

# **BOARD OF ASSESSMENT REVIEW**

## **Training Manual and Reference Materials**

for Local Government Officials



**STATE OF NEW YORK**  
**Andrew M. Cuomo, Governor**

Provided by:

NYS Department of Taxation and Finance  
Office of Real Property Tax Services  
W.A. Harriman State Campus  
Albany, New York 12227

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# **BOARD OF ASSESSMENT REVIEW TRAINING MANUAL**

## **IMPORTANT NOTICE**

The New York State Office of Real Property Tax Services has produced this manual exclusively for training purposes. The information provided in this manual is not a substitute for an understanding of the laws, rules, and regulations governing the board of assessment review. This manual should not be cited as authority in any question of law.

Trainees are responsible for understanding and complying with the laws, rules and regulations governing the board of assessment review; therefore, all questions concerning the administration of the real property tax law should be referred to the county real property tax director or, where appropriate municipal attorneys.

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## BOARD OF ASSESSMENT REVIEW TRAINING

### FOREWORD

The real property tax is an ad valorem tax (that is, a tax levied on the basis of value). In the first instance, it is the local assessor who determines the taxable value of real property. As you may be aware, New York State Law requires all properties to be assessed at a uniform percentage of value each year.

Taxpayers who feel their assessments are unequal, excessive, unlawful or that their property is misclassified, have a right to have their assessments reviewed by the Board of Assessment Review, or, if necessary, by the courts.

You, as a member of the board of assessment review, have been vested with the duty and responsibility of hearing assessment complaints in the first instance. This includes exercising your judgment and discretion to render an impartial, objective determination on complaints of assessments brought before you. A statement of the reasons for the determination should be included in the determination.

When adjusting assessments, assessors should analyze all of the parcels within a community and adjust assessments where necessary to reflect market values. As a result of the analysis, assessments may: 1) remain the same, 2) be adjusted through the use of market trends, or 3) be adjusted based on physical inspection and reappraisal.

Some property owners whose assessments have been adjusted may believe that they have been “selectively reassessed.” Selective reassessment occurs when a municipality is **not** conducting a systematic review of all the parcels, yet the assessments of specific parcels, various portions of an assessing unit, or certain types of property are changed **without regard to the relative uniformity of assessments within the municipality**.

To determine which assessments should remain unchanged or be reappraised and/or adjusted, the assessor must conduct a systematic analysis of **the entire municipality**. Review and analysis should be conducted routinely in order to maintain assessments at a uniform percentage of market value as required by law.

Because many municipalities now comply with State law by keeping assessments uniform **annually**, it is not unusual for the assessor’s systematic analysis to indicate that some assessments should change while others should not. Thus, if a taxpayer claims his assessment should be reduced to the prior year’s level solely because not all assessments were changed, this should not, in and of itself, provide the basis for a reduction. As long as the assessor is able to justify the assessment, the complaint should be denied.

The challenge put to BAR members is not a simple one, nor is the challenge put to assessors. The NYS Office of Real property Tax Services appreciates your joint efforts to ensure that all property owners are assessed fairly and accurately. We are confident that your fellow citizens will value your efforts, as well.

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## Unit 1 - Introduction

### Overview of the Board of Assessment Review

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**Unit Importance** You and your fellow members of the Board of Assessment Review have been vested with the duty and responsibility of hearing assessment complaints in the first instance. To enable you to accomplish your responsibilities you need to have an understanding of the concepts, principles, tasks, techniques and processes of the Board of Assessment Review.

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**Unit Overview** This unit provides a brief overview of the course content, training benefits and obligations, roles and duties of Boards of Assessment Review and assessors.

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#### Unit Objectives



By the end of this unit you will be able to

- Identify reasons for BAR training
- Relate your role with functions of the BAR and Assessor

<b>Commonly used abbreviations</b>	BAR	Board of Assessment Review
	NYS ORPTS	NYS Office of Real Property Tax Services
	EdS	Educational Services Unit (NYS ORPTS)
	RPTL	Real Property Tax Law

## Lesson 1 Reasons for Training and Course Overview

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### Reasons for Training



You and your fellow members of the Board of Assessment Review (BAR) have been vested with the duty and responsibility of hearing assessment complaints in the first instance. You will be asked to exercise judgment and discretion to render an impartial, objective determination on assessment complaints brought before the board, including a statement of the reasons for the determination.

Initial appointees and reappointees to the BAR must attend a training session, taught by a county director of real property tax services, in order to participate in the hearing and determination of assessment complaints on grievance day (RPTL § 523(2)).

Annual attendance at BAR training is optional for those BAR members who are not initial appointees or reappointees. These BAR members may attend the prescribed training course or the supplementary course. No examination is given for either course.

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### Course Overview

This course has been developed to provide you with information pertinent to your role as a BAR member. The materials include information on the assessment process as well as detailed information on the Grievance Day process and requirements.

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**Overview of the  
Assessment  
Review Process**

The real property tax is an ad valorem tax (that is, a tax levied on the basis of value). A distinguishing characteristic of this tax is that it is not merely a mathematical calculation, but is based primarily upon expert opinion and judgment as to the value of property. In the first instance, it is the local assessor who determines the taxable value of real property.

Assessors are required by law to assess all properties in each municipality at a uniform percentage of market value each year as per Real Property Tax Law Sections 301 and 305 (except New York City and Nassau County). This means that all taxable properties in your city, town or village must be assessed at market value or at the same uniform percentage of market value each year.

If taxpayers believe their property assessment is too high, it is recommended that they first discuss this with their local assessor. If, after their meeting, they are still dissatisfied, they have a right to file a formal complaint with the Board of Assessment Review by the filing deadline.

Taxpayers, who feel their assessments are unequal, excessive or unlawful or that their property is misclassified, have a right to have their assessments reviewed administratively, and, if necessary, by the courts. New York statutes set forth the procedure to be followed by taxpayers who have a complaint about their real property assessments. The first step in the assessment review procedure is filing a timely written complaint with the board of assessment review. Taxpayers who are dissatisfied with the administrative determination made by that board may thereafter seek judicial review. In addition, certain residential homeowners may seek small claims assessment review.

## Lesson 2 Role of the Assessor

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### Primary responsibilities of the assessor

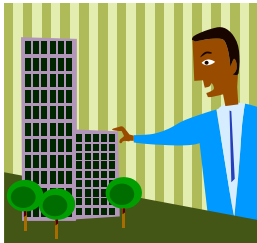
It is the municipal assessor who determines the taxable value of real property.

The primary responsibilities of the assessor are to:

1. Discover, list and place a value on all real property
2. Establish market value
3. Assess according to condition and ownership on taxable status date
4. Determine exemption eligibility

These will be covered in greater detail in unit 5.

### Understanding the Role of the Assessor in relation to the BAR



It is important for you to realize that assessors are required by law, to complete and publish a tentative assessment roll, in most towns, on or before May 1. When the assessor signs the roll, he or she is signing an oath that the assessments are fair and equitable. They must also publish a notice that the roll is open for inspection. The notice must state the time and place where the board of assessment review will meet to hear complaints.

The assessor, or the assessor's designee in the case of an assessor employed by multiple assessing units, is required to attend all hearings of the board of assessment review, and has the right to be heard on any complaint and to have his or her remarks recorded in the minutes of the hearing.

When a complainant presents testimony and proof to support a complaint, the assessor should be called upon to present his or her side, and have the opportunity to explain the assessment of the property in question or recommend a change in the assessment if he or she feels there was an error in the assessment.

Complaints with respect to assessments may be filed with the assessor at any time prior to the hearing of the board of assessment review or with the board of assessment

review at such hearing, but may not be filed with the board of assessment review at any adjourned hearing it may conduct.

When a complaint is filed within three business days preceding the BAR hearing, the BAR must grant an assessor's request for an adjournment to permit the assessor adequate time to prepare a response to a complaint (RPTL, § 524).

## Lesson 3

### Role of the Board of Assessment Review

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#### **Understanding the Role of the BAR**

The BAR constitutes what is known as a quasi-judicial body and the members of the board are charged with judicial responsibility to get all the facts, and apply appropriate laws and reasoning to the facts in a fair and judicious manner. Accordingly, each member of the board of assessment review should:

1. Possess judicial temperament, patience and tact.
2. Provide a fair hearing.
3. Safeguard the constitutional guarantees of due process of law.
4. Withdraw from a case where he/she deems himself disqualified by reason of personal or business relationships or interest.

