

By: Hill

H.B. No. 3194

Substitute the following for H.B. No. 3194:

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C.S.H.B. No. 3194

A BILL TO BE ENTITLED

AN ACT

relating to binding arbitration of certain appraisal review board orders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 41A.01, Tax Code, is amended to read as follows:

Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. (a) Except as provided by Subsection (b), as ~~[As]~~ an alternative to filing an appeal under Section 42.01, a property owner is entitled to appeal through binding arbitration under this chapter an appraisal review board order determining a protest filed under Section 41.41(a)(1) or (2) concerning ~~[the appraised or market value of]~~ real property if:

(1) the property qualifies as the owner's residence homestead under Section 11.13;

(2) the appraised or market value, as applicable, of the property as determined by the order is \$1 million or less; or

(3) the chief appraiser for the appraisal district in which the protest was filed consents to the appeal under this chapter ~~[appraised or market value, as applicable, of the property as determined by the order is \$1 million or less, and~~

~~[(2) the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property].~~

1 (b) A property owner may not appeal through binding
2 arbitration under this chapter an appraisal review board order
3 determining a protest filed under Section 41.41(a)(2) if:

4 (1) the property owner was represented before the
5 appraisal review board by a person who is a property tax consultant,
6 as defined by Section 1152.001, Occupations Code, regardless of
7 whether the consultant is registered or exempt from registration
8 under Chapter 1152, Occupations Code; and

9 (2) the owner or the consultant did not provide to the
10 chief appraiser, at least 14 days before the date of the appraisal
11 review board hearing, copies of all the evidence the owner or the
12 consultant used in the appraisal review board hearing.

13 SECTION 2. Section 41A.04, Tax Code, is amended to read as
14 follows:

15 Sec. 41A.04. CONTENTS OF REQUEST FORM. The comptroller by
16 rule shall prescribe the form of a request for binding arbitration
17 under this chapter. The form must require the property owner to
18 provide only:

19 (1) a brief statement that explains the basis for the
20 property owner's appeal of the appraisal review board order;

21 (2) a statement of the property owner's opinion of:

22 (A) the correct appraised [~~or market~~] value [~~as~~
23 applicable,] of the property that is the subject of the appeal if
24 the property is not land appraised under Subchapter C, D, E, or H,
25 Chapter 23; or

26 (B) the correct appraised or market value, as
27 applicable according to the order being appealed, of the property

1 that is the subject of the appeal if the property is land appraised
2 under Subchapter C, D, E, or H, Chapter 23; ~~and~~

3 (3) if the chief appraiser must consent to the appeal
4 through binding arbitration under Section 41A.01(a)(3), a request
5 that the chief appraiser consent to the appeal; and

6 (4) any other information reasonably necessary for the
7 appraisal district to request appointment of an arbitrator.

8 SECTION 3. Section 41A.05, Tax Code, is amended by amending
9 Subsection (a) and adding Subsections (a-1), (c), and (d) to read as
10 follows:

11 (a) Except as provided by Subsection (a-1), not ~~Not~~ later
12 than the 10th day after the date an appraisal district receives from
13 a property owner a completed request for binding arbitration under
14 this chapter and an arbitration deposit as required by Section
15 41A.03, the appraisal district shall:

16 (1) certify the request;

17 (2) submit the request and deposit to the comptroller;

18 and

19 (3) request the comptroller to appoint a qualified
20 arbitrator to conduct the arbitration.

21 (a-1) Not later than the 30th day after the date the
22 appraisal district receives a request for appeal through binding
23 arbitration that requires the consent of the chief appraiser under
24 Section 41A.01(a)(3) and the filing of an arbitration deposit under
25 Section 41A.03, the appraisal district shall:

26 (1) indicate on the request whether the chief
27 appraiser consents to the appeal; and

1 (2) follow the procedures required by Subsection (a),
2 if the chief appraiser consents to the appeal, or return the request
3 and the arbitration deposit to the property owner by certified
4 mail, if the chief appraiser does not consent to the appeal.

