

DEPARTMENT OF LOCAL AFFAIRS

Board of Assessment Appeals

PROCEDURES OF PRACTICE AND PROCEDURES OF REVIEW

8 CCR 1301-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Basis, Specific Statutory Authority and Purpose

These rules serve to update existing rules which are intended to foster the intent of the general assembly as reflected in articles 1 through 13, title 39, C.R.S. and to achieve administrative efficiency and fairness in the proceedings conducted by the Board of Assessment Appeals.

The rules are authorized by § 24-4-103(1), C.R.S. (2018), § 24-4-105, C.R.S. (2018), § 39-2-125(1)(a), C.R.S. (2018), § 39-2-127 (4) and (5), C.R.S. (2018).

Rule 1: Definitions.

Throughout these rules, the following meanings apply unless the context indicates otherwise:

- a. "BAA" or "Board" means the Board of Assessment Appeals.
- b. "Business day" means a day other than a Saturday, Sunday or state legal holiday.
- c. "Day" means calendar day, unless otherwise specified.
- d. "Documentation" means exhibits, including any audio, video or photographic evidence, and a list of witnesses and exhibits that the parties wish to present at hearing.
- e. "Due Date" means the day by which a document must be filed with the Board and delivered to the opposing party. All documents must be received by the Board by no later than 5:00 p.m. on the date they are due. If the Due Date is a Saturday, Sunday or state legal holiday, the Due Date shall be extended to the end of the next day which is not a Saturday, Sunday or state legal holiday.
- f. "Exchange" means actual receipt.

Rule 2: Board Forms

Parties are directed to utilize the forms provided by the Board on its website or through its online filing system, in order to promote the efficient and prompt handling of matters before the Board.

Rule 3: Form of Petition, Filing, Service and Proof of Service.

- a. If a petitioner or petitioner representative files two or fewer petitions in a forty-eight hour period, those petitions may be filed in hard copy on the form prescribed by the Board. Otherwise, all petitions to the Board shall be on the form prescribed by the Board and filed electronically.

- b. Each petition must include a copy of the decision being appealed (that is the decision of the county board of equalization, county board of commissioners, property tax administrator or assessor, as appropriate). In order for a petition to be docketed, all sections of the petition must be completed, including the section certifying that a copy of the petition has been emailed, mailed or hand-delivered as set forth in Rule 5 below. Any filing fees must be paid at the time of filing of the petition.
- c. Whether filed electronically or by hard copy, one copy of the petition and any attachments must be emailed, mailed or hand-delivered as set forth in Rule 5 below to each of the parties whose decision is being appealed, including the county board of equalization, county board of commissioners, property tax administrator, or assessor, as appropriate.
- d. Upon receipt of a petition by the Board, a docket number shall be assigned to the petition. Once a docket number has been assigned, the filing fee is non-refundable.

Rule 4: Priority Cases.

The following types of cases shall be given priority in the setting of hearings before the Board:

- a. Appeals filed from orders and decisions of the property tax administrator; and
- b. Those cases the Board considers of particular significance OR which the Board determines should be advanced on the docket.
- c. To the extent practicable, all other matters will generally be heard in the order they are filed with the Board.
- d. The order in which hearings are set before the Board are within the sole discretion of the Board, with the exception of Rule 4(a) cases.

Rule 5: Service and Proof of Service of Other Documents.

- a. Every document filed by a party or intervenor in any action before the Board shall be served by such party or intervenor on every other party or intervenor to the action. Where service is required, the filing party may serve the opposing party or intervenor by email, mail or hand-delivery to the party's or intervenor's last known address, or, if represented, to their attorney or other representative at such person's last known address.
- b. Filings with the Board, at its general email address, may be made by email. All filings must include a certificate or proof of service, indicating compliance with Rule 5(a).
- c. A certificate or proof of service shall create a rebuttable presumption of receipt of the matter served.