**Note: RPTL, § 523 (3) requires a BAR member with any direct or indirect interest in any property for which a complaint has been filed to disclose their interest.**

**Knowingly and intentionally failing to disclose such an interest can result in the imposition of a \$1,000 fine for each omission. This is further reviewed in Unit 5.**

## Unit 2 Assessment of Real Property

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**Unit Importance** You as a board of assessment review member are obligated to get all of the facts and apply appropriate laws and reasoning to the facts. In gathering all of the facts you must understand that the real property tax is an ad valorem tax (that is, a tax levied on the basis of value). A distinguishing characteristic of this tax is that it is not merely a mathematical calculation, but is based primarily upon expert opinion and judgment as to the value of property. In the first instance, it is the local assessor who determines the taxable value of real property.

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**Unit Overview** While this lesson will not make you a professional assessor, it will provide you with a basic understanding of definitions, fundamentals and basic knowledge about which real property is subject to taxation, how it should be assessed, and the methods of valuing real property.

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### Unit Objectives



By the end of this lesson you will be able to

- Know the NYS Real Property Tax Law standard of assessment
- Understand the definition of “Ad Valorem Tax”
- Become familiar with the three approaches to value, which are:
  1. Cost,
  2. Market
  3. Income

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## Lesson 1

### Assessment of Real Property

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#### Standard of Assessment



Under New York State law, all real property is subject to taxation unless specifically exempted by statute (RPTL § 300).

Real property must be assessed according to its condition and ownership on taxable status date (RPTL § 302).

The standard of assessment prescribed by law is that all real property in each assessing unit be assessed at a uniform percentage of value (RPTL § 305(2)). Except in "special assessing units," (i.e., New York City and Nassau County) a property owner is entitled to a reduction in assessed valuation if his or her property is assessed at a higher percentage of value than the average percentage of value at which all property in that locality is being assessed. In special assessing units, which are required to establish separate tax rates for four classes of real property, a property owner is entitled to a reduction in assessed valuation if he or she can demonstrate that the property is assessed at a higher percentage of value than the average percentage of value at which other property in the same class is being assessed. An owner of one-, two- or three-family residential property, wherever located, is entitled to a reduction in assessed valuation, if the property is assessed at either a higher percentage of value than all real property on the assessment roll or a higher percentage of value than other residential property on the same assessment roll.

It is the municipal assessor who determines the uniform percentage of value in the absence of any affirmative action by the local legislative body. When a revaluation has been implemented, the legislative body of the assessing unit may direct the assessments be entered at something less than 100% (Opinion of Counsel #7-96).

The following example illustrates basic computations you should understand.

Example 1: If you are computing the percentage of value at which a single property is assessed, where that property has an assessed value(AV) of \$200,000 and a market value(MV) of \$400,000, you will apply the following formula:

- a. 
$$\frac{\text{Assessed Value (AV)}}{\text{Full Value(FV)}} = \% \text{ of value}$$
- b. 
$$\frac{(AV)\$200,000}{(FV)\$400,000} = 50 (\% \text{ of value})$$
- c. By comparing the percentage of value of the example parcel with the uniform percentage of value of the municipality you can determine whether or not the example parcel is assessed equitably. In this case the town is assessing at a uniform percentage of value of 50%. Therefore, the example parcel is assessed equitably.

**Ad Valorem  
(at value)**



The New York State Real Property Tax is an “**Ad Valorem Tax.**” **This means that the tax is based upon the value of the property.**

The real property tax is levied on the basis of the assessed value of the property -- which, in turn, is based on the market value of the property. The ad valorem concept of taxation does not include considerations that do not relate to finding the value of real property.

For example:

Is a taxpayer who claims he cannot afford to pay his taxes (because of age, ill health, income, etc.) entitled to a lower assessment?

No, because the real property tax is an ad valorem tax and is based on the assessed value of the property, not on the taxpayer's ability to pay.

In order for the property tax to be fair and equitable between properties, the assessed value assigned to a particular property and/or groups of properties must be as accurate as possible. In New York State, the value of real property is expressed in two ways:

1. Assessed Value
2. Full (Market) Value

Selective assessing is an illegal practice of assessing newly acquired property at a higher percentage of value than others. This “welcome stranger” method is illegal in favoring certain owners or properties over others.

### Three Approaches to Value



The Three approaches to value are Cost, Market and Income. The **Market approach** (also called the sales comparison approach) uses sales prices as evidence of the value of similar properties. This is the preferred methodology for improved residential properties.

Where real property is of a type that is readily bought and sold, and the price that a willing buyer will pay a willing seller for the property can be determined from bona fide sales of similar property, the market determines the value of the property.

However, where the property is of a type that does not commonly change hands in an ordinary real estate market (for example, utility property, manufacturing property or other properties used for special purposes), other methods may be considered to determine value.

The **Cost approach** is based on the idea that the value of an existing property is the value of the land plus the replacement cost of the improvements less depreciation.

The **Income approach** is used most commonly for improved commercial property. This approach requires the appraiser to estimate the income from a property and capitalize the income into an estimate of current value.

The Assessor in your community is responsible for collecting information and calculating data to determine tentative assessments based on the use of the three standard approaches to value.

## Adjusting Assessments



As you may be aware, New York State Law requires all properties to be assessed at a uniform percentage of value.

When adjusting assessments, assessors should analyze all of the parcels within a community and adjust assessments where necessary to reflect market values. As a result of the analysis, assessments may: 1) remain the same, 2) be adjusted through the use of market trends, or 3) be adjusted based on physical inspection and reappraisal.

Some property owners whose assessments have been adjusted may believe that they have been “selectively reassessed.” Selective reassessment occurs when a municipality is **not** conducting a systematic review of all the parcels, yet the assessments of specific parcels, various portions of an assessing unit, or certain types of property are changed **without regard to the relative uniformity of assessments within the municipality.**

To determine which assessments should remain unchanged or be reappraised and/or adjusted, the assessor must conduct a systematic analysis of **the entire municipality.** As mentioned above, this review and analysis should be conducted routinely in order to maintain assessments at a uniform percentage of market value as required by law.

Because many municipalities now comply with State law by keeping assessments uniform on a regular basis, it is not unusual for the assessor’s analysis to indicate that some assessments should change while others should not. Thus, if a taxpayer claims his assessment should be reduced to the prior year’s level solely because not all assessments were changed, this should not, in and of itself, provide the basis for a reduction. As long as the assessor is able to justify the assessment, the reduction should be denied.

## Unit 3

### Board of Assessment Review Profile

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**Unit Importance** You have agreed to serve on your local board of assessment review. For you to be most effective in your position, you should have an understanding of the concepts, principles, tasks, techniques and processes of the BAR.

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**Unit Overview** This lesson provides definitions, fundamentals and basic knowledge about the specifics of BAR composition and commitments under the laws of New York State

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#### Unit Objectives



By the end of this lesson you will be able to:

- Understand BAR composition
  - Know Public Officers Law definitions
  - Relate to BAR terms of office
  - Develop knowledge of local government
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## Lesson 1 Profile

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### Composition and Terms of Office



The BAR must consist of not less than three nor more than five members (RPTL, §523(b)).

The majority of the board must consist of members who are not officers or employees of the local government. Members of the appointing authority (e.g., town board) may not serve on the BAR. Neither the assessor nor any of his or her staff may be appointed to the board.

In some villages which assess, the board of trustees and assessors constitute the board of review. If however, board of trustees opts to appoint an independent board of assessment review, no trustee may sit as a member of that board

Members are appointed by the legislative body for a five-year term of office.

- The terms of office must begin on October 1 and end on September 30, five years later.
- Terms must be staggered so that only one term expires each year.
- Persons appointed on a date other than October 1, to fill an unexpired term, serve until the September 30 on which that term ends.

### Administrative Hearing Panels

There is a provision for the appointment of temporary members to the board of assessment review under section 523-a of the RPTL. The legislative body of any local government may, in any year it deems necessary, appoint temporary members to the board of assessment review to serve on administrative hearing panels.

