

TITLE MC-5
DEPARTMENT OF FINANCE
SUBTITLE 2
REAL PROPERTY TAX DIVISION
CHAPTER 203
RULES OF PROCEDURE AND FORMS FOR THE BOARD OF REVIEW

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SUBCHAPTER 1

GENERAL PROVISIONS

§5-203-1 Title. The rules of this chapter shall be known as the "Rules of Procedure and Forms for the Board of Review". [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC §3.48.680) (Imp: MCC §3.48.680)

§5-203-2 Purpose. These rules shall govern the procedure and forms to be used before the board of review of the County of Maui. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: MCC §3.48.680)

§5-203-3 Construction. These rules shall be construed to secure the just and efficient determination of proceedings before the board of review. These rules shall be read in conjunction with the Hawaii Revised Statutes, the Charter of the County of Maui, and the Maui County Code. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: HRS §§91-2, 246A-4; MCC §3.48.680)

§5-203-4 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Board" means the board of review of the County of Maui.

"Board" means the board of review of the County of Maui.

"County" means the County of Maui.

"Department" means the department of finance of the County of Maui.

"Director" means the director of finance or the director's authorized representative.

"Division" means the real property tax division of the department of finance.

"HRS" means the Hawaii Revised Statutes.

_____"Postmark" means the United States Postal Service or private delivery service date shown by the postage mark stamped on the envelope or other appropriate wrapper containing the notice of appeal.

_____ "Private delivery services" shall be those delivery services designated by the Internal Revenue Service as meeting 'the timely mailing as timely filing/paying' rule for tax returns and payments.

"Tax year" means the fiscal year beginning July 1st of each calendar year and ending June 30th of the following calendar year.

"Taxpayer" means a person who has filed an appeal to the board of review under section 3.48.595 of the Maui County Code. [Eff 12/5/02; am and comp 3/30/08; am and comp 6/5/10] (Auth: HRS Chapter 246A; MCC §3.48.680) (Imp: HRS §§91-1, 91-2; MCC §3.48.005)

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§5-203-5 Communications. Unless otherwise specified, all communications to the board shall be directed to the board of review of the County of Maui, 70 East Kaahumanu Avenue, Suite A-16, Kahului, Maui, Hawaii 96732. [Eff 12/5/02; am and comp 3/30/08] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: MCC §§3.48.635, 3.48.655)

§5-203-6 Organization. (a) The board shall elect annually a chair and vice-chair from among its members.

(b) The chair shall be the presiding officer of the board. The vice-chair shall serve as the presiding officer during the temporary absence, illness, or disqualification of the chair. The presiding officer shall:

- (1) Open all meetings of the board at the appointed time by taking the chair and calling the meeting to order.
- (2) Call for the approval of the minutes of any preceding meeting.
- (3) Maintain order and proper decorum.
- (4) Announce all matters properly brought before the board.
- (5) Review all matters properly brought before the board, and, when appropriate, call for votes upon such matters and announce the results.
- (6) Authenticate by signature all acts of the board as may be required by law, unless delegated to the director.
- (7) Do and perform such other duties as may be required by law.
- (8) Make known all rules of order when so requested, and to decide all questions of order.

(c) Secretary. The director, or a person designated by the director, shall serve as secretary of the board and shall:

- (1) Receive, submit, and coordinate all matters properly brought before the board in consultation with the chair.
- (2) Provide agenda support materials for meetings.

- (3) Forward to the proper parties all communications and other matters.
- (4) Perform all clerical duties and services as the board shall from time to time direct, and such as shall by law or these rules require.
- (5) Maintain all records of the board. [Eff 12/5/02] (Auth: MCC §§3.48.620, 3.48.680) (Imp: HRS §§91-2, 92-3; Charter §13-2.9)

§5-203-7 Meetings. (a) The board shall meet at some centrally located, publicly accessible place in the county commencing not later than June 1 of each year and shall hear, as speedily as possible, all appeals presented for each year.

(b) The board shall conduct its meetings in accordance with Robert's Rules of Order, newly revised. The rules of the board shall govern in the event of a conflict between the rules of the board and Robert's Rules of Order, newly revised.

(c) The board shall comply with HRS chapter 92.

(d) Special meetings may be called by the chair, the Director, or a majority of board members.

(e) Social, informal gatherings of two or more members of the board where official business is not discussed shall be considered chance meetings and not subject to these rules.