Rule 6: Representation Before the Board

At hearings before the Board and when filing motions or conducting discovery:

- a. Individuals may appear on their own behalf, be represented by an agent, or be represented by an attorney;
- b. Trusts may be represented by the trustee, the trustee's designee or an attorney, and

- c. All other business entities must be represented by an attorney. However, if the entity is closely held (three or fewer members) and the tax amount at issue is less than \$15,000, then a corporate officer may represent the entity. An attorney must represent the entity if it is not closely held or if the tax amount at issue is greater than \$15,000.

Rule 7: Motions

- a. Generally. In the interests of judicial economy and administrative efficiency and to promote collaboration between the parties, the filing of motions by any party is strongly discouraged. Parties should focus their efforts on resolving issues before filing motions. The Board, in its discretion, may decline to consider any motion filed by the parties. After the filing of a petition, an application for an order or relief shall be made by filing of a written motion. The motion shall state the relief sought and the grounds on which it is believed the relief should be granted and, as appropriate, any supporting legal authority of which the filing party is aware. Prior to filing any motion, the filing party must make a good faith attempt to confer with the opposing party or intervenor concerning the substance of the motion. The filing party must include a description of such attempts in its motion.
- b. Non-procedural Motions. Unless otherwise provided for in these rules, such motions may not be filed fewer than 14 calendar days before the hearing. Any party or intervenor may file a response in opposition to such motions within 7 calendar days after service of the motion. Responses are encouraged. Replies may be filed within 3 business days after service of the response.
- c. Procedural Motions. Motions for a procedural order may be filed any time and the Board may act upon such motions at any time, without awaiting a response to such motions.
- d. Responses to Motions. Any responses to motions, unless otherwise stated within these rules, shall be due within 7 calendar days. However, if a motion is filed 28 calendar days or fewer prior to a hearing, any response shall be due within 3 business days.
- e. Motions Concerning Stipulations. Motions which, if granted, tend to reduce the number of issues to be presented at the hearing, whether factual or legal in nature, are encouraged.
- f. Post-Order Motions. Motions for post-order relief of any kind shall be made within 14 calendar days of the date of the order. However, the filing of such a motion does not toll the period for seeking judicial review.
- g. Motions Concerning Clerical Mistakes and Oversights. Clerical mistakes in orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at any time on its own motion or on the motion of any party or intervenor. During the pendency of judicial review, such mistakes may be so corrected before the case is docketed in the appellate court, and, thereafter, while the judicial review is pending, may be corrected only with leave of the appellate court.
- h. Any motion filed pursuant to Rule 7 (f) and (g) is deemed denied if not ruled on within 21 days after its filing with the Board.

Rule 8: Intervention, Consolidation and Bifurcation

The Board may permit, in its discretion or upon written application:

- a. The intervention of another party if the intervention would foster the interests of justice and fairness. The Board may limit or restrict the participation of an intervenor in such a way as the Board orders; and

- b. The consolidation and/or bifurcation of appeals on a case-by-case basis.

Rule 9: Discovery

- a. The Board, in its sole discretion, may limit discovery in the interests of administrative efficiency.
- b. Preparation for hearing may be done through informal information requests or the formal discovery procedures. No specific order by the Board is needed for a party to conduct discovery in cases involving non-residential real property or multi-family residential real property with more than 20 units. Without an order, the following applies to preparation for all hearings involving non-residential real property or multi-family residential real property with more than 20 units; however, upon the filing of a proper motion and a showing of good cause, the Board may modify or waive the following provisions in a specific case or allow discovery requests for hearings involving residential property, including multi-family residential real property with 20 or fewer units.
 - 1. Apart from a request for inspection of the subject property by Respondent, each party may submit no more than 10 total discovery requests. Such requests may include requests for production of documents, requests for admission, interrogatories consisting of one question per request, and a request to inspect the subject property.
 - 2. Responses to discovery, including interrogatories, requests for production of documents, admissions, or requests for inspection, must occur within twenty-one days after service of the request.
- c. Upon a showing of good cause to the Board, a party who intends to offer the testimony of any expert or any other witness may take the deposition of that witness for the purpose of preserving the witness's testimony for use at hearing. However, no deposition may be offered by a party in lieu of live testimony unless the party against whom the deposition is proposed to be used was present or represented at the taking of the deposition and upon an order from the Board permitting the use of the deposition in lieu of live testimony. Such order must be based on a determination that the deponent is not available to testify and that another witness's testimony cannot be substituted for the testimony of the deponent.
- d. Parties must make a good faith effort to resolve any discovery disputes prior to filing a motion to compel discovery. Any motion concerning discovery disputes must certify compliance with this rule and include a description of such good faith efforts in its motion.
- e. Any motion to compel discovery must be filed no later than 14 days prior to the hearing. Failure to conduct discovery in a timely fashion, including providing time for the opposing party to respond to discovery, shall not be a basis for filing a motion to compel less than 14 days prior to the hearing.
- f. Discovery materials, including requests and responses, shall not be filed with the Board. Discovery materials shall be filed in connection with discovery motions only when pertinent and material to the proceedings and when used in a hearing.