An assessing unit's revaluation of assessments, which is often accompanied by a significant change in level of assessment, frequently prompts the filing of an unusually high number of complaints. To facilitate the volume of complaints, section 523-a of the Real Property Tax Law permits the assessing unit's appointing authority to appoint administrative hearing panels whenever it deems it appropriate to do so. The presence of these panels

permits the hearing of more than one grievance at a time.

The law authorizes assessing units to appoint up to two temporary members to boards of assessment review for each regular member on that board. In other words, six panel members may be appointed where there is a three member board, eight panel members where there is a four member board, and 10 panel members where there is a five member board. Three member panels are designated by the board chairman, each to consist of at least one regular member of the board and not more than two temporary members.

The temporary members serve for a one year term but are subject to the same qualifications, training and disclosure requirements as the permanent members of the board of assessment review. However, the temporary members must complete a training course within twelve months of the date on which complaints are to be heard.

The panels hear complaints in relation to assessments and have the same powers and duties as those granted to the board of assessment review, except that the panels only recommend final assessments to the board. In most cases, it is assumed that the board will adopt the panel's recommendations, but, if not, the board is required to hold a second hearing on the complaint, upon notice to the assessor and the property owner.

Questions concerning the administrative hearing panels option may be directed to ORPTS.

Lack of Quorum: State law (i.e., General Construction Law, §41) requires that where a power or duty has been assigned to three or more public officials (such as a board of assessment review), a majority of the whole number (that is, as if there were no vacancies) must meet and not less than a majority may act. So, for a three member BAR, two must be present at the hearing and two must agree if a tentative assessment is to be changed. For a four or a five member BAR, three is a quorum.

If the BAR fails to meet to hear complaints, perhaps due to the lack of a quorum, the law (RPTL, §527) provides that the county treasurer, chairman of the county legislative

body and clerk of the county legislative body shall serve as the acting board of assessment review. Obviously, these officials are unlikely to have the knowledge of local property values that BAR members are to possess nor are they likely to have attended BAR training. So, this stopgap procedure, though legal, should be avoided if at all possible. If a BAR member accepts appointment to that board, he or she should refrain from scheduling any event (e.g., vacation) which might occur during the time period when the BAR must meet and deliberate.

**Qualifications**

The Real Property Tax Law requires that members of the board of assessment review have knowledge of property values in the assessing unit.

Members of the board of assessment review constitute local public officers, and are required to be at least 18 years old, citizens of the United States and residents of the assessing unit which the board serves (Public Officers Law, section 3).

**Oath of Office**



Each member of the board is required to take and file an oath of office. Oaths of local public officers are filed with the clerk of the city or town in which the board serves. In counties having county assessment, oaths are filed with the county clerk. Failure to take or file in a timely manner the oath of office will result in the office being considered vacant (Public Officers Law, section 30).

**Appointing a Chairperson**

To facilitate the conduct of hearings and other business, the members of the board of assessment review should elect a chairperson from among themselves. Only the board of assessment review itself can designate its chairman.

**Quasi-Judicial Body**



The board of assessment review constitutes what is known as a quasi-judicial body and the members of the board are charged with judicial responsibility to get all the facts, and apply appropriate laws and reasoning to the facts in a fair and judicious manner. Accordingly, each member of the board of assessment review should:

1. Possess judicial temperament, patience and tact.
2. Provide a fair hearing.
3. Safeguard the constitutional guarantees of due process of law.
4. Withdraw from a case where he deems himself/herself disqualified by reason of personal or business relationships or interest (See page 4-5).

**Where a BAR member has any direct or indirect interest in any property for which a complaint has been filed, he or she must disclose the interest. See Unit 5 - Disclosure of Interest.**

**Note:** The board of assessment review **must conduct hearings as a body**. Its members are not authorized to divide the complaints among themselves.

## Lesson 2 Training and Certification

### Training and Certification



As an initial appointee or reappointee to the board of assessment review (BAR) you must attend a training session, taught by a county director of real property tax services. Without the appropriate training, you will not be able to participate in the hearing and determination of assessment complaints on grievance day.

If a new or reappointed BAR member cannot attend training due to reasons beyond his or her control, they can request an extension from NYS ORPTS Educational Services Unit (EdS). The extension, if approved, allows participation in the hearing and determination of complaints for the current year.

This request must be in writing and must be received by EdS at least 10 working days prior to grievance day. It must include specific information regarding the reason for not attending. This extension notice will be distributed by EdS to the BAR member with a copy sent to the county director, town or city clerk, town supervisor or city mayor, and assessor. It is expected that any BAR member granted an extension will attend the next available training session held in that county.

New or reappointed board of assessment review members who do not attend the training course, and who do not receive a notice of extension cannot be counted in determining whether a quorum is present at a meeting of the board of assessment review. Furthermore, such members may not participate in the hearing and determination of complaints.

The county director of real property tax services will conduct training session(s) and prepare a "certificate of attendance" for each board of assessment review member who attends the training session. Then, the county director will forward the class roster to NYS ORPTS, Educational Services, W.A. Harriman State Campus, Albany, NY 12227.

The county director will also file a copy of these certificates of attendance with the town or city clerk.

## Unit 4 Grievance Day Preparation

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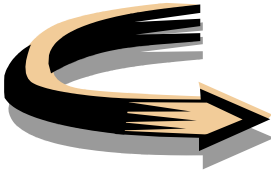
**Unit Importance** Your understanding of the concepts, principles, tasks, techniques and processes of conducting grievance day hearings will better prepare you for administering your role on grievance day.

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**Unit Overview** This lesson provides definitions, fundamentals and basic knowledge about the responsibilities and duties of the BAR and the assessor, including specified dates upon/by which functions must be performed or completed so that you will have an effective grievance day.

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### Unit Objectives



By the end of this lesson you will be able to:

- Know the importance of being prepared
  - Relate to required meeting dates
  - Understand duties/ responsibilities of the BAR and the assessor
  - Develop a plan for conducting BAR hearings in a professional manner
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### Training of Board Members



Before grievance day, each member of the board must be certified as having attended the training course prescribed by the State Board, or must have received a notice of extension, as described in Unit 3 of this manual.

The board members should also familiarize themselves with the relevant laws and regulations pertaining to assessment administration, and have handy for reference copies of pertinent statutes and other relevant material to consult during the course of any grievance hearing (e.g., this manual, other ORPTS publications).

### When is Grievance Day?

In most towns, grievance day is the fourth Tuesday in May.

- In certain counties (Westchester, Nassau, Suffolk), the dates vary and municipal attorneys should be consulted. In certain cities and villages, dates may vary and the corporation counsel should be consulted.

Governing boards of assessing units, which employ assessors who are also so employed by another assessing unit, may adopt local laws to reschedule the hearing of the board of assessment review to one or more days between the fourth Tuesday of May and the second Tuesday in June (inclusive). (RPTL, § 512(1-a)).

A quorum is essential to holding grievance day proceedings. Without a quorum the hearings cannot be held. A quorum is the majority of the whole number (that is, as if there were no vacancies) must meet and not less than a majority may act. So, for a three member BAR, two must be present at the hearing and two must agree if a tentative assessment is to be changed. For a four or a five member BAR, three is a quorum.

If the BAR fails to meet to hear complaints, perhaps due to the lack of a quorum, the law (RPTL, §527) provides that the county treasurer, chairman of the county legislative body and clerk of the county legislative body shall serve as the acting board of assessment review. If a BAR member accepts appointment to that board, he or she should refrain from scheduling any event (e.g., vacation) which might occur during the time period when the BAR must meet and deliberate.

## Organizational Meeting

There are many administrative tasks that need to be accomplished prior to Grievance Day. These tasks can be accomplished by holding an organizational meeting with the entire board of assessment review.

### What time are the hearings?

One of the first tasks is to establish, well in advance of grievance day, the place or places where grievance hearings will be held, and fix the hours of such hearings. The hearings must be for a period of at least four hours (not necessarily consecutive) between 9:00 a.m. and 10:00 p.m. At least two hours must be scheduled after 6:00 p.m. (RPTL, § 525 (1)).



### Select a Chairperson

To facilitate the conduct of hearings and other business, the members of the board of assessment review should elect a chairperson from among themselves. Only the board of assessment review itself can designate its chairperson.