(f) The board shall allow all interested persons an opportunity to submit data, views, arguments or oral testimony on any agenda item in an open meeting. The board may remove any person who wilfully disrupts a meeting so as to prevent and compromise the conduct of the meeting. The board may also provide for the recordation of oral testimony and may place a reasonable time limit on such testimony, which in any event shall be not less than three minutes per person. [Eff 12/5/02] (Auth: Charter §13-9; MCC §§3.48.625, 3.48.680) (Imp: HRS §§91-2, 92-1)

§5-203-8 Quorum. A majority of all members to which the board is entitled shall constitute a quorum to do business, and the affirmative vote of a majority of all members to which the board is entitled shall be necessary to take any action. [Eff 12/5/02] (Auth: HRS

§92-15; Charter §13-2; MCC §3.48.680) (Imp: HRS §92-15; Charter §13-2)

§5-203-9 Minutes. (a) The board shall keep written minutes and may provide for the audio recording of meetings. The written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting.
- (2) The members of the board recorded as either present or absent.
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken.
- (4) Any other information that a board member requests be included or reflected in the minutes.

(b) The written minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosure would be inconsistent with HRS chapter 92. It shall not be necessary for the board to transcribe audio recordings unless requested for purposes of rehearing or court review. Any person requesting a transcript of the audio recording shall pay the costs incurred in the preparation of the transcript. [Eff 12/5/02] (Auth: HRS Chapter 246A, §92-9; MCC §3.48.680) (Imp: HRS §92-9)

§5-203-10 Board records. (a) Board records that are "government records", as defined in HRS chapter 92F ("Uniform Information Practices Act"), as amended, shall be disclosed according to the provisions of that chapter. All costs required by any law, rule, or ordinance shall be paid by the requesting party. [Eff 12/5/02] (Auth: HRS Chapter 246A, §§92F-2, 92F-12, 92F-18; Charter §13-9; MCC §3.48.680) (Imp: HRS §§92F-2, 92F-12, 92F-18; Charter §13-9)

§5-203-11 Computation of time. In computing any period of time under these rules, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a

Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: HRS §91-2)

§5-203-12 Appearance and practice before the board.

(a) Any individual taxpayer may appear for himself before the board. The following persons may appear in a representative capacity before the board:

- (1) Attorneys at law qualified and entitled to practice before the Supreme Court of the State of Hawaii.
- (2) Appraisers deemed qualified by the board, and real estate brokers licensed under the laws of the State of Hawaii.
- (3) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation authorized to appear for such individual firm, association, partnership, or corporation.
- (4) A person representing an immediate member of such person's family.
- (5) The director, or any representative of the director.

Upon good cause shown, any other person authorized in writing by a taxpayer to act in a representative capacity may appear on behalf of the taxpayer.

(b) All persons appearing in proceedings before the board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Hawaii. If any such person does not conform to such standards, the board may decline to permit such person to appear in a representative capacity in any proceeding before the board.

(c) No former employee of the department or the department of the corporation counsel may appear in a representative capacity in a proceeding involving a matter that the former employee investigated or passed upon while in such employ. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: HRS §91-2; MCC §3.48.600)

§5-203-13 Disclosure of conflict. Whenever a conflict of interest or other ethical question is raised

regarding a member of the board, the member shall promptly make a full disclosure of the circumstances to the board. When the member is deemed by the board of ethics to have a conflict of interest, that member shall be disqualified from voting in all actions relating to such matter. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: HRS §91-2; Charter §§10-1, 10-4.1.f)

§5-203-14 Attendance. No member shall be absent from the service of the board, unless the member is sick or otherwise unable to attend and has so advised the chair before the meeting. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: HRS §91-2)

§5-203-15 Petitions for adoption, amendment, or repeal of rules. Any interested person may petition the board for the adoption, amendment, or repeal of a board rule. Such petitions shall be in writing, describe and state the reasons for the proposed change with particularity, and be submitted to the director at the offices of the division. Within thirty days after reviewing such petition, the board shall either deny the petition in writing, stating its reasons for the denial, or initiate proceedings in accordance with HRS chapter 91. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-6; MCC 3.48.680) (Imp: HRS §91-6)

§5-203-16 Declaratory rulings. (a) Any interested person may petition the board for a declaratory order as to the applicability of any statutory provision or any rule or order of the board.

