

NOTICE OF FINAL RULEMAKING
TITLE 16. TAX APPEALS
CHAPTER 4. STATE BOARD OF EQUALIZATION

PREAMBLE

<u>1. Articles, Parts, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 1	New Article
R16-4-101	New Section
R16-4-102	New Section
R16-4-103	New Section
R16-4-104	New Section
R16-4-105	New Section
R16-4-106	New Section
R16-4-107	New Section
R16-4-108	New Section
R16-4-109	New Section
R16-4-110	New Section
R16-4-111	New Section
R16-4-112	New Section
R16-4-113	New Section
R16-4-114	New Section
R16-4-115	New Section
R16-4-116	New Section
R16-4-117	New Section

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 42-16154(C)

Implementing statute: A.R.S. §§ 42-16157, 42-16158, and 42-16159

3. **The effective date of the rule:**

a. **If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable

b. **If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening 26 A.A.R. 1708

Notice of Proposed Rulemaking: 26 A.A.R. 1679

5. **The agency's contact person who can answer questions about the rulemaking:**

Name: George Shook

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6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. The SBOE has functioned with procedures that

have not been formally promulgated as rules since 1996. In this rulemaking, the SBOE makes the required rules.

Mara Mellstrom, Policy Advisor to the Governor, provided an exemption from Executive Order EO2016-03 by e-mail dated February 8, 2017 and Trista Guzman Glover provided an exemption from Executive Order EO2020-02 by e-mail dated on May 5, 2020. The SBOE obtained approval from the Office of the Governor for the Final Rulemaking on December 22, 2021

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The SBOE does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **A summary of the economic, small business, and consumer impact:**

The economic impact of the rulemaking will be positive for the SBOE, petitioners, and respondents. The SBOE will become compliant with Arizona Revised Statute § 42-16154 requiring the SBOE to establish these rules. This will create efficiencies in functioning for the SBOE and eliminate uncertainty caused by failure to have the required procedural rules.

10. **A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

Under R16-4-101 added definitions for Chairman and SBOE Chairman.

Under R16-4-104(A)(4)(b) explains the filing of a petition by electronic means in detail. Under R16-4-104(A)(4)(c) was added for compliance (see ARS 42-16051; 41-16052; 42-16053).

Under R16-4-104(A)(5) the reference was changed to affect either party to the hearing and the word “shall” was changed to “must” for submission by US Postal Service or in-person. The term “business days” added to clarify the deadline to file appeals to the SBOE.

Under R16-4-104(A)(5)(c)(i) a typographical error was corrected to require five copies of petitioner evidence to be submitted to the SBOE.

Under R16-4-104(A)(6) changed the wording to more closely follow statute. The word “shall” has been changed to “may” to accommodate issues raised by the assessor, or the Department, and the petitioner’s rebuttal of those issues. The SBOE changed the number of copies of evidence to reflect current practices. The term “business days” clarifies the correct number of days.

Under R16-4-104(A)(7) the word “shall” has been changed to “may” to reflect the discretion of the SBOE.

Rule R16-4-104(A)(9), the SBOE removed this rule as originally written, as it was determined to be superfluous.

Under R16-4-104(D), as changed, this rule informs the taxpayer the SBOE hearings are open to the public and that evidence submitted during the hearing becomes public information unless otherwise restricted by law.

Under R16-4-110, as changed, this rule redefines standard of proof and annotates the citing of applicable statutes.

Under R16-4-110 is not a material change to the proposed rules. The new verbiage immolates the subpoena criteria used by most Arizona non-judicial agencies.

Under R16-4-116, as changed, this rule responds to public comments requesting a clarification of a process for a review of a rendered decision within the jurisdiction of the SBOE. This rule is a material change to the proposed rules.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The SBOE submitted the Notice of Public Rulemaking to the Arizona Secretary of State. The date of publishing in the Arizona Administrative Register on July 31, 2020. The official public comment period began on September 29, 2020 and ended on October 30, 2020. The SBOE submitted a Notice of Supplemental Proposed Rulemaking to the SOS. The date of publishing in the Arizona Administrative Register is September 17, 2021. The official public comment period began on September 17, 2021 and ended on October 18, 2021.