The chairperson's role is a combination of leadership and organizational talents. The chairperson will orchestrate the meeting: calling it to order, calling forward taxpayers, administering the oaths, maintaining order, and coordinating the scheduling of additional meetings.

### Schedule a second meeting

The Board is required to meet at least 15 days after the filing of the final assessment roll to correct clerical errors, unlawful entries, errors in essential fact and omissions on the final assessment roll upon petition by the assessor. During the organizational meeting a tentative date for the second meeting can be selected. If there are not any petitions then no meeting would be required.

### Administrative Tasks

The organizational meeting is a good time to coordinate some of the administrative tasks of the board of assessment review. The group can decide how to handle hearings, for example, should they be prescheduled. Another item to address is the secretarial duties for grievance day. Who will be handling the minute taking for the day? Will the hearings be recorded?

### **Meet with the Assessor**

The board should arrange an informational meeting with the assessor, so the board can be generally acquainted with the tentative assessment roll, and the assessor's methods and techniques for valuing real property. Specific parcels should not be discussed.

The BAR should also be aware of a situation which might occur where the number of grievances may be overwhelming, for example during a community wide reassessment. For this situation an individual may be appointed to a hearing panel. The appointee is provided a one-year appointment that also includes a training obligation.

### **Contact the municipal attorney**

The board should also confirm the availability of the town attorney/corporation counsel should their presence be required during the hearings.

### **Grievance Day Preparation by the Assessor**



Prior to Grievance Day the assessor's office will be a busy place. The assessor is responsible for:

- Completing and publishing the tentative assessment roll
- Publishing public notice of grievance day locations and times
- Providing grievance forms to the public
- Receiving completed grievance forms and relaying those to the BAR on or before grievance day

Once the tentative roll is published, the assessor's office will be meeting with property owners to discuss their properties as well as handing out pamphlets and forms for Grievance Day. Completed grievance forms will be accepted at the assessor's office prior to grievance day.

## Unit 5

# Holding Grievance Hearings

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### Unit Importance

Section 525 of the RPTL outlines powers given to the board of assessment review for the hearing and determinations of complaints. You should understand the requirements and processes of holding Grievance Day Hearings.

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### Unit Overview

This unit will provide you with the fundamentals and basic knowledge about administering oaths, hearing testimony, taking/accepting proofs, taking minutes, filing disclosures, and voting rights of the board.

Your basic objective in conducting grievance day hearings is to seek out all the facts relevant to the complaint so that you will be able to render a fair decision. This may involve questioning the complainant or his or her witnesses, and/or questioning the assessor. In any event, your role is to see that all facts are presented fairly, and to conduct each hearing with this objective in mind.

This unit will provide you with the fundamentals and basic knowledge to conducting Grievance Day Hearings in accordance with the Open Meetings Law.

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### Unit Objectives



By the end of this lesson you will be able to:

- Understand the powers and duties of BAR
  - Administer oaths
  - Take testimony
  - Record minutes of proceedings
  - File necessary disclosures
  - Understand how to conduct Grievance Day Hearings
  - Know the Open Meetings Law as it pertains to Grievance Day Hearings
  - Learn the Assessor's role regarding duties and attendance at Grievance Day hearings
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## Lesson 1

### Powers and Duties of Board of Assessment Review

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#### Administer Oaths and Affirmations



Pursuant to section 525 of the Real Property Tax Law, the board of assessment review has the express power to:

- Administer oaths and affirmations.
- Take testimony.
- Hear proofs.
- Require personal appearances of the complainant, his or her agent or any other person.
- Require complainant, his or her agent or other person to produce papers relating to the tentative assessment.
- Determine the final assessment of the real property of each complaint.

In most cases, the evidence that the complainant is aggrieved by the tentative assessment of his or her property should accompany the complaint filed with the assessor or the board. At the hearing, the complainant may provide supplemental information (additional documentation), oral testimony, or both.

In all cases information with respect to controverted factual matters, including supplement factual statements made in the complaint, should be supplied by the complainant or his or her witnesses. The complainant may use opinions of experts to support his or her claim.

When a complainant or witness gives oral or written testimony to support the complaint, the board may take such testimony under oath or by affirmation. This is required because it gives some assurance of truthfulness and correctness, and adds to the formality and decorum of the hearing.

The following form of oath or affirmation may be used as a model:

*"Do you solemnly swear (or affirm)  
that the information you are about  
to give will be given accurately  
and truthfully to the best of your  
ability to do so?"*

Each person testifying is sworn in individually prior to making his or her statements. Once sworn in at a hearing, it is not necessary to swear a person in again at any subsequent adjourned hearing. However, a reminder to the person that he or she is still under oath would be appropriate.

The assessor, of course, may supply information in the form of written data or oral statements to support his or her determination as to the valuation or taxability of the property.

**Hearing  
Testimony, Taking  
Proofs**

It is not necessary that a complainant or his or her agent or representative make a personal appearance to give the board of assessment review jurisdiction to consider a complaint. Documents and other written material may be submitted by the complainant or the assessor, or witnesses called on behalf of either.

The board of assessment review must permit the following persons to testify if they so request. However, if circumstances warrant, the board may require a personal appearance, testimony and additional proof from:

1. The complainant, his or her agent or representative, or other persons.
2. The assessor
3. Witnesses for the complainant or the assessor

Letters requesting additional documentation should make clear that the taxpayer is not expected to produce documents which are not readily available or which are not relevant to determining the value of the property in question. The complainant should be given a reasonable deadline for submitting additional proof which may be after Grievance Day. (10 Op Counsel No. 80)

If, after the board so requests, the complainant, his or her agent or representative willfully neglects or refuses to appear personally before the board, or answer material questions, the complainant will not be entitled to any reduction of his or her assessment (RPTL, § 525 (2)).

**Minutes of  
Hearing**



Minutes of the proceedings at a hearing must be taken, and must be filed with the city, town or village clerk. The remarks of the assessor on any complaint must be recorded in the minutes if the assessor so requests. (Real Property Tax Law, section 525, subdivision 2).

The members of the board of assessment review are legally obligated to maintain records of their public meetings (Public Officers Law (POL) section 87(3)(a), 6Op. Counsel SBEA 125). The minutes must include the examination of every person examined upon the hearing of any complaint, a record or summary of all motions, proposals, resolutions and any other matter formally voted

upon and the vote thereon and, if requested by the assessor, any remarks made by the assessor with respect to the complaints filed.

The board, if it deems it necessary or helpful, may make stenographic or tape-recorded records. Where a large volume of testimony is involved, it is recommended that a written transcript be kept of the proceedings. If audio recordings are made, a log should also be maintained so as to facilitate locating discussions or particular parcels on the recording.

**Disclosure of Interest**

Board of assessment review members must file a disclosure form prescribed by the State Board of Real Property Services (RP-523-DCL) with respect to any property for which a complaint is filed in which the board member has a direct or indirect interest. He/she must file the form with the chief executive officer of the municipality on or before the date the board of assessment review submits its verified list of changes to the assessor. If the member intentionally fails to disclose a financial interest, he or she will be subject to a civil fine for each omission.

A board member is deemed to have a financial interest in property for which a complaint has been filed if the member, his or her spouse, or any of his or her minor children:

- (1) is the owner of the property;
- (2) is an officer, director, partner or employee of an entity which is an owner or lessee of the property;
- (3) is an officer, director, partner, or associate of a law firm or real estate firm which has a financial interest with the owner or lessee of the property; or
- (4) legally or beneficially owns or controls stock of a corporation which is an owner or lessee of such property, provided, however, that stock ownership does not constitute an interest where the stock is listed on a major stock exchange or is sold on the over-the-

counter market and the value thereof is less than \$10,000.

**Recusal from Proceedings**

The Attorney General has expressed an opinion that, as a member of the board of assessment review who files a complaint, you are obligated to recuse yourself from participating in board proceedings on that complaint. This recusal obligation is in addition to the requirement that the board member disclose their interest on form RP-523-DCL.

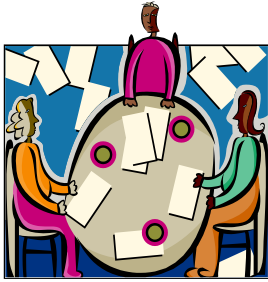
The Attorney General opinion also notes that a municipality may enact a local law to explicitly require recusal. The opinion does not address whether recusal is required where it is the board member's spouse or minor child who has the interest in the property, but prudence would indicate that recusal is appropriate here as well.

