subdivision (a), "full cash value" is the fair market value for either (a) the 1975 lien date; or (b), for property which is purchased, newly constructed or changes ownership after the 1975 lien date, the date on which a purchase or change in ownership occurs, or on which new construction is completed, or if new construction is uncompleted, on the lien date. These values are known as the base year values. For each lien date after the lien date in which the base year value is determined, the full cash value of real property, including possessory interests, is to reflect the percentage change in cost of living, not exceeding an increase in excess of 2%.

Authorities:

- Revenue and Taxation Code, Section 110.1

(b) Taxable value. The taxable value of real property is the lesser of (1) its base year value, compounded annually by the cost of living inflation factor, or (2) its full cash value as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, or other factors causing a decline in value, or (3) an amount calculated for property damaged or destroyed by disaster, misfortune, or calamity, or removed by voluntary action by the taxpayer.

Authorities:

- Revenue and Taxation Code, Section 51

(c) New construction. New construction means any addition to real property since the last lien date, or any alteration of real property since the last lien date which converts the property to a different use, or which constitutes a major rehabilitation of the property. Major rehabilitation includes any rehabilitation which converts an improvement or fixture to the substantial equivalent of a new improvement or fixture. New construction does not include the construction or addition of any active solar energy system, and in the case of solar swimming pool heaters, does not include the increment of cost in excess of the cost of a comparable conventional fossil fuel heating system. New construction does not include the timely reconstruction of real property which was damaged or destroyed by misfortune or calamity where the property after reconstruction is the substantial equivalent of the property prior to

damage or destruction. Any reconstruction of real property, or a portion thereof, which is not substantially equivalent to the damaged or destroyed property, is deemed to be new construction and has a new base year value.

A new base year value is determined for the portion of any taxable real property which had been newly constructed. The base year value of the remainder of the property assessed, which did not undergo new construction, is not changed. New construction in progress on the lien date is appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property which is newly constructed is reappraised at its full value. The date of completion is the date the portion of property is available for use, considering the date of final inspection by a governmental official, the date the prime contractor fulfilled all contractual obligations, or the date of completion of testing machinery and equipment.

Authorities:

- Revenue and Taxation Code, Sections 70, 71 and 73
- State Board Rules, Section 463

(d) Change in ownership and purchase. A “change in ownership” means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. “Purchase” is a change in ownership for consideration.

Authorities:

- Revenue and Taxation Code, Sections 60, 65, and 67

(1) Percentage interests. When an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred is reappraised. A purchase or change in ownership of an interest with a market value of less than 5% of the value of the total property is not reappraised if the market value of the interest transferred is less than \$10,000.00, except that transfers during any one assessment year are accumulated for the purpose of determining the percentage interests and value transferred.

Authorities:

- Revenue and Taxation Code, Section 65.1

(2) Interspousal transfers. Interspousal transfers of any kind are not changes in ownership. Thus, change in ownership does not include the creation, transfer, or termination, solely between spouses, of any co-owners' interest; transfers taking effect upon the death of a spouse; transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation; transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of the deceased transferor, or by a trustee of such a trust to the spouse of the trustor; or the distribution of a legal entity's property to a spouse or former spouse in exchange for the

interest of such spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

Authorities:

--Revenue and Taxation Code, Section 63

(3) Co-owners. Transfers between co-owners resulting in a change in the method of holding title to real property without changing the proportional interests of the co-owners, are not changes in ownership. Examples of transfers between co-owners which are not changes in ownership include a partition of a tenancy in common and any transfer of title between an individual and a legal entity or between legal entities (such as a co-tenancy to a partnership, a partnership to a corporation, a trust to a co-tenancy, or an individual to a legal entity) which results solely in a change in the method of holding title and in which the proportional interests of the transferors and transferees (whether represented by stock, partnership interest, or otherwise) remain the same after transfer.

Any transfer between co-owners in any property which was held by them as co-owners for all or part of the period between March 1, 1975, and March 1, 1981, and which was eligible for a homeowner's exemption during the period of the co-ownership is not a change in ownership. (Revaluations in contravention of this paragraph are to be reversed for the 1980-81 assessment year and years thereafter by filing an application with the county assessor on or before March 26, 1982.)

Authorities:

--Revenue and Taxation Code, Section 62, subdivisions (a) and (j)

(4) Perfecting title. Transfers for the purpose of perfecting title to property are not changes in ownership.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (b)

(5) Security interest. Neither the creation, assignment, termination or reconveyance of a security interest, nor the substitution of a trustee under a security instrument is a change in ownership.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (c)

(6) Collective investment funds. Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution is not a change in ownership.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (h)

(7) Employee benefit plans. Neither the creation, vesting, transfer, distribution or termination of a participant's or beneficiary's interest in an employee benefit plan, nor any contribution of real property to an employee benefit plan is a change in ownership.

Authorities:

--Revenue and Taxation Code, Section 66

(8) Joint tenancy. A change in ownership occurs upon the creation, transfer, or termination of any joint tenancy interest unless the transfer is interspousal, the transfer is between co-owners and results in a change of the method of holding title without changing the proportional interests of the co-owners, or the transferor, upon creation or transfer of a joint tenancy interest, is one of the joint tenants (an original transferor). (Spouses of original transferors are considered to be original transferors.)

Upon a change in ownership of a joint tenancy interest only, the interest or portion which is transferred from one owner to another owner is reappraised. If an original transferor's interest is terminated, the entire portion of the property held by the original transferor prior to the creation of the joint tenancy is reappraised, unless it vests in whole or in part, in any remaining original transferor in which case there is no reappraisal. Upon the termination of the interest of the last surviving original transferor, there is a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal. If a joint tenancy interest other than the original transferor's interest is terminated, there is no reappraisal if the interest is transferred either to an original transferor or to all remaining joint tenants.