5 (c) If a chief appraiser does not consent to an appeal
6 through binding arbitration for which the chief appraiser's consent
7 is required under Section 41A.01(a)(3), the property owner may not:

8 (1) protest the chief appraiser's decision not to
9 consent under Section 41.41; or

10 (2) appeal the chief appraiser's decision not to
11 consent under Chapter 42.

12 (d) If a chief appraiser does not consent to an appeal
13 through binding arbitration for which the chief appraiser's consent
14 is required under Section 41A.01(a)(3), the property owner may
15 elect to appeal the appraisal review board order under Chapter 42,
16 even if the time for filing a notice of appeal under Section 42.06
17 has expired, if the property owner files a notice of appeal in the
18 manner provided by Section 42.06 not later than the 45th day after
19 the date the property owner receives the request indicating that
20 the chief appraiser does not consent to the appeal through binding
21 arbitration and the return of the arbitration deposit under
22 Subsection (a-1)(2) of this section.

23 SECTION 4. The heading to Section 41A.06, Tax Code, is
24 amended to read as follows:

25 Sec. 41A.06. REGISTRY AND INITIAL QUALIFICATION
26 [QUALIFICATIONS] OF ARBITRATORS.

27 SECTION 5. Section 41A.06, Tax Code, is amended by amending

1 Subsection (b) and adding Subsections (c) and (d) to read as
2 follows:

3 (b) To initially qualify to serve as an arbitrator under
4 this chapter, a person must:

5 (1) have completed at least 30 hours of training in
6 arbitration and alternative dispute resolution procedures from a
7 university, college, or legal or real estate trade association;

8 (2) have been licensed or certified continuously
9 during the five years preceding the date the person agrees to serve
10 as an arbitrator, as:

11 (A) [~~be licensed as~~] a real estate broker or
12 salesperson under Chapter 1101, Occupations Code; ~~;~~ or

13 (B) [~~be licensed or certified as~~] a real estate
14 appraiser under Chapter 1103, Occupations Code; and

15 (3) agree to conduct an arbitration for a fee that is
16 not more than 90 percent of the amount of the arbitration deposit
17 required by Section 41A.03.

18 (c) A person who is registered as a property tax consultant
19 under Chapter 1152, Occupations Code, is not eligible to serve as an
20 arbitrator under this chapter.

21 (d) A person who performs property tax consulting services,
22 as defined by Section 1152.001, Occupations Code, for compensation
23 in connection with this title that relate to a particular appraisal
24 district is not eligible to serve as an arbitrator of an appeal of
25 an order of the appraisal review board established for that
26 appraisal district.

27 SECTION 6. Chapter 41A, Tax Code, is amended by adding

1 Section 41A.061 to read as follows:

2 Sec. 41A.061. CONTINUED QUALIFICATION OF ARBITRATOR;
3 RENEWAL OF AGREEMENT. (a) The comptroller shall include a
4 qualified arbitrator in the registry until the second anniversary
5 of the date the person was added to the registry. To continue to be
6 included in the registry after the second anniversary of the date
7 the person was added to the registry, the person must renew the
8 person's agreement with the comptroller to serve as an arbitrator
9 on or as near as possible to the date on which the person's license
10 or certification issued under Chapter 1101 or 1103, Occupations
11 Code, is renewed.

12 (b) To renew the person's agreement to serve as an
13 arbitrator, the person must:

14 (1) file a renewal application with the comptroller at
15 the time and in the manner prescribed by the comptroller;

16 (2) continue to meet the requirements provided by
17 Section 41A.06(b); and

18 (3) during the preceding two years have completed at
19 least eight hours of continuing education in arbitration and
20 alternative dispute resolution procedures offered by a university,
21 college, real estate trade association, or legal association.

22 (c) The comptroller shall remove a person from the registry
23 if the person fails or declines to renew the person's agreement to
24 serve as an arbitrator in the manner required by this section.