## Lesson 2

### Holding Grievance Hearings

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#### Conducting an Open Meeting



In that New York State requires grievance day hearings be held in compliance with the Open Meetings Law (Public Officers Law, Art. 7), their location and physical accessibility which is barrier free is important.

The degree of formality of hearings will vary, depending on the respective boards and the localities they serve. But, in any event, the board of assessment review should choose a place for hearings that meets the following minimum requirements.

1. Separate from general office facilities of the municipality, preferably in a public hearing room;
2. Free from interruption or conduct of other business while hearings are in progress;
3. Equipped with essentials such as desks or tables and chairs for the board, the assessor and the complainants; and
4. Large enough to accommodate a number of people, since hearings are open to the public.

Be sure to contact local officials well in advance of the date of publication of notice of completion of the tentative roll, in order to explore what facilities will be available and reserve appropriate space.

In conducting hearings, you may find, for the convenience of complainants, it is necessary to arrange for adjourned hearing dates. Be sure facilities will be available if adjourned dates do become necessary.

After the hearings are finished, the board of assessment review must meet to make its final determinations. A place for this meeting of the board should also be arranged.

**Seating Arrangements**

The area selected must be fully accessible to the public, and large enough to accommodate the board, the assessor and a number of interested taxpayers. Of primary consideration is how the board arranges their own seating.

The space dedicated for board of assessment review proceedings should be utilized solely for that purpose. It is distracting if other business or services are being conducted simultaneously within sight or hearing distance of the hearing.

While there are many variations, the preferred seating plan suggests the chairperson at one end of the table and the property owner at the other end, with board members at either side of the table. The assessor should be seated at a separate table adjacent to the board table, which affords the assessor the opportunity for being heard by all parties.

Property owners not being heard may await their turn and listen to the proceedings while being seated away from the board and assessor tables.

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## Lesson 3 Hearings

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### Keeping an Open Mind

The board, acting as a quasi-judicial body, should conduct the hearings in such a manner that all persons involved in the complaint have a full opportunity to make statements, present testimony and produce evidence. BAR meetings are not adversarial proceedings where formal rules of evidence apply.

Control of the hearing, questioning of the complainant, his or her witnesses and the assessors, and the order of proof taken, rests within the discretion of the board, and is largely a matter of exercising common sense in each situation.

Your basic objective in a hearing is to seek out all the facts relevant to the complaint so that you will be able to render a fair decision. This may involve questioning the complainant or his or her witnesses, or questioning the assessor. In any event, your role is to see that all facts are presented fairly, and to conduct each hearing with this objective in mind.

### Complaint Requirements



The board of assessment review has jurisdiction to consider complaints in relation to assessments only in those cases where the complainant has filed a proper complaint on or before grievance day.

The law requires complainants to file a written statement, specifying the respect in which the assessment complained of is excessive, unequal or unlawful or that the property is misclassified (Real Property Tax Law, section 524, subdivision 3). The complaint must also specify the value of the property and the amount of reduction, or change in class designation sought and contain an estimate of the "value" of the real property for which the complaint is made, regardless of the grounds on which the complaint is made.

ORPTS has prepared complaint forms and instructions which it supplies to localities for use by the taxpayer. The form, "Complaint on Real Property Assessment" (RP-524, and RP-524-SAU for Nassau County), is required by

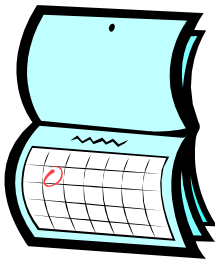
statute to be used. The form is acceptable if it specifies the value of the property, the grounds for complaint, the relief sought and the certification statement is signed by the owner or the owner's representative.

The complaint may be filed with the assessor prior to grievance day, or with the board of assessment review on or before grievance day. It is too late to file a complaint after the board concludes its hearings. Grievances may not be filed on adjourned hearing dates.

The complaint may be made by the aggrieved person, or by his or her attorney or representative. However, if a complaint is made by a representative of the complainant, a written authorization to allow the representative to appear on behalf of the complainant must be completed on the complaint form or filed there with, and bear a date within the same calendar year during which the complaint is filed.

Board members should remember that many taxpayers are not experienced in real property assessment administration, and when necessary, you should answer questions that will assist them in filing properly executed complaints that contain all of the necessary information to make a proper claim with respect to their grievance. However, it is not the job of the board or the assessor to fill out grievance forms for the taxpayer.

### Adjourned Hearing Dates



The assessor may request an adjourned hearing if the complaint is received three or fewer business days before the scheduled grievance day hearing.

If either the complainant or the assessor is not prepared to supply information, supporting evidence or proofs, the board should set an adjourned hearing date to provide the complainant or the assessor the opportunity to present all facts concerning the assessment under consideration.

If all complainants cannot be heard on the scheduled grievance date, an adjourned hearing date or dates must be scheduled. Remember that new complaints cannot be accepted on an adjourned hearing day.

## Open Meetings Law



In brief, the law gives the public the right to attend meetings of public bodies, listen to the debates and watch the decision making process in action.

### *What is a meeting?*

Meeting is defined to mean “the official convening of a public body for the purpose of conducting public business.” As such, any time a quorum of a public body gathers for the purpose of discussing public business, the meeting must be open to the public, whether or not there is an intent to take action, and regardless of the manner in which the gathering may be characterized. BAR hearings are open meetings.

### *Notice of Meetings*

The law requires that notice of the time and place of all meetings be given prior to every meeting. Municipalities that have public websites must post notice of public meetings on the public website in addition to the traditional manner of posting and publicizing meetings (POL § 104(5), L.2009, ch.26).

### *When can a meeting be closed?*

BAR meetings are subject to the Open Meetings Law. An analysis of the requirements of the Open Meetings Law and how it applies to BAR meetings can be found in a published opinion letter by the Executive Director of the Committee on Open Government (OML-AO-4043). The BAR meeting must be open to the public, minutes kept and the presentation of the complainant and the comments of the assessor must be made at the open portion of the meeting.

The BAR, if it wishes, may hold a closed executive session to consider the complaints and supporting documentation and to deliberate. The general public and the complainant are excluded from this executive session, as well as the assessor.

The assessor may not make additional comments to the BAR in the closed session of the BAR. When the BAR has concluded its deliberations, whether in executive session or in the open session, the actual voting must be done in an open meeting and minutes taken.

## Unit 6

# Grounds for Complaints on Assessments

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### Unit Importance

You will need to understand the concepts, principles, tasks, techniques and processes of determining the grounds for filing complaints with the board of assessment review so that proper determinations can be rendered.

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### Unit Overview

This lesson provides definitions; fundamentals and basic knowledge about the complaint form, conducting hearings, the four legal grounds for an assessment complaint, complaint filing procedures, and burden of proof.

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### Unit Objectives



By the end of this lesson you will be able to:

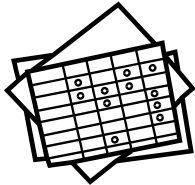
- Know the complaint form format
  - Learn complaint filing procedures
  - Understand the (4) legal grounds for complaint
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## Lesson 1 RP-524 Complaint on Real Property Assessment

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### Complaint Form



The law requires complainants to file a written statement, specifying how the assessment complained of is excessive, unequal or unlawful or that the property is misclassified (RPTL § 524 (3)). The complaint must also specify the value of the property and the amount of reduction or change in class designation sought and contain an estimate of the "value" of the real property for which the complaint is made, regardless of the grounds on which the complaint is made.

ORPTS has prepared complaint forms which it supplies to localities for use by the taxpayer. The form, "Complaint on Real Property Assessment" (RP-524, NYC and Nassau County prescribe their own complaint forms), is required by statute to be used. The form is acceptable if it specifies the value of the property, the grounds for complaint, the relief sought and the certification statement is signed by the owner or representative. The statement reads as follows:

"I certify that all statements made on this application are true and correct to the best of my knowledge and belief, and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the Penal Law relevant to the making and filing of false instruments."

The complaint may be filed with the assessor prior to Grievance Day or with the board of assessment review on Grievance Day. After the board concludes its hearings it is too late to file a complaint. Grievances may no longer be filed on adjourned hearing dates.

