

Legal News You Can Use

Van Kerrebrook & Associates P.C. | Attorneys at Law

Whose protest is this?

by Mary A. Van Kerrebrook

The last few years have seen a flurry of case law on protests and lawsuits filed in a “wrong” name. Most of these cases hold that such protests and suits can be dismissed. Are there any exceptions? How can consultants minimize the risks? And is help on the way?

Who may protest?

Section 41.44 (d) of the Tax Code says that anyone claiming an interest in property may file a protest. Most protests and lawsuits are filed by the record title owner (shown in the county’s deed records) as of January 1. Those who buy property after January 1 and before May 31 may also protest. When a timely protest is filed by the prior owner, those who acquire property after that may continue the protest or suit. And, tenants who are contractually obligated to pay property taxes (typically in single-tenant buildings) may protest and sue.

What can go wrong?

There is often little time between the consultant’s hiring and the protest deadline in which to confirm the record title owner as of January 1.

Some property managers — or even owner representatives — may not know the precise record title owner name.

Appraisal district records may have an incorrect name. But the same appraisal district may refuse to process a protest unless it includes the incorrect name shown in the appraisal district’s records.

E-protests are increasingly common, but may not include a field for consultants to list the protesting party(s).

What’s your plan?

Tax consulting contracts may make the client responsible for: (a) telling you the precise, current record title owner’s name, and (b) immediately notifying you when the property is sold or conveyed. When possible, the best practice is to get a copy of the most recent deed; the record title owner is the “Grantee.” Or, ask for the owner’s title policy; the owner is listed as the “insured.” (Make sure that you get the owner policy and not the lender’s policy — the lender’s policy is usually headed “Mortgagee Policy”).

When time is short, include all potentially correct names as protesting parties on the protest. Ex: tenant, owner per



Mary A. Van Kerrebrook has met a fair number of property owner representatives and property managers who are not quite sure of their property’s record title ownership. While she hasn’t lost yet on this issue, she will be happy if and when HB 1887 becomes law.

CAD records, actual owner, “common name” of actual owner (see below). Then, try to figure out record title ownership as soon as possible. You can later delete any unnecessary parties, but you cannot add.

E-protest with caution, if at all. And always file paper protests, even if you’re also filing an e-protest. E-protest websites may not allow you to list all protesting names — or may even populate the name field automatically from appraisal district records. Then — adding insult to injury — the appraisal district may try to get an appeal dismissed because it was purportedly filed in the wrong name. Filing a paper protest will give you the room to list the correct owners, tenants, and anyone else who should be listed. (While a protest may be made by multiple parties, do make clear that you are only filing one protest per property).

Whenever appropriate, file a name change form with the appraisal district. If necessary, you can even protest to determine ownership under Section 41.41(a) (7).

Are there ANY exceptions?

Case law creates some ways to avoid the “gotcha” of listing the wrong owner. These include: (a) when a property has a common or assumed name, a protest in that common or assumed name is valid, (b) sometimes the correct name is actually not in the deed records, as when title to property has been passed under a will but the will is not recorded, or a company has merged or changed its name with the Secretary of State but did not re-title the property, and (c) minor misspellings are not usually a problem.

Is help on the way?

Yes. Currently pending in the Texas state legislature is HB 1887, which states that a notice of protest may not be found untimely or insufficient based on the owner named, if the appraisal records show the person as owner, the person is an affiliate of the owner, or the protest’s identification of the owner is not materially misleading.

Mike's Top Ten Tips For ARB Hearings

by Michael Saegert

"The other teams could make trouble for us if they win." – Yogi Berra

Spring means baseball, flowers, and looming ARB hearings. While I don't have Yogi Berra's turn-of-phrase, I hope that my suggestions — gleaned from 13 years of watching tax agents' triumphs, disasters, and everything in between — will help you "swing for the fences."

Know the rules – Don't assume that ARB and CAD representatives know every tax law and hearing rule, especially if you're citing one that is seldom considered. Take the Tax Code and ARB rules to your hearings, so that you can cite a law or rule if needed. The ARB will appreciate your professionalism and respect for the rules. *Install an electronic version of the Tax Code and local hearing rules on your laptop, so you can easily search and cite them when needed.*

Look at last year's evidence – Appraisal records errors (such as mistakes in square footage) can persist from year to year. Copies of last year's hearing evidence can help. You can show where the mistake is, how the CAD/ARB addressed it last time, and how to fix the problem. Proof of a recurring problem can also undermine the credibility of CAD arguments. *Get historical information inexpensively from the CAD, including last year's evidence and ARB audio recording, under the Texas Public Information Act.*

Pictures are worth a thousand words.