(b) A person seeking a declaratory ruling shall file the petition with the board. The petition shall include:

- (1) The name, address, and telephone number of the petitioner.
- (2) A statement of the nature of petitioner's interest, including reasons for the submission of the petition.
- (3) A designation of the specific provision, rule or order in question.
- (4) A complete statement of facts.
- (5) A statement of the position or contention of

- the petitioner.
- (6) A memorandum fully discussing the reasons for such position or contention.
 - (c) The board may refuse to issue a declaratory ruling where:
 - (1) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future.
 - (2) The petitioner's interest is not of the type that would give petitioner standing to maintain an action if petitioner were to seek judicial relief.
 - (3) The declaratory ruling concerns matters in litigation or matters which are reasonably expected to arise in litigation.
 - (4) The matter is not within the jurisdiction of the board.
 - (d) Where any question of law is involved, the board may refer the petition to the department of the corporation counsel. The board may also refer the petition to other agencies when necessary or desirable.
 - (e) The board shall promptly notify the applicant of the disposition of the petition. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-8; MCC §3.48.680) (Imp: HRS §91-8)

SUBCHAPTER 3

APPEALS

§5-203-17 Filing of appeal. (a) Any taxpayer seeking to appeal an assessment before the board shall file a notice of appeal with the board at the offices of the division during the period beginning March 15 and ending April 9 of the preceding tax year.

(b) An appeal shall be considered timely made if the appeal is filed by personal delivery, private delivery service, or U.S. Postal Service with a postmark date during the period for filing appeals and the notice of appeal is properly addressed to the board. All other appeals shall be deemed untimely and shall not be accepted by the board. Untimely appeals received by the board shall be returned to the sender with notification that the appeal was untimely filed and not accepted by the board.

(c) The appellant shall include the fee required by ordinance for each appeal at the time of filing. Any appeal received without the required fee shall not be filed or accepted by the board, but shall be returned with notification that the required fee was not paid.

(d) An original and one copy of the notice of appeal, including any supporting documents attached to the application form, shall be submitted. [Eff 12/5/02; am and comp 3/30/08; am and comp 6/5/10] (Auth: HRS Chapter 246A; Charter §13-2(15); MCC §§3.48.655, 3.48.660, 3.48.680) (Imp: MCC §§3.48.655, 3.48.660)

§5-203-18 Contents of appeal. (a) The notice of appeal shall be in writing and shall at time of filing:

- (1) Provide the name, mailing address, phone numbers, and signature of the taxpayer;
- (2) Provide, if applicable, the printed name, mailing address, and phone numbers of the authorized person filing on behalf of the taxpayer;
- (3) State the total valuation claimed by the taxpayer for the property if the appeal is based upon the ground that the assessed value of the property for tax purposes is excessive;
- (4) State the grounds of appeal; and
- (5) Provide the tax map key number.

(b) Any notice of appeal without the information required by paragraphs (3), (4), and (5) of subsection (a) shall be deemed incomplete, and such notice of appeal shall not be accepted by the board, but shall be returned with notification that the notice of appeal was incomplete.

(c) Any notice of appeal submitted during the filing period without the information required by paragraphs (1) and (2) of subsection (a), shall be given fifteen calendar days after filing of the notice of appeal to make the application complete. Failure to perfect the appeal within the fifteen days shall be grounds for dismissal, and the appeal shall not be accepted by the board, but shall be returned with notification that the notice of appeal was incomplete and the appeal dismissed.

(d) Any notice of appeal may be amended at any time before a decision of the board, provided that the amendment does not substantially change the dispute or lower the valuation claim. [Eff 12/5/02; am and comp 3/30/08; am and comp 6/5/10] (Auth: HRS Chapter 264A; Charter §13-2(15); MCC §§3.48.655, 3.48.680) (Imp: MCC §3.48.655)

§5-203-19 Second appeal. In every case in which a taxpayer has an appeal of an assessment pending before the tax appeal court, the taxpayer shall not be required to file a notice of the second appeal of the assessment with the board; provided the tax court appeal has not been decided before April 9 preceding the tax year of the second appeal and, provided further, the director gives notice that the assessment has not been changed from the assessment which is the subject of the tax court appeal. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC §§3.48.610, 3.48.680) (Imp: MCC §3.48.610)

§5-203-20 Notice of hearing of appeal. (a) The director shall provide written notice of hearing of appeal to the appellant by mail at least fifteen days before the hearing.

(b) The notice shall state:

- (1) The date, time, place, and nature of hearing.
- (2) The legal authority under which the hearing is to be held.