The complaint may be made by the aggrieved person, or by his or her attorney or representative. However, if a complaint is made by a representative of the complainant, a written authorization to allow the representative to appear on behalf of the complainant must be filled in on or with the complaint form and bear a date within the same

calendar year during which the complaint is filed.

Board members should remember that many taxpayers are not experienced in real property assessment administration, and when necessary, you should answer questions that will assist them in filing properly executed complaints that contain all of the necessary information to make a proper claim with respect to their grievance. However, it is not the job of the board or the assessor to fill out grievance forms for the taxpayer.

## Lesson 2 Grounds for Complaint

### Grounds for Complaint

The law requires complainants to file a written statement, specifying the respect in which the assessment complained of is:

- **Unequal**
- **Excessive**
- **Unlawful**
- **Misclassified**

### Unequal Assessment



When an unequal assessment or inequality is claimed, there are two issues for the complainant to prove and for the board of assessment review to resolve:

1. The value of the complainant's property.
2. The average ratio of assessed value to market value for the assessing unit (that is, the percentage of value at which all property on the average is assessed, or in a special assessing unit, the percentage of value at which all property in the same class on the average is assessed).

Except in special assessing units, if the property of a taxpayer is assessed at a higher percentage of value than the average of all other properties on the same assessment roll, the taxpayer should file a complaint on grounds of an unequal assessment. In a special assessing unit, a taxpayer may file a complaint on the grounds of an unequal assessment only if the property is assessed at a higher percentage of value than the average of all other properties in the same class on the same assessment roll.

When the complainant specifies that the assessment is unequal and the property assessed is improved by a one-, two- or three-family residence (other than a condominium), regardless of where the property is located, an unequal assessment means either: (a) that the property is assessed at a higher proportion of value than other residential property on the same roll; or (b) that the property is assessed at a higher proportion of value than all real property on the same roll.

## Excessive Assessment



If the assessed valuation is greater than the full (market) value of the parcel of property, the taxpayer should complain on the ground that the assessment is excessive.

1. Overvaluation

By constitutional mandate, assessments shall not, in any case, exceed full value (New York State Constitution, Article XVI).

**Proof:** The complainant must establish the full (market) value of the parcel.

2. Incorrect Partial Exemption

If a taxpayer has been denied all or a portion of a partial exemption to which his or her property is entitled, the taxpayer should complain on the ground that the taxable assessment is excessive.

**Proof:** The complainant must establish that all statutory eligibility requirements are satisfied or that the assessor's computation of the exempt amount is incorrect. If the taxpayer did not file the appropriate form by the appropriate date then their complaint should be dismissed. Failure to complete the application form on time does not meet the statutory eligibility requirements.

3. Excessive Transition Assessment

(Applicable only in Approved Assessing Units that have adopted transition assessments). Approved assessing units may adopt a system of transition assessments to phase in over five years all increases and decreases in assessed value resulting from a revaluation (RPTL § 1904). If an approved assessing unit has adopted transition assessments and a taxpayer believes that the transition assessment for his or her property has been improperly calculated, the taxpayer should complain that the assessment is excessive.

**Proof:** The complainant must establish that the transition assessment was incorrectly computed.

4. Incorrect Assessment Limitation

(Applicable only in Special Assessing Units)

Special assessing units are required to observe limitations on permissible increases in assessed value. These limitations do not apply to changes in assessed value attributable to: (a) new property; (b) additions to or improvements in existing property; (c) fire; (d) demolition or destruction; and (e) changes in taxable status.

The limitations for class one differ from those governing classes two, three and four.

Class one:

The current assessment may not exceed last year's assessment by more than 6% and cannot be increased in any five-year period by more than 20%, with the first five-year period measured from the 1980 assessment roll. If the 1981 assessment exceeded the 1980 assessment by more than 20%, the assessment must be computed in accordance with a statutory formula that will usually result in an actual assessment lower than the 1981 assessment.

Class two, three and four:

Transition assessments must be established to phase in increases in assessed value over five years.

If a taxpayer in a special assessing unit believes that the assessment limitations have been incorrectly applied to his or her property, the taxpayer should complain on the ground that the assessment is excessive.

**Proof:** The complainant must establish that the applicable assessment limitation was incorrectly applied.

## Unlawful Assessment



Generally, an unlawful assessment is one where the assessor has no authority or jurisdiction to make the assessment.

The following summarizes the various situations in which the claim of unlawful assessment may be raised:

1. The property is outside the assessing unit, or outside the school district or special district in which the real property is designated as being located.

The jurisdiction of an assessor is confined to the physical boundaries of the assessing unit. If a parcel of property is totally outside the boundaries of the assessing unit, the assessor has no authority to assess it. If part of the parcel is located inside the boundaries of the assessing unit, the assessment would not be unlawful (the question becomes one of the value of the portion of the property located within the assessing unit).

**Proof:** The complainant must prove that the property in question is not located within the boundaries of the assessing unit, or within the school district or special district designated on the assessment roll. (Also correctable error RPTL § 550(7)(b))

2. The property cannot be identified from the description on the assessment roll.

Description may be by name of abutting property owners, or by recorded tax map designation.

**Proof:** The complainant must prove that the property description on the assessment roll does not permit identification of the assessed property.

3. The property is wholly exempt.

Certain real property of not-for-profit organizations, certain agencies and other classes of property may be wholly exempt by statute from the real property tax.

This is not the proper ground for complaint where the complainant is seeking review of a partial exemption such as a veteran's or senior citizen exemption. Those complaints are excessive.

**Proof:** The complainant must prove the property satisfies all statutory requirements to be wholly exempt.

4. The property was assessed by a person or body without the authority to make the assessment.

**Proof:** For example, the complainant must prove that the assessment was entered on the assessment roll by one member of the board of assessors without the approval of a majority of the board.

5. The property is a special franchise property and the assessment exceeds the final assessment established by the State Board.

**Proof:** The complainant must submit a copy of the certification of final assessment issued by the State Board.

### Misclassification



(Relevant only in Approved Assessing Units which establish homestead and non-homestead tax rates and in Special Assessing Units)

#### Approved Assessing Units

Cities, towns and villages certified by the State Board as approved assessing units may elect to establish separate tax rates for homestead and non-homestead real property.

The homestead class includes:

- one-, two-, or three-family residential parcels
- residential condominiums
- mixed use parcels (i.e., used in part for residential purposes and in part for nonresidential purposes), if the primary use is residential
- mobile homes and trailers, only if they are owner-occupied and separately assessed
- all vacant land parcels, not exceeding ten acres,

which are located in an assessing unit that has a zoning law or ordinance in effect, provided that such parcels are located in a zone that does not allow a residential use other than for one-, two- or three-family dwelling residential real property

- farm dwellings
- all land used in agricultural production that is eligible for an agricultural assessment pursuant to section 305 or 306 of the Agriculture and Markets Law if the owner has filed an annual application for an agricultural assessment
- all farm buildings and structures as defined in RPTL, § 483(3), located on such land used in agricultural production.

The non-homestead class includes all other real property (e.g., commercial, industrial, special franchise and utility property, and some vacant land).

### Special Assessing Units

Special assessing units, namely New York City and Nassau County, must classify all real property into four classes and establish a tax rate for each class. The classes are defined as follows:

Class ONE: This class includes all one-, two- or three-family residential parcels and some condominiums. Mixed-use parcels (i.e., used in part for residential purposes and in part for non-residential purposes) qualify if the primary use is residential. Mobile homes and trailers qualify only if they are owner-occupied and separately assessed. Most condominiums and all co-operatives are specifically excluded from class one.

Class TWO: This is defined as all other residential real property which is not in class one, except hotels, motels and similar commercial property.

Most condominiums and all co-operatives are included in class two.

Class THREE: Utility real property. "Utility real property" means the real property, including special franchises, of

persons and corporations subject to the supervision of the Public Service Commission, the State Commission on Cable Television, the State Department of Transportation, or any other Federal or State regulatory agency, used in the generation, storage, transmission, distribution or sale of gas, electricity, steam, water, refrigeration, cable television, telephone or telegraph service, delivered through mains, pipes, cables, lines or wires.

Class FOUR: All other real property not in class one, class two, or class three (e.g., commercial and industrial property, vacant land).