Where the joint tenancy was created on or before March 1, 1975 there is a rebuttable presumption that each joint tenant with an interest as of March 1, 1975 is an original transferor.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (d), Section 62, subdivisions (a) and (f), Sections 63 and 65

(9) Tenancy in common. A change in ownership occurs upon the creation, transfer or termination of any tenancy in common, unless the transfer is interspousal, the transfer is between co-owners and results in a change in the method of holding title without changing the proportional interest of the co-owners, or the transfer is of an undivided interest with a value less than 5% of the value of the property if under \$10,000.00.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (e), Section 62, subdivisions (a), Sections 63 and 65.1

(10) Leasehold interests in taxable real property. A change in ownership occurs upon (1) the creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options); and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years. A transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more is not a change in ownership. It is conclusively presumed that all homes eligible for the homeowner exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Revenue and Taxation Code, Part 13 (commencing with Section 5800), which are on leased land have a renewal option of at least 35 years on the lease of such land, whether or not, in fact such renewal option exists in any contract or agreement.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (c), Section 62, subdivision (g)

(11) Possessory interests. The creation, renewal, sublease or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (b)

(12) Trusts. A change in ownership does not occur upon (1) any transfer by the trustor, the trustor's spouse, or both, into a trust for so long as the transferor is the present beneficiary of the trust, or the trust is revocable; (2) or any transfer by a trustee of such a trust back to the trustor; or (3) any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years' duration. Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of the deceased transferor, or by a trustee of such a trust to the spouse of the trustor are not changes in ownership. A change in ownership occurs when a revocable trust becomes irrevocable as to any interest in real property which vests in persons other than the trustor.

Authorities:

--Revenue and Taxation Code, section 61, subdivision (g), Section 62, subdivision (d), and Section 63, subdivision (a)

(13) Present and future interests. No change of ownership occurs upon a transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. A change in ownership occurs upon any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or similar precedent property interest, unless such vesting would constitute an interspousal transfer such as a transfer taking effect upon the death of a spouse, or the transfer would not be considered a change in ownership under the provisions relating to trust.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (f), Section 62, subdivision (e)

(14) Corporation and partnership interest. The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person constitutes a change in ownership, unless the transfer results solely in a change in the method of holding title and the proportional interests of the transferors and transferees remain the same after transfer. The purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, is not deemed to constitute a transfer of the real property of the legal entity, and does not constitute a change in ownership, unless:

(a) the transfer is of stock of a cooperative housing corporation, as defined in Revenue and Taxation Code Section 17265, vested with legal title to real property which conveys to the transferee the exclusive right to occupancy and possession of such property, or a portion thereof; or

(b) in the case where property was transferred to a legal entity in a transaction excluded from change in ownership because it resulted solely in a change in the method of holding title and the proportional interests of the transferors and transferees were the same after the transfer, whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original co-owners in one or more transactions (the date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity); or

(c) a corporation, partnership, or other legal entity or any other person obtains control, as defined in Revenue and Taxation Code Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, in which case a change in ownership of the property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained is deemed to have occurred.

A change in ownership does not occur upon (1) any corporate reorganization, where all of the corporations involved are members of an affiliated group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a non-taxable event by similar California statutes or (2) any transfer of real property among members of an affiliated group.

Authorities:

--Revenue and Taxation Code, Section 61, subdivisions (h) and (i), Section 62, subdivision (a), and Section 64

(15) Cooperative housing corporation. The transfer of stock of a cooperative housing corporation as defined in Revenue and Taxation Code Section 17265, vested with legal title to real property which conveys to the transferee the exclusive right to occupancy and possession of such property, or a portion thereof, is a change in ownership.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (h)

(16) Common areas for facilities of condominiums, shopping centers, etc. If a unit or lot within a cooperative housing corporation, community apartment project, condominium, planned unit development, shopping center, industrial park, or other residential, commercial, or industrial land subdivision complex with common areas or facilities is purchased or changes ownership, then only the unit or lot transferred and the share of the common area reserved as an appurtenance of such unit or lot is reappraised.

Authorities:

--Revenue and Taxation Code Section 65, subdivision (c)

(17) Low income housing cooperative. Change in ownership does not include any transfer of stock or membership certificate in a housing cooperative which was financed under one mortgage provided such mortgage was insured under Sections 213, 221(d) (3), 221(d) (4), or 236 of the National Housing Act, as amended, or such housing cooperative was financed or assisted pursuant to Sections 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of such person or family constitutes a change in ownership.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (i)

(18) Right to extract oil, gas or other minerals. The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals for so long as they can be produced or extracted in paying quantities is a change in ownership. The balance of the property, other than mineral rights, is not reappraised.

Authorities:

--Revenue and Taxation Code, Section 61, subdivision (a)

(19) Religious corporations. Change in ownership does not include a transfer of property or interest between a corporation sole, a religious corporation, a public benefit corporation, or a holding corporation (defined in Rev. & Tax. Code, § 23701(h) holding title for the benefit of any of the corporations, or any transfer from one such entity to the same type of entity, provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (k)

(20) Correction or reformation of deed. No change of ownership occurs upon transfer of property between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, where the original relationship between the grantor and grantee is not changed.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (l)

(21) Intrafamily transfer upon death of parents. Change in ownership does not include an intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings, as a result of a court order or judicial decree due to the death of the parent or parents. Eligible dwelling unit means the dwelling unit which was the principal place or residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

Authorities:

--Revenue and Taxation Code, Section 62, subdivision (m)

(22) Replacement of real property acquired by governmental action. Change in ownership does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property was displaced from his or her property in this state by eminent domain proceedings, by acquisition by a public entity or by governmental action which has resulted in a judgment of inverse condemnation. The base year value of the property acquired is the lower of (a) the fair market value of the property acquired or (b) the sum of the adjusted base year value of

the property from which he or she was displaced, plus the amount by which the full cash value of the property acquired exceeds 120 percent of the amount received for the property taken by governmental action.

Authorities:

--Revenue and Taxation Code, Section 68

(e) Enforceable restrictions. Certain types of property are required to be valued in accordance with the California Constitution and Revenue and Taxation Code provisions specifically applicable to their valuation, instead of in accordance with provisions enacted in implementing California Constitution Article XIII A. Properties required to be valued in accordance with the California Constitution and Revenue and Taxation Code provisions specifically applicable to their valuation are open space lands, historical properties, property restricted to timberland, certain golf courses, lands owned by local governments that are outside of their boundaries, fruit and nut trees, and grape vines.