Rule 10: Notice of Hearing and Pre-Hearing Conferences

- a. The time allocated to conducting the proceedings shall be at the sole discretion of the Board. Parties may request additional time based upon good cause or unusual circumstances in a case. The granting of such additional time shall be at the sole discretion of the Board.

- b. If a matter is set for one day or more of hearing, within 14 days of the receipt of the notice of hearing or the granting of additional hearing time allowing for one day or more of the hearing, the parties shall submit mutually agreeable dates for a pre-hearing conference no fewer than 42 days prior to the hearing.

Rule 11: Exchange of Documentary Evidence

- a. All parties shall exchange all documentation (supply exhibits, including any audio, video or photographic evidence and a list of witnesses) at least 28 calendar days prior to the hearing. Twenty-one (21) calendar days prior to the hearing all reply documentation pertaining to the evidence submitted in the 28 calendar day exchange of documentation must be exchanged with all parties and four copies are to be filed with the Board and one copy is to be served on each party and intervenor. All documentary evidence exchanged or filed with the Board shall be paginated. The Board may order different deadlines for document exchange on a case by case basis upon a motion filed by either party or in the discretion of the Board on the Board's own motion.
- b. The Board will not accept any information not submitted by the due date in Rule 11(a) except as otherwise required by these rules or as the interests of justice and fairness dictate in the Board's discretion.

Rule 12: Continuances

- a. Hearings shall ordinarily be conducted during normal working hours. Whenever, due to illness, emergency, or for other good reason, the Board considers that it would be in the best interest of justice and fairness to order a recess or continuance, the Board may, on its own motion, recess or continue the hearing to a specified date, time and place.
- b. Parties may request a mutually agreed upon continuance once within time constraints set by the BAA. Any further mutually agreed upon requests for a continuance or any contested request for a continuance will not be considered without a demonstration of good cause. Good cause will not normally include unavailability of counsel due to an engagement in another judicial or administrative proceeding, unavailability of a witness if the witness' testimony can be taken by telephone or deposition, or failure of an attorney, party or witness to timely prepare for a hearing. Continuances are at the sole discretion of the BAA.

Rule 13: Subpoenas for Production of Records and to Appear.

Upon request by any party or intervenor to a proceeding before the Board made at least 14 days prior to hearing, any member of the Board may issue subpoenas involving the party's or intervenor's case, under the seal of the Board. However, a party may not subpoena another party to the action for the production of records. Subpoenas may command the designated witness to appear with or without records and to testify at the specified time and place of the Board hearing. Witness fees and mileage shall be tendered by the party or intervenor procuring the subpoena, as in civil actions in district court. The subpoena shall be served personally no later than 7 days prior to hearing, unless the recipient of the subpoena agrees to waive service and copies of any subpoena and proof of service shall be provided to the opposing party within 48 hours of service.

Rule 14: Hearing Location and Schedule

A schedule of forthcoming hearing dates will be published on the Board's website. All hearings will be conducted at 1313 Sherman Street, Room 315, Denver, Colorado unless the Board orders otherwise. Upon request to the Board staff three or more business days prior to hearing, accommodations may be made for the electronic appearance of the parties.

Rule 15: Conduct of Hearing by Board Members

All hearings shall be conducted by one or more members of the Board and all final decisions shall be rendered by at least two members of the Board.