Claims of Misclassification

In either approved assessing units or special assessing units, there are two possible claims of misclassification.

1. A parcel has been designated in the wrong class on the assessment roll.

For example, in an approved assessing unit, a single family house on a one acre lot is designated as non-homestead property.

**Proof:** The complainant must prove that the property is used primarily for residential purposes.

2. The allocation of a parcel's total assessed value between classes is incorrect.

For example, assume that a 100-acre parcel is located in an approved assessing unit and is assessed for \$50,000. The Assessor allocated \$20,000 of that amount to the residence and surrounding 10 acres (homestead), the other \$30,000 allocated to the remaining 90 acres (non-homestead). The complainant believes that the \$50,000 total assessment is correct but contends that the residence and 10 acres are worth one-half of that total, or \$25,000. (The question of allocation will be significant because of the different tax rate for the homestead and non-homestead classes.)

In this case, the taxpayer may claim that the property is misclassified and request that the

assessed value be allocated equally between the residence and surrounding 10 acres, and the remaining 90 acres.

If the complainant is contesting only the allocation without seeking review of the total assessed value, only the "Misclassification" claim need be raised. However, if the taxpayer believes that the assessment is unequal or excessive and the allocation between the homestead and non-homestead parts is incorrect then he or she should complain on the grounds that the property is misclassified and that the assessment is unequal or excessive. Using the same example as above, if the taxpayer claims that the total assessed value should be reduced from \$50,000 to \$35,000, he or she must show an allocation of the \$35,000 between the homestead and non-homestead shares.

**Proof:** The complainant must show the proper allocation of assessed value.

**After the board of assessment review has heard all statements and testimony, and received whatever proof has been submitted, it must decide whether the assessment complained of is excessive, unequal or unlawful or whether the property is misclassified.**

## Unit 7

# Determinations of Board of Assessment Review

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**Lesson Importance**

Understanding the concepts, principles, tasks, techniques and processes of how determinations are made, evidence weighed and decisions rendered by the board of assessment review.

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**Lesson Overview**

This lesson provides definitions, fundamentals and basic knowledge about the procedures to be followed when making a final determination on a complaint.

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**Lesson Objectives**



By the end of this lesson you will be able to

- Understand the decision making process
  - Follow sequential steps of the process
  - Make logical and legal determinations
  - Prepare required notification forms
  - Act as a body, bring closure to each case
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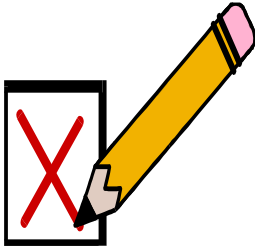
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## Lesson 1

### Determinations of Board of Assessment Review

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#### Making Determinations



After the board of assessment review has heard all statements and testimony, and received whatever proof has been submitted, it must decide whether the assessment complained of is excessive, unequal or unlawful or whether the property is misclassified.

The board of assessment review is required to act as a body. The board, or a majority of the board, must make a final decision on each complaint properly and timely filed. As the facts warrant, the board may lower the assessment, or leave the assessment unchanged (RPTL § 525(3)).

If the board of assessment review decides that the assessment is unlawful, it must order the assessment removed from the roll or, where appropriate, entered on the exempt portion of the roll.

If the board decides that property is misclassified, it must order that the property class designation or allocation of assessed value be entered on the assessment roll.

The board should not make an immediate "on the spot" decision on the complaint under consideration. The chairman should advise the complainant that the board will consider the matter and advise him or her of their final decision.

#### Open Meetings Law



BAR meetings are subject to the Open Meetings Law. An analysis of the requirements of the Open Meetings Law and how it applies to BAR meetings can be found in a published opinion letter by the Executive Director of the Committee on Open Government (OML-AO-4043).

The BAR meeting must be open to the public, minutes kept and the presentation of the complainant and the comments of the assessor must be made at the open portion of the meeting.

The BAR, if it wishes, may hold a closed executive session to consider the complaints and supporting documentation and to deliberate. The general public and the complainant are excluded from this executive session, as well as the assessor.

The assessor may not make additional comments to the BAR in the closed session of the BAR. When the BAR has concluded its deliberations, whether in executive session or in the open session, the actual voting must be done in an open meeting and minutes taken. The vote on each complaint must be recorded (See RP-524, RP-525).

A majority of the board of assessment review must make the final decisions on the complaints. If for some reason a member of the board was not present at the hearings, they may still vote, provided he or she reviews the minutes, testimony and proofs taken so that he or she is familiar with each complaint being considered.

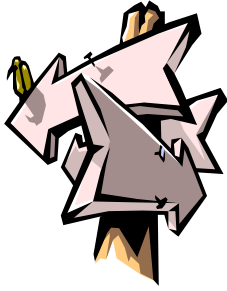
Prior to Grievance Day taxpayers may meet with the assessor to discuss their assessment. If the assessor agrees with taxpayer and believes that the assessment should be changed then both the assessor and the taxpayer stipulate to that agreement.

### **Ratifying Stipulations**

The law requires that the assessment grievance form (i.e., RP-524) include a section whereby an assessor and taxpayer (or his or her representative) may stipulate in writing to an agreed upon assessment of the taxpayer's parcel. The board of assessment review is expected to ratify any such stipulations. The BAR need not mail a notice of its determination to a taxpayer who has stipulated to his or her assessment.

As long as the BAR ratifies the stipulation, and the agreed upon value appears on the final assessment roll, no judicial review of the parcel's assessment would be permitted. However, if the BAR refuses to ratify a properly executed stipulation, a mandamus proceeding could be brought against the BAR. A court would then decide whether the BAR's refusal to ratify was justified (10 Op. Counsel SBRPS No. 89).

## Burden of Proof



The presumption under the law is that the assessor has properly done his or her job and that the assessment is correct.

The burden of proof is always on the complainant to overcome this presumption that the assessment is correct, and the complainant must present convincing evidence that the assessor's judgment was incorrect. The submission of a grievance complaint form alone does not necessarily prove that an assessment is incorrect. The complaint form represents that the complainant believes the assessment is in error. If no proof or evidence is submitted to support this belief, the legal presumption that the assessment is correct and accurate must be upheld.

Appraisals, comparable sales listings, purchase price or building costs, etc., can all be presented as proof that the assessment is incorrect. If the complainant does provide convincing evidence that supports the assessment being incorrect then the BAR should direct the assessor to change the tentative assessment to reflect the more correct and accurate value.

## Assessor's Role



The assessor, or the assessor's designee in the case of an assessor employed by multiple assessing units, is required to attend all hearings of the board of assessment review, and has the right to be heard on any complaint and to have his or her remarks recorded in the minutes of the hearing (RPTL, § 525 (2), 526 (4)). When a complaint is filed within three business days preceding the BAR hearing, the Board must grant an assessor's request for an adjournment to permit the assessor adequate time to respond to a complaint (RPTL § 524).

When a complainant presents testimony and proof to support a complaint, the assessor should be called upon to present his or her side, and have the opportunity to explain the assessment of the property in question or recommend a change in the assessment if he or she feels there was an error in the assessment.

Taxpayers and assessors may stipulate to an assessed value, obviating the need for administrative or judicial review of such value (amended RPTL, §§524(3), 525, 527).

The law requires that the assessment grievance form (i.e., RP-524) include a section whereby an assessor and taxpayer (or his or her representative) may stipulate in writing to an agreed upon assessment of the taxpayer's parcel. The board of assessment review is expected to ratify any such stipulations.

### Weighing the Evidence



The primary duty of the board of assessment review is to decide whether the assessment of the property in question is proper and equitable.

This does not mean that the board should reappraise the property. There should not be any reason, except in the most unusual cases, for the board to physically inspect or view the property.

It does mean that the board must decide (a) whether the complainant has supported his complaint with evidence to indicate the assessor made a mistake in the assessment, or (b) whether the assessor's determination of the assessment was correct.

The board of assessment review should consider at least the following:

1. Has the complainant filed a timely and proper complaint?
2. Has the complainant clearly stated the facts on which the complaint is based?
3. Has the complainant presented sufficiently detailed evidence to support his or her claim?
4. Has the assessor actually viewed the property in question?
5. Has the assessor presented any facts or evidence to explain the assessment complained of?