Authorities:

--Revenue and Taxation Code, Sections 52 and 53

## 6. BURDEN OF PROOF.

The law presumes that the assessor has properly performed his duty and has assessed all properties fairly and upon an equal basis. Except as hereinafter noted, the effect of this presumption is to impose upon the applicant the burden of providing that the property in question has not been correctly assessed. An exception applies in any hearing involving the assessment of an owner-occupied single-family dwelling. In such instances the presumption in Section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the taxpayer or assessee 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. The law requires that the party having the burden of proof proceed to present evidence relevant to the full value of the property. The assessor has the burden of establishing the basis for imposition of a penalty assessment. No greater relief may be granted than is justified by the evidence produced.

Authorities:

--San Diego County Rules, Sections 13 and 21

--State Board Rules, Sections 313 and 321

--Revenue and Taxation Code, Section 167

In a proceeding before the board on an application for a reduction, the burden of proof is upon the petitioner. (*Wild Goose Country Club v. County of Butte* [1922] 60 Cal.App. 339.)

## 7. STATE BOARD RULES ON VALUATION.

(a) The State Board of Equalization has adopted the following rules on the valuation of property.

Chapter 1. State Board of Equalization – Property Tax Subchapter 1. Valuation Principles and Procedures

(1) General application. The rules in this subchapter govern assessors when assessing, county boards of equalization and assessment appeals boards when equalizing, and the State Board of Equalization, including all divisions of the property tax department.

(2) The value concept. In addition to the meaning ascribed to them in the Revenue and Taxation Code, the words "full value", "full cash value", "cash value", "actual value", and "fair market value" mean the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

(3) Value approaches. In estimating value as defined in Section 2, the assessor shall consider one or more of the following, as may be appropriate for the property being appraised:

(a) The price or prices at which the property and comparable properties have recently sold (the comparative sales approach).

(b) The prices at which fractional interests in the property or comparable properties have recently sold, and the extent to which such prices would have been increased had there been no prior claims on the assets (the stock and debt approach).

(c) The cost of replacing reproducible property with new property of similar utility, or of reproducing the property at its present site and at present price levels, less the extent to which the value has been reduced by depreciation, including both physical deterioration and obsolescence (the replacement or reproduction cost approach).

(d) If the income from the property is regulated by law and the regulatory agency uses historical cost or historical cost less depreciation as a rate base, the amount invested in the property or the amount invested less depreciation computed by the method employed by the regulatory agency (the historical cost approach).

(e) The amount that investors would be willing to pay for the right to receive the income that the property would be expected to yield, with the risks attendant upon its receipt (the income approach).

(4) The comparative sales approach to value. When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices. In using sales prices of the appraisal subject or of comparable properties to value a property, the assessor shall:

(a) Convert a noncash sale price to its cash equivalent by estimating the value in cash of any tangible or intangible property other than cash which the seller accepted in full or partial payment for the subject property and adding it to the cash portion of the sale price and by deducting from the nominal sale price any amount which the seller paid in lieu of interest to a lender who supplied the grantee with part or all of the purchase money.

(b) When appraising an unencumbered fee interest, (1) convert the sale price of a property encumbered with a debt to which the property remained subject to its unencumbered fee price equivalent by adding to the sale price of the seller's equity the price for which it is estimated that such debt could have been sold under value-indicative conditions at the time the sale price was negotiated and (2) convert the sale price of a property encumbered with a lease to which the property remained subject to its unencumbered fee price equivalent by deducting from the sale price of the seller's equity the amount by which it is estimated that the lease enhanced that price or adding to the price of the seller's equity the amount by which it is estimated that the lease depressed that price.

(c) Convert a sale to the valuation date of the subject property by adjusting it for any change in price level of this type of property that has occurred between the time the sale price was negotiated and the valuation date of the subject property.

(d) Make such allowances as he deems appropriate for differences between a comparable property at the time of sale and the subject property on the valuation, in physical attributes of the properties, location of the properties, legally enforceable restrictions on the properties' use, and the income and amenities which the properties are expected to produce. When the appraisal subject is land and the comparable property is land of smaller dimensions, and it is assumed that the subject property would be divided into comparable smaller parcels by a purchaser, the assessor shall allow for the cost of subdivision, for the area required for streets and alleys, for selling expenses, for normal profit, and for interest charges during the period over which it is anticipated that the smaller properties will be marketed.

(6) The reproduction and replacement cost approaches to value.

(a) The reproduction or replacement cost approach to value is used in conjunction with other value approaches and is preferred when neither reliable sales data (including sales of fractional interests) nor reliable income data are available and when the income from the property is not so regulated as to make

such cost irrelevant. It is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical deterioration, is not misplaced, is neither over- or underimproved, and is not affected by other forms of depreciation or obsolescence.

(b) The reproduction cost of a reproducible property other than inventory (for which see Section 10 of this chapter) may be estimated either by (1) adjusting the property's original cost for price level changes and for abnormalities, if any, or (2) applying current prices to the property's labor and material components, with appropriate additions for entrepreneurial services, interest on borrowed or owner-supplied funds, and other costs typically incurred in bringing the property to a finished state (or to a lesser state if unfinished on the lien date). Estimates made under (2) above may be made by using square-foot, cubic-foot, or other unit costs; a summation of the in-place costs of all components; a quantity survey of all material, labor, and other cost elements; or a combination of these methods.

(c) The original cost of reproducible property shall be adjusted, in the aggregate or by groups, for price level changes since original construction by multiplying the cost incurred in a given year by an appropriate price index factor. When detailed investment records are unavailable for earlier years or when only a small percentage of the total investment is involved, the investments in such years may be lumped and factored to present price levels by means of an index number that represents the assessor's best judgment of the weighted average price change. If the property was not new when acquired by its present owner and its original cost is unknown, its acquisition cost may be substituted for original cost in the foregoing calculations.

(d) The replacement cost of a reproducible property other than inventory may be estimated as indicated in (b) (2) of this Section by applying current prices to the labor and material components of a substitute property capable of yielding the same services and amenities, with appropriate additions as specified in subsection (b) (2).

(e) Reproduction or replacement cost shall be reduced by the amount that such cost is estimated to exceed the current value of the reproducible property by reason of physical deterioration, misplacement, over- or underimprovement, and other forms of depreciation or obsolescence. The percentage that the remainder represents of the reproduction or replacement cost is the property's percent good.