Rule 16: Testimony Under Oath

All testimony in Board proceedings shall be given under oath, administered by the Board member chairing the hearing.

Rule 17: Record of Proceedings and Access

- a. All Board hearings shall be recorded in a manner permitted by law.
- b. Copies of documents or materials maintained by the Board or the Board's administrator which are required by law to be accessible by or disclosed to the public may be obtained for a reasonable fee during reasonable times.

Rule 18: Order of Proceedings in Hearing and Rebuttal and Surrebuttal

- a. The order of proceedings in Board hearings shall be as follows:
 - 1. Opening statements are limited to no more than ten minutes unless otherwise ordered by the Board.
 - 2. Presentation of evidence by the petitioner followed by cross-examination by the respondent or intervenor, as appropriate;
 - 3. Presentation of evidence by the respondent followed by cross-examination by the petitioner or intervenor, as appropriate;
 - 4. Presentation by any other party or intervenor followed by cross-examination as appropriate;
 - 5. The Board, at any time, may question any witness; and
 - 6. Closing statements are limited to no more than ten minutes unless otherwise ordered by the Board. In its discretion the Board may order written briefs and corresponding filing deadlines.
- b. The parties may conduct rebuttal and surrebuttal as the Board, in its discretion, may order.

Rule 19: Burden of Proof, Rules of Evidence and Audio and Video Evidence

- a. The petitioner shall have the burden of proof.
- b. Every party to the proceeding shall have the right to present its case or defense by oral and documentary evidence. The rules of evidence shall, to the extent practicable, conform with those in civil non-jury cases in the district courts and the provisions of the State Administrative Procedure Act, article 4, title 24, C.R.S.
- c. Audio, video and other similar evidentiary displays are permitted unless the Board rules otherwise or the Governor's Office of Information Technology guidelines indicate otherwise. It is the sole responsibility of the sponsor of any electronic evidence to present the evidence in such a manner that it complies with the Governor's Office of Information Technology guidelines.

Rule 20: Copies and Size of Evidence

- a. Xerox copies, photographic copies, or copies made by other types of similar procedures may be admitted in evidence or substituted in place of the original documents.
- b. When oversized exhibits or materials are offered into evidence or made a part of the record, the Board may order them to be reduced to a specified size. When voluminous exhibits or materials are offered into evidence or made a part of the record, the Board may require that the contents be summarized.

Rule 21: Submission of Stipulations/Agreements as to Facts and/or Law

- a. Parties are encouraged to save time at hearing by stipulating in advance to the facts or the law when the facts or the law are not in dispute. Such agreements may be reduced to writing and filed with the Board as soon as practicable. The filing of such agreements shall conform with the service requirements set forth in Rule 5.
- b. When no factual disputes exist, the Board may determine the matter after hearing oral argument from the parties.

Rule 22: Board Decisions

All decisions of the Board shall be in writing and shall include the description and location of the property when applicable and the findings, conclusions and order of the Board. A decision of the Board must be agreed to by two members of the Board. The decision of the Board shall be communicated to all parties of the proceedings.

Rule 23: Declaratory Orders

- a. The Board may issue a declaratory order to terminate a controversy or to remove an uncertainty as to the applicability to any legal entity of any statutory provision or any rule or order of the Board.
- b. The order may be sought by written motion, if the controversy or uncertainty arises in a pending Board matter, or by written petition if the controversy or uncertainty did not arise in any pending Board matter. The motion or petition shall identify the controversy or uncertainty and state what order the movant or petitioner seeks and why.
- c. The application or petition shall outline the requested relief.
- d. The Board has the sole discretion to decline to enter a declaratory order.

Rule 24: Dismissal for Lack of Jurisdiction

Whenever it appears that a matter pending before the Board involves questions over which the Board does not have jurisdiction, the matter may be dismissed on motion of any party or intervenor to the action or on the Board's own motion.

Rule 25: Suspension of Rules

The Board may suspend any of its rules upon motion of a party or intervenor or by the Board upon its own motion when the interests of justice or fairness so require.

Editor's Notes

History

Rule 11 eff. 09/14/2013.

Entire rule eff. 08/15/2019.