The SBOE received comments from stakeholders and SBOE members. Included in the comments were several observations regarding the proposed rulemaking. Not all comments referenced the proposed rules. The SBOE received comments from SBOE Board members Mary Chandler, Susan Fair and Daniel Swango, and Department of Revenue employee Jolene Christopherson. Other comments came from Paul Euler, Jodi Bain, Thomas Naifeh, Kathryn Wiseman, Gail Sharp, and Jeff Nolan, property tax agents and/or their staff. The response to the comments and observations resulted in the clarification of the proposed rules. Nothing in the Notice of Final Rulemaking is a significant change to the Supplemental Proposed Rules.

As permitted under A.R.S. § 42-16161(A), the SBOE has chosen to offer electronic filing as a convenience to taxpayers. Several comments claimed that the electronic filing procedures were burdensome to the taxpayer. The SBOE mitigated any additional burdens caused by electronic filing procedures. The petitioner may elect to file paper documents instead. The SBOE has installed advanced technology and enhance procedures during and after the comment period that have overcome some of the contentions regarding electronic filing. This is a work in progress.

Several comments concern the SBOE's inability to keep documents confidential in defiance of Arizona Open Meeting and Public Record laws. These comments addressed the requirement for county assessors to hold income information for statutory shopping-

center valuation in confidence under A.R.S. § 42-13202(B). Statutes also set the requirements for the disclosure of confidential material. Disclosure is permitted for some court and administrative proceedings under A.R.S. § 42-2003(C). This applies to SBOE hearings because the taxpayer is a party to these cases.

The SBOE has experienced submissions of incomplete petitions. The Department created forms and instructions for submitting petitions. Along with the petition form, the Department requires a copy of the assessor's decision. In the past, some petitions have included only an excerpt of the assessor's decision and not the complete decision. R16-4-104(A)(4)(a)(ii) makes clear that all pages of the assessor's decision are required.

Public comments were made regarding SBOE subpoenas rule and the review of an SBOE Decision. In R16-4-111 and R16-4-116, respectively, A.R.S. § 41-1062 and A.R.S. § 42-16161(D) provide the SBOE with the discretion to issue subpoenas to compel testimony from witnesses. R16-4-111 conforms as closely as possible to Rule 45 of the Arizona Rules of Civil Procedure. A.R.S. § 41-1062 requires that rules for review of decisions conform as closely as is practicable to Rule 59 of the Arizona Rules of Civil Procedure. Both R16-4-111 and R16-4-116 were modeled after similar rules used by other agencies that conduct quasi-judicial hearings.

The SBOE follows the dictates of Arizona laws and complies with the Open Meeting and Public Records laws § 38-431 et seq, § 39-121, and §41-151. A.R.S. § 42-16161 allows the SBOE to accept petitions and evidence by electronic means. A.R.S. § 42-16161 provides that parties shall present evidence in person and that the SBOE decision will be based on evidence by the parties attending the hearings. Hearing officers make individual decisions at the conclusion of each hearing and hard copy mailed to the parties. The SBOE will consider all evidence available or presented at the hearing regardless if a party fails to attend a hearing. Evidence submitted to the SBOE becomes public information unless redacted by law.

Arizona Revised Statutes require the SBOE to mail written decisions to all parties and to the Department. A.R.S. § 42-16165 sets statutory deadlines for issuing decisions. The SBOE issues decisions during the hearing and within the statutory deadlines. Following a hearing, the SBOE will mail written decisions within a reasonable time as circumstances dictate. Such circumstances may include staff workloads, reviews by the Chairman and communication with parties and board members to ensure a correct description of the decision.

On-the-Record hearings are the result of coordination with all parties prior to being scheduled. The SBOE changed the wording of the proposed Rule R16-4-107 to indicate all parties must agree to the On-the-Record hearing. The SBOE complies with the American Disabilities Act and attempts to accommodate individual circumstances and may allow the use of testimony by telephone.

Arizona Revised Statute § 42-16162 directs the SBOE to render a decision that is just and proper. The SBOE may reject jurisdiction for an appeal because the appeal filing does not comply with Arizona Revised Statutes. The SBOE does not have the authority to determine if a property should be exempt from taxation. The SBOE cannot create exemptions. The SBOE does not have jurisdiction/authority to determine tax rates.