(f) When the allowance made pursuant to paragraph (e) exceeds the amount included in the depreciation tables used by the assessor, the reasons therefor shall be noted in the appraisal record for the property and the amount therefor shall be ascertainable from the record.

(g) This rule shall first be observed in assessing property for the 1968-69 fiscal year.

(8) The income approach to value.

(a) The income approach to value is used in conjunction with other approaches when the property under appraisal is typically purchased in anticipation of a money income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties. It is the preferred approach for the appraisal of land when reliable sales data for comparable properties are not available. It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable because the reproducible property has suffered considerable physical depreciation, functional obsolescence or economic obsolescence, is a substantial over or underimprovement, is misplaced, or is subject to legal restrictions on income that are unrelated to cost.

(b) Using the income approach, an appraiser values an income property by computing the present worth of a future income stream. This present worth depends upon the size, shape, and duration of the estimated stream and upon the capitalization rate at which future income is discounted to its present worth. Ideally, the income stream is divided into annual segments and the present worth of the total income stream is the algebraic sum (negative items subtracted from positive items) of the present worths of the several segments. In practical application, the stream is usually either (1) divided into longer segments, such as the estimated economic life of the improvements and all time thereafter or the estimated economic life of the improvements and the year in which the improvements are scrapped and the land is sold, or (2) divided horizontally by projecting a perpetual income for land and an income for the economic life of the improvements, or (3) projected as a level perpetual flow.

(c) The amount to be capitalized is the net return which a reasonably well informed owner and reasonably well informed buyers may anticipate on the valuation date that the taxable property existing on that date will yield under prudent management and subject to such legally enforceable restrictions as such persons may foresee as of that date. Net return, in this context, is the difference between gross return and gross outgo. Gross return means any money or money's worth which the property will yield over and above vacancy and collection losses, including ordinary income, return of capital, and the total proceeds from sales of all or part of the property. Gross outgo means any outlay of money or money's worth, including current expenses and capital expenditures (or annual allowances therefor) required to develop and maintain the estimated income. Gross outgo does not include amortization, depreciation, or depletion charges, debt retirement, interest on funds invested in the property, or rents and royalties payable by the

assessee for use of the property. Property taxes, corporate net income taxes, and corporation franchise taxes measured by net income are also excluded from gross outgo.

(d) In valuing property encumbered by a lease, the net income to be capitalized is the amount the property would yield were it not so encumbered, whether this amount exceeds or falls short of the contract rent and whether the lessor or the lessee has agreed to pay the property tax.

(e) Recently derived income and recently negotiated rents or royalties (plus any taxes paid on the property by the lessee) of the subject property and comparable properties should be used in estimating the future income if, in the opinion of the appraiser, they are reasonably indicative of the income the property will produce in its highest and best use under prudent management. Income derived from rental of properties is preferred to income derived from their operation since income derived from operation is the more likely to be influenced by managerial skills and may arise in part from nontaxable property or other sources. When income from operating a property is used, sufficient income shall be excluded to provide a return on working capital and other nontaxable operating assets and to compensate unpaid or underpaid management.

(f) When the appraised value is to be used to arrive at an assessed value, the capitalization rate is to include a property tax component, where applicable, equal to the estimated future tax rate for the area times the assessment ratio.

(g) The capitalization rate may be developed by either of two means:

(1) By comparing the net incomes that could reasonably have been anticipated from recently sold comparable properties with their sales prices, adjusted, if necessary, to cash equivalents (the market-derived rate). This method of deriving a capitalization rate is preferred when the required sale prices and incomes are available. When the comparable properties have similar capital gains prospects, the derived rate already includes a capital gain (or loss) allowance and the income to be capitalized should not include such a gain (or loss) at the terminus of the income estimate.

(2) By deriving a weighted average of the capitalization rates for debt and for equity capital appropriate to the California money markets (the band-of-investment method) and adding increments for expenses that are excluded from outgo because they are based on the value that is being sought or the income that is being capitalized. The appraiser shall weigh the rates for debt and equity capital by the respective amounts of such capital he deems most likely to be employed by prospective purchasers.

(h) Income may be capitalized by the use of gross income, gross rent, or gross production multipliers derived by comparing sales prices of closely comparable properties (adjusted, if necessary, to cash equivalents) with their gross income, gross rents, or gross production.

(i) The provisions of this rule are not applicable to lands defined as open-space lands by Chapter 1711, Statutes of 1967, nor are they applicable in all respects to possessory interests.

(10) Trade level for tangible personal property.

(a) In appraising tangible personal property, the assessor shall give recognition to the trade level at which the property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level. Accordingly, tangible personal property shall be valued by procedures that are consistent with the general policies set forth herein.

(b) Tangible personal property in the hands of a primary producer which is produce of the soil and for which there are regular markets established by the buyers of the property, such as petroleum and other minerals, logs, livestock, and other farm products, shall be valued at the price offered by the buyers less the unincurred cost of preparing the property for market and of moving the property to the market place at which such price is applicable, or plus the cost of moving the goods from that market place to the place at which they are to be processed if the latter location is the tax situs.

(c) Tangible personal property in the hands of a manufacturer who holds it for processing or for sale shall be valued at the amount for which it would transfer to other manufacturers of like property. This value shall be estimated (1) by reference to the cost of the property in its condition on the lien date or (2) by reference to the cash price at which the manufacturer is expected to sell the property less costs yet to be incurred and experienced gross profits. When the cost approach is used, there shall be added to the cost of raw materials all other direct costs and manufacturing burden, including depreciation and property taxes, but excluding selling and general administrative costs. Unprocessed raw material cost is the cost of replacement on the lien date as evidenced by recent purchases by the assessee or other recent market transactions.

(d) Tangible personal property in the hands of a retail merchant who holds it for sale, lease, or rental shall be valued at the amount for which it would transfer to other retailers of like property; and tangible personal property in the hands of a wholesale merchant who holds it for sale, lease, or rental shall be valued at the amount for which it would transfer to other wholesalers of like property. This value shall be estimated (1) by reference to the property's cost to the merchant, including freight- in and deducting trade quantity, and cash

discounts, with reasonable allowance based on proper substantiation for damaged, shopworn, out-of-style, used, or overage stock, or (2) by reference to the price at which the merchant is expected to sell the property less his experienced gross profit.