Photos — especially color photos — can persuasively show property defects and other important characteristics. Aerial photographs show where the subject and comparables are located — and why those comparables are or are not relevant. *Online resources like Google Earth (www.earth.google.com) and Bing maps (www.bing.com) are enormously useful. Include date stamps showing when a photograph was taken, to help respond to claims that a picture is too old or too new to bear on the assessment date.*

Honesty is vital, especially when uncontroverted evidence detracts from your case. Show that you are trustworthy by acknowledging this evidence up front. This might even make the ARB more open to your arguments. *Submit copies of the CAD's documents with your own evidence.* You can then de-emphasize the strengths of the CAD's position, highlight any irregularities, and help the ARB focus on central issues.

Show up on time and use hearing affidavits – You may inadvertently miss a hearing due to a calendaring error, for example. So, once a hearing is scheduled, consider submitting an affidavit with your evidence under Tax Code Section 41.45(b). This prevents a protest from being "no-showed," but won't affect your ability to personally attend the hearing. *Use the State Comptroller's form "Property Owner's Affidavit of Evidence to the Appraisal Review Board."* Submit the completed form with your evidence. And, if you later lose your working file, you can get copies from the CAD records.

If it sounds like an agreement on value, it's probably an agreement on value – When CAD and property owner representatives agree on a property's value, the agreement is final. If the CAD representative agrees with your opinion of value at the ARB hearing, your client will still get an Order stating that he has the right to appeal. But when he files the appeal, the CAD will move to dismiss it, after listening to the ARB recording. *So, insist that any settlement be formalized under Tax Code Section 1.111(e). The ARB may ask you for an opinion of value when a hearing starts. If you have one, give it, but premise it by stating that your opinion of value may be revised up or down based on evidence given at the hearing.*

Give each ARB member an outline of your presentation.

This will keep you organized, help emphasize your main ideas, and draw attention to issues that the CAD representative may be unable to address. *The outline should be only page long and on colored paper.* This sets the outline apart from the many other pieces of paper in front of the panel.

Look professional. First impressions matter. Avoid political, religious, or revealing attire, bizarre haircuts, and the like.

Have a closing. Take one minute or less to close your presentation with confidence, and state clearly how you want the ARB to rule. Emphasize your case theme and summarize key facts. Your close should show that you understand both sides' arguments, presented things fairly, and that the relief you seek is appropriate. *Consider using a rhetorical question. These are not so much questions as persuasive statements. For example: since A and B are undisputed, isn't C the result?*

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In limited circumstances, ask the ARB to set aside a panel recommendation. Yogi's saying that "It ain't over 'til it's over" applies to both baseball and ARB decisions. If a panel recommendation clearly violates state law, contact the ARB Chairman in writing immediately. The ARB can set aside errors of law, but does so rarely and only at full Board meetings. Include with your written request any supporting documentation, and cite the applicable authority. *Although panel recommendations are seldom set aside, this may be possible if a clear error of law is shown.*



Michael Saegert was formerly legal counsel to the Harris County Appraisal Review Board, one of the largest administrative appeal boards in the United States. His responsibilities included teaching public officials about local property taxation.

Mike's Top Ten Tips are general observations, should not be considered legal advice, and are not based on any specific actions or inactions of any particular individual, living or dead.

Free Form: Texas Public Information Act Request

by Mary A. Van Kerrebrook

Under the Texas Public Information Act, government entities must make most information available to the public upon request. No one should make harassing or repetitive requests. But do invoke the law to find needed information. Requests should be sent to the entity's public information officer. The public information officers of some major Texas appraisal districts are listed below. Others may be located through an internet search or phone call.

While most government entities follow the law, the best practice is to send your request by certified mail or fax, so you'll have proof of receipt. (The law also allows emailed requests.) The entity must respond within a reasonable time, which many interpret to mean ten days. The entity may require payment of limited costs associated with the request; these should be minimal unless you're requesting a very high volume of items.

Dear _____:

I am writing under the Texas Public Information Act to request copies of the following:

[Specifically list what you are requesting. Ex: all evidence submitted by the ____ Appraisal District at the 2010 Appraisal Review Board hearing on tax account number 123-456-789-1011.]

Please let me know if there are any costs associated with this request, and I will pay them. Many thanks for your help.

Yours truly,

Public Information Officers for Major Texas CADS

Ms. Kelly Sherbert
**Harris County
Appraisal District**
13013 Northwest Freeway
Houston, Texas 77040-6305

Mr. Rick Kuehler
**Dallas Central
Appraisal District**
2949 North Stemmons
Freeway
Dallas, Texas 75247

Ms. Barbara Adan
**Bexar County
Appraisal District**
411 North Frio
San Antonio, Texas 78207

Ms. Mary McCoy
Tarrant Appraisal District
2500 Handley-Ederville Rd.
Ft. Worth, Texas
76118-6982

Ms. Karen Prinz
**Travis Central
Appraisal District**
8314 Cross Park Drive
Austin, Texas 78754

If you have a request or suggestion for the next Free Form, email it to Mary Van Kerrebrook at mary@vkalawyers.com

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Van Kerrebrook & Associates P.C. works with tax consultants and property owners in lawsuits against appraisal districts in Harris, Fort Bend, and nearby counties. This newsletter is not legal advice on any specific situation, and does not create an attorney-client relationship.