Copies of comments made by the public and interested parties are included in this package.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules in the rulemaking requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No federal law is applicable to the subject on any rule in this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The SBOE did not rely on nor submit an analysis regarding competitiveness of business.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None.

14. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

Section

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ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

R16-4-101. Definitions

“Assessor” means the county assessor of the county in which the property at issue in an appeal is located.

“Chairman” means the presiding member of the panel of SBOE board members in a particular appeal hearing.

“Department” means the Arizona Department of Revenue (ADOR).

“Motion,” aside from parliamentary procedures, means a written or oral request to the SBOE for an order or ruling regarding an appeal.

“On-the-Record” means a hearing conducted by reviewing submitted documents without taking oral testimony or argument.

“Petitioner” means a taxpayer or other person qualified to file an appeal and appear before the SBOE and, if applicable, an authorized representative of the taxpayer.

“Respondent” means a person or entity qualified to answer an appeal filed by a petitioner.

“SBOE” means:

The State Board of Equalization,

A member of the SBOE,

A panel of members of the SBOE (see A.R.S. § 42-16156(B)(2) and (3)), or

A hearing officer employed by the SBOE under A.R.S. § 42-16155 to hear appeals.

“SBOE Chairman” means director of the SBOE as described in § A.R.S. 42-16154.

R16-4-102. Jurisdiction of the SBOE

A. The SBOE hears appeals regarding the valuation or legal classification of real and certain personal property made by the assessor or the Department.

B. The SBOE hears appeals by petitioners regarding:

1. A.R.S. § 42-15105. A notice from the assessor pertaining to the valuation or legal classification of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use;
2. A.R.S. § 42-16053. The rejection by the assessor of a petition for failure to include substantial information;

3. A.R.S. § 42-16056. The decision by the assessor on a petition for review of valuation or legal classification;
 4. A.R.S. § 42-16157 or 42-16158. The decision by the assessor or the Department on a petition for review of valuation or legal classification;
 5. A.R.S. § 42-16252: A Notice of Proposed Correction decision issued by the assessor or the Department;
 6. A.R.S. § 42-16254: The decision made by the assessor or the Department regarding an error as described in A.R.S. § 42-16251(3) in a Notice of Claim;
 7. A.R.S. § 42-19052: The decision by the assessor pertaining to the valuation or legal classification of personal property; and
 8. A.R.S. § 42-19156: The decision by the assessor pertaining to the valuation of a mobile home.
- C. The SBOE hears an appeal by an assessor under A.R.S. § 42-16159 regarding an equalization order issued by the Department.
- D. The SBOE hears an appeal by the Department under A.R.S. § 42-16157 regarding a proposed valuation or legal classification or change in a valuation or legal classification made by the assessor.
- E. If the SBOE lacks jurisdiction regarding an appeal, the SBOE shall dismiss the appeal on its own motion.

R16-4-103. Representation before the SBOE

The following individuals may appear before the SBOE:

- A. An individual representing:
 1. The individual's interest,
 2. An estate or trust of which the individual is the legal representative,
 3. A partnership of which the individual is a partner, or
 4. A corporation or limited liability company of which the individual is an officer or an authorized representative,
- B. An attorney authorized to practice law in Arizona;
- C. A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;

- D. An authorized representative from the assessor's office;
- E. An authorized representative from the Department; and
- F. Other individuals allowed under Arizona Supreme Court Rule 39.