(e) Tangible personal property in the hands of a person who holds it for consumption shall be valued in accordance with Sections 4, 6, and 8 of this subchapter. When, however, such property is leased or rented for a period of less than six months so that its tax situs, as provided in Section 204 of this chapter is at the place where the lessor normally keeps the property, it shall be valued in accordance with the last sentence of subdivision (d).

(f) When tangible personal property is in the hands of a person engaged in two or more of the functions, of producer, manufacturer or processor, wholesaler, retailer, or consumer, the level of trade at which the property is held shall be determined by reference to its form, location, quantity, acquisition source, and probable purchasers or lessees. A person is operating at two or more levels when the property consists of raw materials, semi-manufactures, or finished goods which were acquired from sources within a business entity (other than component parts meeting the tests of the following sentence) and the property is held (1) for consumption by the business entity or (2) for processing and/or marketing in competition with similar products marketed by other business entities that have purchased like raw materials, semi-manufactures, or finished goods at the same stage of production from external sources. Component parts held at the manufacturing-processing level, however, shall not be considered to be a higher level than that which they are manufactured when they have been manufactured by a business entity specifically and exclusively for (1) incorporation by the entity in its finished product, (2) marketing as replacement parts for its finished product, or (3) both.

When it is concluded that the person holding tangible personal property is operating at more than one trade level, property at the higher trade level or levels acquired from internal sources shall be valued (1) by estimating what the property, in its condition and location on the lien date, would have cost had it been acquired in an arm's length transaction from an outside supplier, (2) by reference to the cash price at which the property could be sold in an arm's-length transaction to an outside customer less a reasonable gross profit, or (3), if held at the consumer level, in accordance with subdivision (e).

(g) Storage of tangible personal property in a warehouse, in and of itself, does not alter the trade level. The trade level of such property will be determined in accordance with subdivision (f).

(b) The State Board of Equalization has adopted specific guidelines for valuation of property which are included in the assessors' handbooks.

8. EVIDENCE – ADMISSIBILITY – GENERAL.

(a) Admissible evidence. To be admissible, evidence must be relevant, material and competent. The board may act only on the basis of evidence properly admitted into the record.

(b) Objections – waiver. Failure to enter a timely objection to evidence constitutes a waiver of the objection.

(c) Court rules of evidence not binding. "The hearing need not be conducted according to technical rules relating to evidence and witnesses."

Authorities:

- Revenue and Taxation Code, Section 1609
- San Diego County Rules, Section 13f
- Rancho Santa Margarita v. County of San Diego (1933) 135 Cal.App. 134
- A. F. Gilmore Co. v. County of Los Angeles (1960) 186 Cal.App.2d 471

(d) Evidence – hearsay. 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, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

Authorities:

- Revenue and Taxation Code, Section 1609
- San Diego County Rules, Section 13

(e) Expert testimony – board not bound by. The board is not compelled to adopt, as determinative of market value, the testimony of expert witnesses produced before it by a taxpayer.

Authorities:

- Eastern-Columbia, Inc. v. County of Los Angeles (1943) 61 Cal.App.2d 734
- A. F. Gilmore Co. v. County of Los Angeles (1960) 186 Cal.App.2d 471

(f) Opinion testimony – who may give. An opinion of value may be given only by (1) the owner or person in possession of the property or property interest being valued, (2) a qualified expert, or (3) an officer, regular employee, or partner designated by a corporation, partnership or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.

Authorities:

- Evidence Code, Section 813

(g) Opinion testimony – basis for – limitation on. The opinion of a witness as to the value of property is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is, or a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property.

Authorities:

--Evidence Code, Section 814

(h) New evidence offered by assessor. The assessor is not limited to evidence of which he was aware at the time he made the assessment. He may introduce new evidence of full cash value at the hearing. If the assessor proposes to introduce evidence to support a higher assessed value than he placed on the roll, he shall, at least 10 days prior to the hearing, inform the applicant of the higher assessed value and the evidence proposed to be introduced and he may thereafter introduce such evidence at the hearing.

Authorities:

--Revenue and Taxation Code, Section 1609.4

(i) Subpoenas. The board or the clerk on authorization of the board may subpoena witnesses and books, records, maps and documents. No subpoena to take depositions shall be issued nor shall depositions be considered for any purpose by the board. A party having a subpoena issued shall have the obligation of serving the subpoena any paying witness fess and mileage.

Authorities:

--Revenue and Taxation Code, Section 1609.4

--San Diego County Rules, Section 22

--State Board Rules, Section 322

## 9. EVIDENCE – REAL PROPERTY.

Evidence with respect to the following is admissible:

(a) Condition of the subject property including:

(1) Physical condition of the land including (i) size and shape, (ii) nature of the terrain (hilly, flat, etc.), (iii) soil conditions, (iv) view.

(2) Improvements on the property including (i) size, (ii) utility for intended purpose, (iii) condition (well maintained or obsolete or run down).

(3) Zoning restrictions including the probability or improbability of changing the zoning classification of the property, e.g., the probability or improbability of changing property from residential zone to commercial zone.

- (4) Easements which are a burden on and affect the value of the property.
- (5) Deed restrictions which restrict the use of the property.
- (6) Utilities and facilities available to the property including (i) water, (ii) sewer, (iii) gas, (iv) telephone, (v) schools, (vi) road access, (vii) public transportation, etc.
- (7) Maps and photographs of subject property and vicinity and of comparable sales.

(b) Sales (purchase) price of subject property, if it sold (purchased) within a reasonable time prior to or after date of valuation.

Authorities:

--Evidence Code, Section 815 provides in part:

"When relevant to the determination of the value of property, a witness may take into account as a basis for an opinion the price and other terms and circumstances of any sale or contract to sell and purchase which included the property or property interest being valued or any part thereof if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation . . . ."

(c) Improvements on subject property including:

- (1) Original cost, if constructed or installed within a reasonable time prior to date of valuation.
- (2) Replacement cost.
- (3) Reproduction cost.

Authorities:

--Evidence Code, Section 820 provides:

"When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the value of the property or property interest being valued as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon, if the improvements enhance the value of the property or property interest for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered."

(d) Offers to sell or purchase subject property made within a reasonable time prior to or after date of valuation.