**Evidence to be used as proof**



Unequal Assessment

If the complainant claims that the assessment is unequal, he or she must show:

1. the value of the property; and
2. the applicable ratio:
  - (a) Generally. Except in a special assessing unit, the complainant must show the average percentage of value at which all properties are assessed. In a special assessing unit, the complainant must show the average percentage of value at which all properties in the same class are assessed.
  - (b) One-, two- or three-family residential property. The complainant must show either the average percentage of value at which all properties are assessed or the average percentage of value at which residential properties are assessed.

Where a complainant has established the market value of the property (for example, the recent purchase price of the property) and the applicable ratio, the presumption of the validity of the assessment is overcome.

The assessor must then justify the assessment placed on the property. If the assessor cannot rebut the complainant's proof, the board of assessment review grants relief to the complainant in the amount justified by the complainant's proof.

### Excessive Assessment

1. Overvaluation. If the complainant proved the assessment is higher than the full (market) value of the property, he or she is entitled to a reduction to the full (market) value.
2. Incorrect Partial Exemption. If the complainant has asked for a reduction in the assessment because a partial exemption (e.g., veteran's, senior citizens) was denied by the assessor, the board should consult the exemption information in the booklet: "Exemptions from the Real Property Tax." Any legal questions should be referred to the town attorney or corporation counsel.
3. Excessive Transition Assessment (Approved Assessing Units only). If the complainant proved that the transition assessment is excessive, he or she is entitled to a reduction.

Incorrect Assessment Limitation (Special Assessing Units only). If the complainant proved that the applicable assessment limitation has been incorrectly applied, he or she is entitled to a correction and any resulting reduction.

### Unlawful Assessments

If the complaint claims that the assessment is unlawful, the complainant must clearly show one of the following:

1. The entire parcel of property is not located within the boundaries of the assessing unit, or within the boundaries of a school district or special district as designated on the assessment roll.
2. The property cannot be identified from the description on the assessment roll. The board should request the assessor to obtain an adequate description and to ask the appropriate county legislative body to enter an adequate description before the next assessment roll.
3. The property is wholly exempt from taxation. The

board should ask the town attorney or corporation counsel for advice on this matter.

4. The property was assessed by someone other than the assessor or majority of the board of assessors.
5. The property is special franchise property and the assessment exceeds the final assessment established by the State Board.

Misclassification (Approved Assessing Units and Special Assessing Units only)

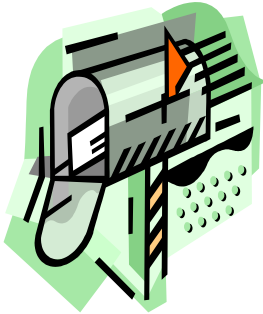
If the complainant claims that real property is misclassified, he/she must clearly show one of the following:

- 1) The use of the property is such that the class designation appearing on the assessment roll is incorrect.
- 2) The total assessed value is improperly allocated between classes.

## Final Determination

After the board of assessment review has made its determination on each complaint before it for review, it has a statutory duty to notify the complainant of the board's final determination of the complaint and the reasons for the determination (RPTL § 525 (4)). The Board's vote on the complaint should be indicated as well on FORM RP-525.

## Notify the Complainant



This notice is to be sent on or before the date the board delivers to the assessor the verified statement of changes, if any, to be made to the tentative assessment roll as determined by the board. The notice must contain the following statement:

*"If you are dissatisfied with the determination of the Board of Assessment Review, you may seek judicial review of your assessment pursuant to article seven of the Real Property Tax Law. If you are the owner of a one-, two- or three-family residential structure and reside at such residence, or if you are the owner of unimproved property which is not of sufficient size as determined by your assessing unit to contain a one-, two-, or three-family residential structure, you may seek small claims assessment review pursuant to title one-A of article seven of the Real Property Tax Law."*

**Note:** When filling out the RP-525 Notice of Determination, it is important to complete the form in its entirety. The complainant would like to know why their property was not reduced as requested. A complete and accurate RP-525 form will help to alleviate many of these questions.

Instructions for completing the RP-525 can be found in the appendix of this manual or on the ORPTS website at: [www.tax.ny.gov/pdf/current\\_forms/orpts/rp525ins.pdf](http://www.tax.ny.gov/pdf/current_forms/orpts/rp525ins.pdf)

## List of Assessment Changes

After the board of assessment review has made its final determinations and mailed notice of its determination to each complainant, a majority of its members must prepare and verify a statement showing the assessment changes. The changes to be made to the tentative assessment roll must be listed and verified by the board or a majority of the board. Verification means to declare under oath or upon penalty of perjury that the statements made are true. The verification should be located at the end of the document

listing the assessment changes.

This verified statement must be notarized and delivered to the assessor on or before the date required by law for completion of the final assessment roll, or such other date specified by applicable law (RPTL § 525(4)).

In most towns, the last date for the filing of the final assessment roll is July 1 (RPTL § 516). The last date for the filing of the final assessment roll may vary in towns in the counties of Monroe and Westchester, and town attorneys should be consulted. In cities and villages, the dates may vary, and corporation counsel should be consulted. In Nassau and Tompkins counties, the county attorney should be consulted.

### **Judicial Review**

Petitions for judicial review must be filed within 30 days after the final completion and filing of the final assessment roll containing the assessment. An assessment roll is not considered finally completed until the last day set by law for the filing of such final assessment roll or until notice of such filing is published, whichever is later.

The notice must also state where the small claims assessment review petitions may be obtained.

## Unit 8

# Second Meeting of the BAR and Subsequent Complaint Routes for Taxpayers

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### Lesson Importance

Understanding the concepts, principles, tasks, techniques and processes of conducting a second meeting of the board of assessment review in order to address corrections of errors, and to review small claims and certiorari proceedings.

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### Lesson Overview

This lesson provides definitions, fundamentals and basic knowledge about when and why a “Second Meeting” may be held, its importance and requirements. Also to better understand subsequent complaint routes for aggrieved taxpayers.

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### Lesson Objectives



By the end of this lesson you will be able to:

- Understand what a “Second Meeting” of the BAR is for, and what it accomplishes
  - Understand the subsequent complaint routes, such as small claims assessment review and tax certiorari proceedings, and their relationship to BAR requirements.
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## Lesson 1

### Second Meeting of Board of Assessment Review

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**Why is the second meeting held?**

The second meeting of the BAR is convened for the purpose of reviewing assessments made pursuant to correction of errors law (RPTL, § 553).

This is done in a form of petition submitted to the BAR by the assessor or county director of real property services for the purpose of correcting any “clerical errors”, “unlawful entries”, “errors in essential fact”, or “omissions” appearing on the final assessment roll (RPTL, § 550).

**When is the second meeting?**

The second meeting is held approximately between July 15 and not less than 20 days prior to tax levy. Therefore, a BAR may have several “second” meetings for school, town/county, and non-assessing unit village purposes (RPTL, § 553).



## Lesson 2

### Subsequent Complaint Routes for Taxpayers

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#### Routes of Complaint



If dissatisfied with a BAR determination, a taxpayer may seek judicial review. The two judicial remedies are called “Small Claims Assessment Review” and “Tax Certiorari”.

Both must be filed for within 30 days after completion and filing of the final assessment roll and the taxpayer must have timely filed a grievance form RP-524 prior to petitioning for either.

Which route the taxpayer chooses depends on the type of property on which the complaint was filed.

#### Small Claims Assessment Review

**Small Claims Assessment Review** - Form RPTL 730:

1. For 1, 2 and 3 family residence owners only.
2. The taxpayer must have timely filed a grievance form RP-524 and followed due process
3. The taxpayer must file petition within 30 days after completion and filing of the assessment roll.

#### Certiorari Proceedings

**Tax Certiorari Proceedings:**

1. For all property owners.
2. The taxpayer must have timely filed a grievance – form RP-524 and followed due process.
3. The taxpayer must file petition within 30 days after completion and filing of the final assessment roll.

## APPENDIX

Form 523 – Notice of Disclosure of Interest

Form 524 – Complaint on Real Property Assessment

Form 525 – Notice of Determination

*Instructions for Form 525*

### **Reference Listing:**

Excerpts from Opinions of Counsel Index

Exemptions Handout

*Contesting Your Assessment in New York State*