R16-4-104. Filing a Petition; Filing Deadlines

- A. To initiate an appeal under R16-4-102(B), a petitioner shall submit a petition to the SBOE.
 - 1. The petitioner shall use the correct petition form when initiating an appeal. The SBOE shall not accept a letter in place of the correct petition form. Except as noted, the correct petition forms are available on the Department's website and from an assessor.
 - a. Under A.R.S. §§ 42-15105, 42-16053, 42-16056, and 42-16157, the correct petition form is ADOR 82130 (for A.R.S. §§ 42-15105 the correct form is ADOR 82130NC);
 - b. Under A.R.S. § 42-16158, the correct petition form is SBOE EQ200, which is available on the SBOE website, or upon request from the SBOE;
 - c. Under A.R.S. § 42-16252, the correct petition form is ADOR 82179C;
 - d. Under A.R.S. § 42-16254, the correct petition form is ADOR 82179C-1; and
 - e. Under A.R.S. §§ 42-19052 and 42-19156, the correct petition form is ADOR 82530.
 - 2. If the petition is made under A.R.S. § 42-15105 and is submitted to the SBOE, the petitioner shall attach to the correct petition form a copy of the current form ADOR 82130AA, as applicable, which is available on the Department's website;
 - 3. The petitioner shall submit the correct petition form under subsection (A)(1) as follows:
 - a. Under A.R.S. § 42-15105 or § 42-16056, by U.S. Postal Service, by hand delivery to the SBOE office, or filed online using the SBOE Appeals application;
 - b. Under all other provisions, by U.S. Postal Service or hand delivery to the SBOE office.
 - 4. Submission of Petition to the SBOE.
 - a. The petitioner shall submit by mail or hand delivery to the SBOE with its petition:
 - i. A copy of the petition and attachments originally filed with the assessor or the Department; and
 - ii. A copy of the decision and attachments by the assessor or the Department regarding the original petition.

- b. For a petition electronically submitted to the SBOE under subsection (A)(3)(a), the petitioner shall complete the online form using the SBOE Appeals application. Those materials shown in (A)(4)(a)(i) and (ii) shall either be uploaded using the application or delivered to the SBOE in hard-copy form by hand or mail within 3 business days of the electronically-filed petition or the petition filing deadline, whichever is later. Petitioners may not use email to submit petitions and evidence.
 - c. Failure to comply with these requirements shall result in an administrative dismissal of the appeal.
5. Neither the Department nor the assessor forwards evidence previously submitted by the assessor or the Department to the SBOE. Parties to the hearing must submit evidence in person at the hearing or by U.S. postal service or hand delivered to arrive at the SBOE office three business days prior to the scheduled hearing:
- NUMBER OF COPIES:
- a. One copy of any evidence for property that is owner-occupied legal class 3 or another legal classification with a full-cash-value less than \$3 million;
 - b. Three copies of any evidence for property not described under subsection (A)(6)(a) and not valued by the Department; and
 - c. For property valued or classified by the Department under A.R.S. § 42-16158 at least 5-business days before the scheduled hearing, the petitioner and respondent shall deliver evidence to the respective parties as follows:
 - 1. The petitioner shall submit one copy of the evidence regarding the property valuation or classification to the Department, and five copies to the SBOE;
 - 2. The Department shall submit one copy of evidence regarding the property valuation or classification to the petitioner and five copies to the SBOE.
6. In compliance with A.R.S. § 42-16056 the SBOE may only consider issues previously raised with the assessor. The SBOE may admit new or additional evidence only if:
- a. The evidence directly relates to an issue previously raised with the assessor and
 - b. At least five business days before the scheduled hearing, the petitioner must provide, if applicable, amended income information, including an amended form ADOR 82300, and the appropriate income and expense form, to the assessor.

7. The SBOE will consider requests for multiple parcels, or petitions, to be heard together. The request must be made in writing, clearly identify all parcel numbers to be included and identify the qualifying basis (see A.R.S. 42-16051 et seq.) for the type of request described below:
 - a. The multiple parcels constitute a single economic unit;
 - b. The multiple petitions require a singular argument for all parcels;
 - c. The petitioner desires to hear multiple petitions on a single day's agenda;
 - d. The assessor's decision is for multiple parcels and the petitioner wants them heard together as a single appeal.
- B. To initiate an appeal under R16-4-102 (C) or (D), the Department or assessor shall submit a petition and proof of service of the appeal on the respondent to the SBOE before the date of the scheduled hearing.
- C. Arizona Revised Statutes creates deadlines for filing petitions to the SBOE. The petitioner is responsible to file the petition in accordance with the statute.
 1. The SBOE shall compute the period for filing a petition according to A.R.S. § 1-243.
 2. The taxpayer must properly deliver the petition to the SBOE office. The filing of the petition is timely if it:
 - a. Is received in the SBOE office before the end of the time-period;
 - b. Is postmarked on or before the end of the time period; or
 - c. Contains an electronic date that is on or before the end of the time-period.
- D. Evidence and testimony provided for SBOE consideration are, upon submission, rendered public information, unless restricted by law or court order. A.R.S. §§ 38-431 et seq., 39-121 et seq., and 42-2003(C)(1)(a).