(1) Voluntary offers to sell, listings and options granted by the owner are indicative of a maximum value of the property and to some extent the owner's opinion of value. Where the price is less than the full value determined by the assessor, it is evidence that the assessor is too high.

(2) Offers to purchase the subject property are indicative of a minimum value and where the price is equal to or greater than full value determined by the assessor they are evidence in support of the assessor's opinion.

(e) Fire insurance. The amount of insurance on improvements on subject property is indicative of owner's opinion of value of improvements.

(f) Deeds of trust, mortgages, etc., on subject property. Amount of loan (deed of trust or mortgage) on subject property is indicative of minimum value of property for security purposes.

(g) Income from subject property:

(1) Gross Income.

(2) Expenses of operation.

(3) Net income.

(4) Capitalization rate to be applied in computing value based on income.

Authorities:

--Evidence Code, Sections 817, 818, and 819 provide:

Section 817:

"(a) Subject to subdivision (b), when relevant to the determination of the value of property, a witness may take into account as a basis for an opinion the rent reserved and other terms and circumstances of any lease which included the property or property interest being valued or any part thereof which was in effect within a reasonable time before or after the date of valuation, except that in an eminent domain proceeding where the lease includes only the property or property interest being taken or a part thereof, such lease may not be taken into account in the determination of the value of property if it is entered into after the filing of the lis pendens.

"(b) A witness may take into account a lease providing for a rental fixed by a percentage or other measurable portion of gross sales or gross income from a business conducted on the leased property only for the purpose of arriving at an opinion as to the reasonable net rental value attributable to the property or property interest being valued as provided in Section 819 or determining the value of a leasehold interest."

Section 818:

"For the purpose of determining the capitalized value of the reasonable net rental value attributable to the property or property interest being valued . . . or determining the value of a leasehold interest, a witness may take into account as a basis for his opinion the rent reserved and other terms and circumstances of any lease of comparable property if the lease was freely made in good faith within a reasonable time before or after the date of valuation."

Section 819:

"When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the capitalized value of the reasonable net rental value attributable to the land and existing improvements thereon (as distinguished from the capitalized value of the income or profits attributable to the business conducted thereon)."

(h) Conditions in general vicinity of the subject property.

Authorities:

--Evidence Code, Section 821 provides:

"When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the nature of the improvements on properties in the general vicinity of the property or property interest being valued and the character of the existing uses being made of such properties."

(i) Sales of comparable property. To be comparable:

(1) The sale or contract of sale must be made sufficiently near in time to the valuation date, but must not have been made more than 90 days after the lien date.

(2) The property must be located sufficiently near the subject property.

(3) The property must be sufficiently like the subject property in respect to character, size, situation, usability and improvements.

Authorities:

--Revenue and Taxation Code, Section 402.5

--Evidence Code, Section 816, provides:

"When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation. In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size,

situation, usability, and improvements, to make it clear that the property sold and the property being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued."

(j) Verification of sales – business records. A memorandum or other written record of a sale is not made inadmissible by the hearsay rule when offered to prove the sale if:

(1) The writing was made in the regular course of a business (including a real estate business or any governmental activity);

(2) The person making the writing made it at or near the time he obtained the information concerning the sale;

(3) The custodian of the writing or other qualified witness testifies to its identity and the mode of its preparation; and

(4) The sources of information and method and time of preparation of the writing were such as to indicate its trustworthiness.

Authorities:

--Evidence Code, Section 1271

#### 10. EVIDENCE – POSSESSORY INTEREST.

Generally speaking, evidence admissible with respect to real property as outlined above is admissible with respect to possessory interests which are likewise real property. In addition, the following evidence is admissible:

(a) Terms of the lease or agreement creating the possessory interest.

(b) Length of lease or right of possession.

(c) Restrictions imposed on the use of the property and other terms of the lease.

(d) Rent. In valuing a possessory interest, the amount of rent paid or to be paid is not deducted in determining the value of the possessory interest. One method of valuation is to capitalize the rent paid to compute the value of the possessory interest.

Authorities:

--De Luz Homes, Inc. v. County of San Diego (1955) 45 Cal.2d 546

--El Tejon Cattle Co. v. County of San Diego (1966) 64 Cal.2d 428

--State Board Rules, Sections 21-28

11. EVIDENCE – PERSONAL PROPERTY.

The following types of evidence are admissible in valuing personal property such as machinery and equipment, inventories, household furnishings, etc.

- (a) Condition of goods or equipment.
- (b) Cost (including transportation).
- (c) Improvements to goods or equipment.
- (d) Replacement or reproduction cost.
- (e) Obsolescence.
- (f) Sales price of similar goods.
- (g) Retail selling price of goods and cost or expense of selling.

12. EVIDENCE – INADMISSIBLE.

Evidence of the following is inadmissible:

- (a) Assessed value of other property.
- (b) Increase in assessed value.
- (c) Taxes.
- (d) Opinion of value of other property.
- (e) Assessment Appeals Board decision (1) with respect to the subject property in prior years, or (2) with respect to other property.
- (f) Board of Equalization (Board of Supervisors) decision on subject property or other property in prior years.

13. EVIDENCE – LIMITED ADMISSIBILITY.

The following evidence may be admitted under limited conditions:

- (a) Sales to public agencies having power of eminent domain. The price paid by a condemnor for the purchase of other property may be more or less than the market value of the other property because of either party's desire to avoid litigation. When the litigation-avoidance motive is present, the sales price is not a relevant index of value. The Evidence Code provisions applicable to eminent domain proceedings now preclude admission of such evidence. Prior to the adoption in 1965 of the provision of the Evidence Code making such evidence inadmissible, evidence of sales to public agencies was admissible where it was demonstrated that the sale was

not influenced by the fact that one party had the power of eminent domain. In an administrative hearing before the Assessment Appeals Board the price at which comparable property was sold to a public agency having power of eminent domain may be admitted in the discretion of the Board if the parties in agreeing on the sales price acted voluntarily so that the price is a reasonable index of value.