25 SECTION 7. Section 41A.08(b), Tax Code, as added by
26 Chapters 372 and 912, Acts of the 79th Legislature, Regular
27 Session, 2005, is reenacted and amended to read as follows:

1 (b) The parties to an arbitration proceeding under this
2 chapter may represent themselves or, at their own cost, may be
3 represented by:

4 (1) an employee of the appraisal district;

5 (2) an attorney who is licensed in this state;

6 (3) a person who is licensed as a real estate broker or
7 salesperson under Chapter 1101, Occupations Code, or is licensed or
8 certified as a real estate appraiser under Chapter 1103,
9 Occupations Code; ~~or~~

10 (4) a property tax consultant registered under Chapter
11 1152, Occupations Code; or

12 (5) an individual who is licensed as a certified
13 accountant under Chapter 901, Occupations Code.

14 SECTION 8. Sections 41A.09(b), (c), and (d), Tax Code, are
15 amended to read as follows:

16 (b) An award under this section:

17 (1) must include a determination of:

18 (A) the appraised or market value, as applicable,
19 of the property that is the subject of the appeal, if the appeal is
20 an appeal of an appraisal review board order determining a protest
21 under Section 41.41(a)(1); and

22 (B) the equalized appraised value as calculated
23 under Section 41A.091 of the property that is the subject of the
24 appeal, if the appeal is an appeal of an appraisal review board
25 order determining a protest under Section 41.41(a)(2) and the
26 arbitrator determines the appeal in favor of the property owner;

27 (2) may not include any relief or determine any issue

1 not specified by this chapter [~~may include any remedy or relief a~~
2 ~~court may order under Chapter 42 in an appeal relating to the~~
3 ~~appraised or market value of property~~];

4 (3) shall specify the arbitrator's fee, which may not
5 exceed the amount provided by Section 41A.06(b)(3);

6 (4) is final and may not be appealed except as
7 permitted under Section 171.088, Civil Practice and Remedies Code,
8 for an award subject to that section; and

9 (5) may be enforced in the manner provided by
10 Subchapter D, Chapter 171, Civil Practice and Remedies Code.

11 (c) If the value determined under Subsection (b)(1)(A) or
12 (B), as applicable, or the lower of the values determined under
13 Subsections (b)(1)(A) and (B), if both paragraphs are applicable,
14 [~~arbitrator determines that the appraised or market value, as~~
15 ~~applicable, of the property that is the subject of the appeal~~] is
16 nearer to the property owner's opinion of the appraised or market
17 value, as applicable, of the property as stated in the request for
18 binding arbitration submitted under Section 41A.03 than the value
19 determined by the appraisal review board:

20 (1) the comptroller, on receipt of a copy of the award,
21 shall refund the property owner's arbitration deposit, less the
22 amount retained by the comptroller under Section 41A.05(b);

23 (2) the appraisal district, on receipt of a copy of the
24 award, shall pay the arbitrator's fee; and

25 (3) the chief appraiser shall correct the appraised or
26 market value, as applicable, of the property as shown in the
27 appraisal roll to reflect the arbitrator's determination.

1 (d) If the value determined under Subsection (b)(1)(A) or
2 (B), as applicable, or the lower of the values determined under
3 Subsections (b)(1)(A) and (B), if both paragraphs are applicable,
4 ~~[arbitrator determines that the appraised or market value, as~~
5 ~~applicable, of the property that is the subject of the appeal]~~ is
6 not nearer to the property owner's opinion of the appraised or
7 market value, as applicable, of the property as stated in the
8 request for binding arbitration submitted under Section 41A.03 than
9 the value determined by the appraisal review board:

10 (1) the comptroller, on receipt of a copy of the award,
11 shall:

12 (A) pay the arbitrator's fee out of the owner's
13 arbitration deposit; and

14 (B) refund to the owner the owner's arbitration
15 deposit, less the arbitrator's fee and the amount retained by the
16 comptroller under Section 41A.05(b); and

17 (2) the chief appraiser shall correct the appraised or
18 market value, as applicable, of the property as shown in the
19 appraisal roll to reflect the arbitrator's determination if the
20 value as determined by the arbitrator is less than the value as
21 determined by the appraisal review board.