R16-4-105. Motions

- A. A party shall:
 1. Serve a copy of any motion on all other parties. The party shall ensure a motion includes the factual and legal grounds supporting the motion and the requested action; and
 2. Submit proof of service on the other parties to the SBOE unless making the motion at the time of a scheduled hearing.
- B. A party may file a response stating any objection to the motion served under subsection (A).

- C. The SBOE, in its discretion, shall:
1. Decide whether to allow oral argument regarding a motion; and
 2. Decide whether to rule on a motion before or during a scheduled hearing. If the SBOE rules on a motion before a scheduled hearing, the SBOE shall serve the written ruling on all parties.

R16-4-106. Hearing

- A. As required under A.R.S. § 42-16163, the SBOE shall mail notice of an appeal hearing to all parties at least 14 days before the hearing. The SBOE shall include in the notice the date, time, and location of the hearing.
- B. Before a scheduled hearing, all members of the SBOE shall make known whether the member, as defined at A.R.S. § 38-502, has a substantial interest, as defined at A.R.S. § 38-502, in the matter to be heard by the SBOE. As required by A.R.S. § 38-509, the SBOE shall maintain the disclosure documents and make them available for public inspection.
- C. When the SBOE determines it is in the interest of the parties and the state, the SBOE shall allow one or all parties to participate in a hearing by telephone.

R16-4-107. On-the-Record Hearing; Failure to Appear

- A. Upon request of either party, the SBOE may conduct a hearing On-the-Record, only if all parties to the hearing agree.
- B. If all parties agree to an On-the-Record hearing, the SBOE shall review the evidence submitted by the parties, orally summarize the evidence for the record, and render a decision based on the submitted evidence.
- C. If the parties do not agree regarding an On-the-Record hearing, the SBOE shall:
1. Consider all the evidence submitted by the parties;
 2. Take oral testimony from or on behalf of the party opposing the On-the-Record hearing; and read the evidence into the record beginning with testimony by the petitioner, if present, or such submitted evidence followed by the testimony by the respondent, if present, or such submitted evidence; and
 3. Render a decision based on both the submitted evidence and oral testimony.

- D. If a party fails to appear at a scheduled hearing, the SBOE shall conduct the hearing as described in subsection (C).
- E. Consistent with R16-4-108(B), under both subsections (B) and (C); the SBOE shall enter the petitioner's evidence in the record before entering the respondent's evidence in the record.

R16-4-108. Hearing Procedure

- A. Unless otherwise provided by law, all SBOE hearings are open to the public.
- B. At a hearing, the SBOE shall ordinarily proceed as follows:
 - 1. Identification for the record of the docket number of the proceeding, the parcel number or account number of the property at issue, if applicable, the ownership of the subject property, the presiding SBOE member and/or members, and parties participating in the proceeding;
 - 2. Administration of oath or affirmation to all parties and witnesses who will offer testimony;
 - 3. The respondent will provide its recommendation for a reduction in noticed value or a change in legal class, if any; followed by opening statements by all parties, if requested by the SBOE;
 - 4. Presentation of testimony and evidence by the petitioner and witnesses;
 - 5. Presentation of testimony and evidence by the respondent and witnesses;
 - 6. Petitioner's rebuttal; and
 - 7. Questions by the SBOE; final arguments, if requested by the SBOE; and
 - 8. SBOE deliberation, motion, and the announcement of the decision.
 - 9. The decision of the SBOE shall include the full cash value, the applicable limited property value or limited property value rule, the legal classification or applicable legal classification allocation, and the assessment ratio.
- C. The SBOE may recess or continue a hearing for good cause.

R16-4-109. Rules of Evidence

- A. The SBOE shall accept oral evidence only when presented under oath or affirmation.
- B. The SBOE is not required to follow rules of evidence usually used in a court proceeding.

- C. The SBOE shall admit evidence that is relevant and not cumulative. The SBOE may consider objections to the admission of evidence in assigning weight to the evidence.
- D. At the SBOE's discretion, parties may call and examine witnesses, cross-examine witnesses, and introduce written evidence relevant to the proceeding.
- E. The SBOE may call and examine a witness and may examine a witness called by a party.
- F. The SBOE shall admit into evidence a copy of an original document if there is a showing of authenticity and relevance.