Authorities:

- California Condemnation Practice, C.E.B., Section 14.29
- Nichols on Eminent Domain, Section 21.3
- County of Los Angeles v. Faus (1957) 48 Cal.2d 672
- Evidence Code, Section 822(a)

(b) Offers to sell or purchase comparable properties, including offers, listings and options. In general, the same principles of relevancy used to determine the admissibility of evidence of sales are applicable to offers, listings and options. The unilateral character of offers renders them much less reliable indicators of market value than sales. Further, the terms and bona fides of a prior offer may be extremely difficult to ascertain at the time of the hearing. The Evidence Code precludes the admission in eminent domain proceedings of offers to purchase or sell comparable properties. The rules uniformly followed throughout the United States in eminent domain proceedings is that offers by or to the owner of comparable property are inadmissible. In Nichols on Eminent Domain it is stated:

"If evidence of the price of similar land is to be admitted, the rule is firmly established that it must be confined to the amount actually paid in a completed transaction. Mere offers, whether made by the owner of such land or to him, are inadmissible. The objections to the reception of evidence of offers to buy the identical land which is taken are multiplied ten fold in the case of other land in the neighborhood, and if offers for neighboring land were competent, the trial of a land damage case would degenerate into a confused and endless wrangle in which collateral issues and what is, in substance, hearsay evidence would play the most prominent part. Doubtless under certain conditions evidence of a bona fide offer might have some probative value, but the safest course is to exclude such evidence altogether, except perhaps when it can be used to contradict an expert witness by showing that he himself had made an offer for neighboring land inconsistent with his present testimony. . . ."

Although it is questionable whether evidence of offers to purchase or sell comparable properties should be admitted in any case, where there are no sales of comparable properties, evidence of offers, listings and options of comparable properties may, in the discretion of the board, be admitted if the board considers that they are indicative of what others are willing to pay or accept in the purchase of such comparable properties.

Evidence presented by the applicant of offers to sell, listings, and options to purchase comparable properties at prices which indicate a value of the subject property that is less than the assessor's value thereof tend to show that the assessor's valuation is too high. Such offers to sell and listings tend to set the ceiling, that is the maximum price which a purchaser will pay for similar properties. In other words, normally a purchaser would not pay a higher price for the

subject property if in the vicinity there are equally suitable (comparable) properties which he can purchase for less. On the other hand, evidence of offers to sell, listings or options to purchase comparable properties should not be received when offered by the assessor because they do not support his valuation, such offers, listings and options being merely asking prices, whereas evidence of offers to purchase comparable properties may tend to support his valuation.

Authorities:

- California Condemnation Practice, C.E.B., Section 14.34
- Nichols on Eminent Domain, Section 21.4 [3]
- County of Los Angeles v. Faus (1957) 48 Cal.2d 672 and 677
- Evidence Code, Section 822 (b)

14. DECISION – BOARD MAY ACT ONLY ON EVIDENCE.

The board may act only on evidence introduced at the hearing on the application it is considering. It may not raise or lower an assessment without substantial evidence to support its decision. It may not base its decision on evidence taken subsequent to the hearing or out of the presence of the applicant. The final determinations by the board shall be supported by the weight of the evidence.

Authorities:

- Revenue and Taxation Code, Sections 1611.5 and 1609
- City of Oakland v. Southern Pacific Co. (1900) 131 Cal. 226
- Bandini Estate Co. v. County of Los Angeles (1938) 28 Cal.App.2d 224

15. DECISION.

The board is required to determine the full value of the property which is the subject of the hearing as prescribed by Section 1610.8, Revenue and Taxation Code.

When the applicant requests reduction in the assessed value of a portion of an improved real property (e.g., land only or improvements only) for a portion of installations which are partly real property and partly personal property (e.g., only the improvement portion or only the personal property portion of machinery and equipment), whether the reduction is requested on grounds of valuation, on grounds of misclassification, or for any other cause, the board shall make a determination of the full value of the whole property and shall order a change in the assessed value of the part only if the assessed value of the whole requires equalization, or shall adjust the value of the parts so that each is equalized and the value of the whole property is accounted for.

The board is bound by the same principles of evaluation that are legally applicable to the assessor. The board may neither raise nor lower the entire local roll.

Authorities:

- San Diego County Rules, Section 24
- State Board Rules, Section 324

16. BOARD DECISION FINAL.

The decision of the board in raising or lowering an assessment is final. The board may not change its decision once made nor grant a rehearing. The only recourse of the applicant or assessor if they disagree with the board's decision is to seek a review in the superior court.

Authorities:

When evidence has in fact been taken, the action of the board thereon in raising an assessment, in the absence of fraud or an abuse of discretion, is final. (Universal Consolidated Oil Co. v. Byrum [1944] 25 Cal.2d 353; H. & W. Pierce, Inc. v. County of Santa Barbara [1919] 40 Cal.App. 302; Eastern-Columbia, Inc. v. County of Los Angeles [1943] 61 Cal.App.2d 734; McClelland v. Board of Supervisors [1947] 30 Cal.2d 124; A. F. Gilmore Co. v. County of Los Angeles [1960] 186 Cal.App.2d 471.) Similarly, in the absence of fraud or arbitrary use of its powers, the county board is the sole judge of questions of fact and of the values of property. The decision of the board upon the evidence cannot be attacked by new evidence on the point in a superior court. (Bank of America v. Mundo [1951] 37 Cal.2d. 1).

--San Diego County Rules, Section 26  
--State Board Rules, Section 326

17. FALSE STATEMENTS.

Every person who wilfully states anything which he 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. A person who wilfully states orally or in writing anything which he knows to be false while under oath or under penalty of perjury is guilty of perjury.

Authorities:

--Penal Code, Sections 118, and 129  
--Revenue and Taxation Code, Section 1610.4

II

ASSESSMENT HEARING OFFICERS

1. INTRODUCTION.

In an attempt to give homeowners and owners of relatively small properties an informal remedy and to relieve assessment appeals boards of some of the equalization load, the Legislature has provided an informal procedure for hearings before assessment hearing officers appointed by the board of supervisors for the hearing officers to make recommendations to the Assessment Appeals Board.

Authorities:

--Revenue and Taxation Code, Section 1636

2. JURISDICTION.

An assessment hearing officer may conduct hearings on applications where:

(a) The applicant is the assessee and has filed an application under Revenue and Taxation Code, Section 1607;

(b) The total assessed value of the property under consideration, as shown on the current assessment roll, does not exceed one hundred thousand dollars (\$100,000) or the property under construction is a single-family dwelling, condominium or cooperative, or multiple-family dwelling of four units or less regardless of value; and

(c) The applicant has requested that the hearing be held before the assessment hearing officer.