22 SECTION 9. Chapter 41A, Tax Code, is amended by adding
23 Section 41A.091 to read as follows:

24 Sec. 41A.091. DETERMINATION AND REMEDY FOR UNEQUAL
25 APPRAISAL. (a) An arbitrator may determine an appeal of an
26 appraisal review board order determining a protest under Section
27 41.41(a)(2) in favor of the property owner only if the evidence

1 establishes that:

2 (1) the appraisal ratio of the property exceeds by at
3 least 10 percent the median level of appraisal of a reasonable and
4 representative sample of other properties in the appraisal
5 district;

6 (2) the appraisal ratio of the property exceeds by at
7 least 10 percent the median level of appraisal of a sample of
8 properties in the appraisal district consisting of a reasonable
9 number of other properties similarly situated to, or of the same
10 general kind or character as, the property subject to the appeal; or

11 (3) the appraised value of the property exceeds by at
12 least 10 percent the median appraised value of a reasonable and
13 representative sample of comparable properties appropriately
14 adjusted.

15 (b) If a determination would result in an award for the
16 property owner under Subsection (a)(1) or (2), the award must state
17 an equalized appraised value of the property calculated by
18 multiplying the appraised value of the property as determined by
19 the appraisal review board by the median level of appraisal
20 according to Subsection (a)(1) or (2), as applicable. If a
21 determination would result in an award for the property owner under
22 Subsection (a)(3), the award must state an equalized appraised
23 value that is equal to the median appraised value determined under
24 that subsection. If a property owner is entitled to an award under
25 more than one method of determination, the lowest of the equalized
26 appraised values is the equalized appraised value.

27 (c) In making a determination under Subsection (a), an

1 arbitrator:

2 (1) shall determine each applicable median level of
3 appraisal or median appraised value according to law;

4 (2) is not required to adopt the median level of
5 appraisal or median appraised value proposed by a party to the
6 appeal; and

7 (3) may not limit or deny an award to a property owner
8 who is entitled to an award based on any method of determination
9 under Subsection (a) on the ground that the equalized appraised
10 value according to another method of determination under Subsection
11 (a) is higher.

12 (d) For purposes of establishing the median level of
13 appraisal under Subsection (a)(1), the median level of appraisal by
14 the appraisal district within the applicable category of property
15 as determined by the comptroller under Section 5.10 is admissible
16 as evidence of the median level of appraisal of a reasonable and
17 representative sample of properties in the appraisal district for
18 the year of the comptroller's determination.

19 (e) For purposes of this section, the value of the property
20 subject to the appeal and the value of a comparable property or
21 sample property that is used for comparison must be the market value
22 as determined by the appraisal district if the property is a
23 residence homestead subject to the limitation on appraised value
24 imposed by Section 23.23.

25 SECTION 10. (a) Sections 41A.01, 41A.04, 41A.05, 41A.08,
26 and 41A.09, Tax Code, as amended by this Act, and Section 41A.091,
27 Tax Code, as added by this Act, apply only to an appeal through

1 binding arbitration under Chapter 41A of that code that is
2 requested on or after the effective date of this Act.

3 (b) Section 41A.06, Tax Code, as amended by this Act,
4 applies only to a person who initially qualifies to serve as an
5 arbitrator under Chapter 41A, Tax Code, on or after the effective
6 date of this Act.

7 (c) Section 41A.061, Tax Code, as added by this Act, does
8 not affect the eligibility of a person who is included on the
9 registry list of qualified arbitrators on the effective date of
10 this Act to continue to remain on that registry list before the date
11 on which the person's license or certificate under Chapter 1101 or
12 1103, Occupations Code, expires unless renewed.

13 SECTION 11. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect September 1, 2007.