R16-4-110. Proof

Unless otherwise provided by law:

- A. The standard of proof in a hearing before the SBOE is a preponderance of the evidence, unless, some other standard of proof is required by law or statute. See e.g., A.R.S. § 42-16251(3)(e) which requires a standard of clear and convincing evidence;
- B. The decision made by the assessing agency is presumed to be correct. See e.g., A.R.S. § 42-16212(B). The petitioner has the burden to prove that the valuation and/or legal classification of the subject property is incorrect.

R16-4-111 Subpoenas

- A. In connection with a noticed hearing, the SBOE may issue a subpoena to compel the attendance of a witness at the hearing. A.R.S. § 42-16161(D)
 - 1. A party requesting a subpoena, or the SBOE on its own motion, shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
 - 2. The SBOE has discretion to issue or deny a subpoena based on the:
 - a. Relevance of the evidence sought,
 - b. Reasonable need for the evidence sought, and
 - c. Timeliness of the request.
- B A party requesting a subpoena shall:
 - 1. Draft the subpoena in the correct format, including:
 - a. The caption and docket number of the hearing;
 - b. The full name and address of the person ordered to appear;

- c. The time, date, and place to appear; and
 - d. The name, address, and telephone number of the party requesting the subpoena;
 2. Obtain the SBOE Chairman's signature on the subpoena;
 3. Ensure service of the subpoena on the person named in the subpoena under subsection (C); and
 4. Bear all subpoena-related costs.
- C. Unless otherwise provided by statute or administrative rule, a party requesting a subpoena shall have the subpoena served by a person who:
 1. Is at least age 18 and is not a party to the hearing;
 2. Delivers a copy of the subpoena to the person named in the subpoena;
 3. Hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
 4. Files with the SBOE a notarized proof of service, signed by the person who served the subpoena, certifying:
 - a. The date of service,
 - b. The manner of service,
 - c. The name of the person served, and
 - d. The amount of the mileage and witness fee paid.
- D. A party or a person served with a subpoena who objects to the subpoena may file an objection in writing with the SBOE. The party or person served with the subpoena shall:
 1. State in the objection the reasons for objecting and
 2. File the objection with the SBOE:
 - a. Within three days after service of the subpoena or
 - b. If the subpoena is served less than three days before the hearing, at the start of the hearing.
- E. The SBOE may quash or modify a subpoena if:
 1. The subpoena is unreasonable or imposes an undue burden or
 2. The evidence sought may be obtained by another method.
- F. Unless otherwise provided by statute or administrative rule, a party requesting a subpoena, or the SBOE, shall enforce the subpoena in the Superior Court of Arizona, in the appropriate

county. The party requesting enforcement shall name the SBOE as a party to any proceedings.

R16-4-112. Records of a Hearing

- A. The SBOE shall make a recording of every hearing. If a person makes a request by completing and submitting a Public Records Request form, the SBOE shall provide a copy of a hearing recording on its website, or any other electronic means, within three business days after the hearing. If the person wants a copy of the hearing recording in another format, the SBOE may charge the cost of providing the copy in the other format.
- B. At the party's expense, a party to a proceeding may record the proceeding using a recording device or court reporter.
- C. Subject to the limits imposed at A.R.S. § 39-121.03, a person may submit a written request to examine or be furnished a copy of a public record in the custody of the SBOE. As allowed under A.R.S. § §39-121.01(D)(1) and 39-121.03(A), the SBOE may charge a fee for providing a copy of a public record.
- D. While examining a public record, a person shall not remove the public record from the SBOE office.

R16-4-113. Withdrawal

- A. The petitioner may withdraw an appeal by providing written notice to the SBOE with a copy delivered to the respondent at least three business days prior to the scheduled hearing.
- B. If the petitioner submits a written notice of withdrawal to the SBOE fewer than two business days prior to the hearing or if the petitioner submits a written or oral notice of withdrawal at the hearing, the SBOE shall treat the request as a motion.