Authorities:

--Revenue and Taxation Code, Section 1637

3. REPRESENTATIVES OF ASSESSOR AND ASSESSEE.

The applicant may be represented in the hearing of the application and shall have the right to offer evidence. The assessor may be represented in the hearing by an attorney if the applicant is represented by an attorney and one or more members of his staff, and the assessor and members of his staff shall have the right to offer evidence.

Authorities:

--Revenue and Taxation Code, Section 1638

4. PROCEDURE.

Hearings before an assessment hearing officer are to be conducted pursuant to the provisions of State law governing equalization proceedings by a county board of equalization or an assessment appeals board. The hearing and disposition of applications are to be conducted in an informal manner.

Authorities:

--Revenue and Taxation Code, Sections 1637 and 1638

5. CONDUCT AND REPORT OF HEARING OFFICER.

The hearing officer is to conduct the hearing and prepare a summary report of the proceedings together with his recommendation on the assessment protest. The hearing officer then is to transmit his report and recommendation to the clerk of the board of supervisors. The report and recommendation to the clerk of the board of supervisors. The report and recommendation does not constitute precedent for future proceedings initiated by the applicant or other applicants.

Authorities:

--Revenue and Taxation Code, Section 1639

6. HEARING OFFICER'S REPORT.

The clerk is to transmit by mail to the protesting party and to the assessment appeals board the hearing officer's report and recommendation on the assessment protest. The protesting party will be informed that the assessment appeals board is bound by the recommendation of the assessment hearing officer.

Authorities:

--Revenue and Taxation Code, Section 1640

7. HEARING OFFICER RECOMMENDATION FINAL.

Upon the recommendation of an assessment hearing officer the assessment appeals board must establish the assessed value for the property at the value recommended by the hearing officer.

Authorities:

--Revenue and Taxation Code, Section 1641

SUGGESTED RULES OF ETHICS  
FOR  
MEMBERS OF ASSESSMENT APPEALS BOARDS  
AND  
ASSESSMENT HEARING OFFICERS

Rule 1. Duties of Members of Assessment Appeals Boards.

The assumption of the office of member of an Assessment Appeals Board casts upon the member duties in respect to his personal conduct which concern his relation to the State of California and the County of San Diego, the applicants who appear before him, the principles of law, the attorneys, witnesses and others who aid him in the administration of the board's functions.

(Canons of Judicial Ethics of the American Bar Assn. No. 1)

Rule 2. The Public Interest.

Assessment Appeals Boards exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every member of an Assessment Appeals Board should at all times be alert in his rulings and in the conduct of the business of the board to make it useful to the applicants and the community. Every member of an Assessment Appeals Board should avoid unconsciously falling into the attitude of mind that the applicants are made for the board instead of the board for the applicants.

(Canons of Judicial Ethics of the American Bar Assn. No. 2)

Rule 3. Essential Conduct.

A member of an Assessment Appeals Board should be temperate, attentive, patient, impartial, and since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

(Canons of Judicial Ethics of the American Bar Assn. No. 5)

Rule 4. Consideration for Others.

A member of an Assessment Appeals Boards should be considerate of applicants, witnesses and others in attendance before the board.

(Canons of Judicial Ethics of the American Bar Assn. No. 9)

Rule 5. Kinship or Influence.

A member of an Assessment Appeals Board should not act in a proceeding where a near relative is a party; he should not allow his conduct to justify the impression that any person can improperly influence him or that he is affected by the kinship, rank, position or influence of any party or other person.

(Canons of Judicial Ethics of the American Bar Assn. No. 13)

Rule 6. Independence.

A member of an Assessment Appeals Board should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

(Canons of Judicial Ethics of the American Bar Assn. No. 14)

Rule 7. Business Promotions and Solicitations for Charity.

A member of an Assessment Appeals Board should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures or to charitable enterprises. He should, therefore, not enter into such private business or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others. He should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

(Canons of Judicial Ethics of the American Bar Assn. No. 25)

NOTE: It is recognized that the office of member of an Assessment Appeals Board is not a full time public office and that a member of a Board is not expected to unduly restrict his private activities by reason of holding such office. Certainly a Board member should not exploit his official position and should not engage in an activity which so conflicts with his office as to create doubt as to his integrity or adversely affect the reputation of any Assessment Appeals Board.

Rule 8. Gifts and Favors.

A member of an Assessment Appeals Board should not accept any presents or favors from applicants, parties, or from lawyers or agents practicing before him or from others whose interests are likely to be submitted to him for judgment.

(Canons of Judicial Ethics of the American Bar Assn. No. 32)

Rule 9. Grounds of Disqualification.

(a) No member of an Assessment Appeals Board should sit or act as a member of the board in any proceeding:

- (1) To which he is a party; or in which he is interested;
- (2) In which he is interested as a holder or owner of any capital stock of a corporation, or of any bond, note or other security issued by a corporation;
- (3) When he is related to either party to the proceeding, or to an officer of a corporation, which is a party, or to an attorney, counsel, or agent of either party, or when he is indebted, through money borrowed as a loan, to either party, or to an attorney, counsel or partner of either party, or when he is so indebted to an officer of a corporation or unincorporated which is a party;
- (4) When he has been attorney or counsel for any party; or when he has given advice to any party upon any matter involved in the proceeding;
- (5) When it is made to appear probable that, by reason of bias or prejudice of such member a fair and impartial hearing cannot be had before him.

(b) Whenever a member of an Assessment Appeals Board has knowledge of any fact or facts, which, under the provisions of this rule, disqualify him to sit or act as such in any proceeding pending before him, it shall be his duty to disqualify himself to sit or act in such proceeding.

(Code of Civil Procedure § 170)

Rule 10. Interest of Board Member.

No member of an Assessment Appeals Board shall knowingly participate in any assessment appeals 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 the Revenue and Taxation Code.

(Revenue and Taxation Code § 1624.2)

Rule 11. Terminology

The term "members of Assessment Appeals Boards" as used herein shall include Assessment Hearing Officers.