R16-4-114. Ex Parte Communications

- A. A party shall not communicate, either directly or indirectly, with a member of the SBOE about a substantive issue in a pending appeal unless:
 - 1. All parties are present,
 - 2. During a scheduled hearing where an absent party fails to appear after proper notice, or,
 - 3. By written motion where all parties receive a copy of the motion.

- B. If a member of the SBOE has received ex parte communications regarding an appeal, the member shall not participate in the appeal.

R16-4-115. SBOE Decision

- A. The SBOE shall mail a written copy of the decision within a reasonable time after the conclusion of the hearing. A.R.S. § 42-16164
- B. In its decision, the SBOE shall include the following:
 - 1. Docket number of the appeal;
 - 2. Parcel number or other identification of the property at issue;
 - 3. Separately stated findings of fact and conclusions of law;
 - 4. The decision regarding the property valuation or classification;
 - 5. Other matters before the SBOE related to the appeal; and
 - 6. The right of an aggrieved party to appeal the SBOE’s decision under A.R.S. § 42-16203 or § 42-16254(G).
- C. The SBOE shall mail a copy of the written decision to all parties and to the Department.

R16-4-116 Review of the SBOE Decision

- A. A party does not exhaust its administrative remedies after a hearing and decision by the SBOE if the party does not file a motion for rehearing or review.
- B. The SBOE may not rehear or review a decision if any of the following have occurred:
 - 1. A party has appealed the SBOE decision with the Arizona Tax Court or the time limit for appeal has expired pursuant to A.R.S. §§ 42-16168, 42-16203, or 42-16254(G).
 - 2. Expiration of a relevant statutory deadline pursuant to A.R.S. § 42-16165.
 - 3. The SBOE does not have jurisdiction over the matter for any other reason.
- C. No later than 10 days after a hearing in which the SBOE announced a decision, any party to that hearing may, pursuant to A.R.S. § 41-1062(B), file with the SBOE Chairman a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the SBOE Chairman rules upon the motion.

- D. A rehearing or review of the decision may be granted only for any one of the following causes that materially affect the rights of the moving party:
1. Any irregularity in the proceedings or abuse of discretion depriving the party of a fair hearing;
 2. Misconduct by a SBOE member, hearing officer or panel assigned to the hearing, or by the prevailing party;
 3. Accident or surprise that could not reasonably have been prevented;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 6. The findings of fact or decision is arbitrary, capricious, or an abuse of discretion; or
 7. The evidence does not support the findings of fact and/or the decision or is contrary to law.
- E. To file a motion for rehearing or review, a filing party shall specify in the motion the grounds on which the motion is based, and shall set forth facts and law in support of the rehearing or review. The affidavits must be served with the motion when a motion for rehearing or review is based upon affidavits.
- F. Any party may file a response to the motion within 10 days after the motion is served. Such a response may include supporting affidavits.
- G. Upon review of a motion for rehearing or review of the decision, and any response, the SBOE Chairman shall issue a ruling granting or denying the motion. If granted, the SBOE Chairman may modify the decision or grant a rehearing. An order granting a rehearing shall specify, with particularity, the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the original hearing may participate as parties at a rehearing.
- H. The SBOE Chairman, may on the SBOE Chairman's own initiative, order a rehearing or review of the SBOE decision for any reason for which a rehearing or review might have been granted on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the SBOE Chairman may grant a motion for rehearing or review,

timely served, for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor.

- I. At any time after a motion for rehearing or review is received by the SBOE or, the SBOE Chairman has ordered a rehearing or review, the SBOE Chairman may assign the case to an SBOE member or panel of SBOE members for rehearing or review.

R16-4-117. SBOE Member Participation in Matters before the SBOE

- A. A member of the SBOE shall comply with A.R.S. Title 38, Chapter 3, Article 8, regarding conflicts of interest. This requires, but not limited to:
 1. Refraining from participating in any manner in a SBOE decision regarding property in which the member or the member's relative has a substantial interest; and
 2. Refraining from participating in any manner in a SBOE decision regarding a petition submitted to the SBOE by an entity in which the member, or the member's relative, has a substantial interest.
- B. Remedies and penalties for violating A.R.S. Title 38, Chapter 3, Article 8 are specified at A.R.S. §§ 38-506 and 38-510.
- C. Members of the SBOE shall comply with the Open Meeting Laws of Arizona.