- (3) The particular sections of the ordinances and rules involved.
- (4) In plain language, the issues involved and facts alleged.
- (5) That the appellant may retain counsel and that another person may appear on appellant's behalf.
- (6) That persons with disabilities will be accommodated when attending the hearing. [Eff 12/5/02; am and comp 6/5/10] (Auth: HRS Chapter 246A, §91-9; MCC §3.48.680) (Imp: HRS §§91-9, 91-9.5)

§5-203-21 Docket. The board shall maintain a docket of all appeals and each appeal shall be assigned a number. The name and address of each person making an appearance in a representative capacity shall be noted in the docket. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-2; MCC §3.48.680) (Imp: MCC §3.48.680)

§5-203-22 Consolidation. The board, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more appeals that involve substantially the same parties or substantially the same or closely related issues if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-2; MCC §3.48.680) (Imp: HRS §91-2)

§5-203-23 Evidence. (a) The board shall not be bound by the rules of evidence, but may receive any oral or documentary evidence. The board may exclude irrelevant, immaterial, or repetitious evidence. The board shall give effect to the rules of privilege recognized by law. The presiding officer shall rule on the admissibility of evidence and upon any objections made to the admission or exclusion of evidence.

(b) Documentary evidence may be submitted to the board in the form of copies or excerpts, if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy

with the original.

(c) Each party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of facts, and shall have the right to submit rebuttal evidence.

(d) The board may take notice of judicially recognizable facts. In addition, the board may take notice of generally recognized technical or scientific facts within members' specialized knowledge; but parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Notices of assessments, records of assessments, and lists or other records of payments and amounts unpaid prepared by, or under the authority of, the director, or copies thereof, shall be prima facie proof of the assessment of the property or person assessed, the amount due and unpaid, and the delinquency in payment and that all requirements of law in relation thereto have been complied with.

(f) The appellant shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-10; MCC §§3.48.065, 3.48.680) (Imp: HRS §91-10; MCC §3.48.065)

§5-203-24 Decorum. Board members, appellants, appellee, and witnesses shall, at all times, conduct themselves in a manner that is appropriate and conducive to the proper and efficient conduct of the board's proceedings. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-2; Charter §13-2(15); MCC §3.48.680) (Imp: HRS §91-9; MCC §3.48.625)

§5-203-25 No distractions. Persons present at a board meeting shall turn off or silence all pagers, mobile phones, radios, and other electronic equipment. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-2; Charter §13-2(15); MCC §3.48.680) (Imp: HRS §91-9; MCC §3.48.625)

§5-203-26 Conduct of hearing; sequence of presentation. (a) Subject to order of the chair, who may alter the sequence of presentation of a case when there are multiple parties or properties or for other reasons:

- (1) The county assessor shall testify briefly as to the location of the property or properties that are the subject of the appeal and shall present a map of the subject property or properties.
- (2) After the testimony of the assessor regarding property location, the appellant may make an opening statement and shall produce the evidence on appellant's part. Appellant's presentation shall be limited to five minutes.
- (3) Appellee county shall then open its defense and offer evidence in support thereof. Appellee county's presentation shall be limited to five minutes.
- (4) The board may ask questions of appellant or appellee and seek clarification of matters presented.

(b) The board may grant additional time as may be reasonably necessary for a party to conclude its presentation. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-2; Charter §13-2(15); MCC §3.48.680) (Imp: HRS §91-9; MCC §3.48.625)

§5-203-27 Stipulations. Any procedure in a hearing of an appeal before the board may be modified or waived by stipulation of the parties and informal disposition may be made of an appeal by stipulation, agreed settlement, consent order, or default. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-9; MCC §3.48.680) (Imp: HRS §91-9)

§5-203-28 Continuances or extensions of time. (a) A taxpayer desiring a continuance of a hearing shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance come to taxpayer's knowledge, notify the chair in writing of taxpayer's desire, stating in detail the reasons for requesting continuance. The chair, in passing upon a request for continuance, shall consider whether such

request was promptly and timely made. For good cause shown by the taxpayer, the chair may grant such a continuance. The chair may at any time order a continuance on the chair's own motion.

(b) Whenever a party has a right or is required to take action within the period prescribed or allowed by the board, the chair may (1) before the expiration of the specified period, with or without notice, extend such period; or (2) upon good cause shown, permit the act to be done after the expiration of the specified period. [Eff 12/5/02] (Auth: HRS Chapter 246A, §91-2; MCC §3.48.680) (Imp: HRS §91-2; MCC §3.48.680)

§5-203-29 Decisions. Decisions may be signed by the board's chair on behalf of the board and shall be processed administratively by department staff within sixty days after the conclusion of the hearing. All final decisions and orders shall contain a phrase informing the parties thereto of the time in which to appeal such order or decision to the court. [Eff 12/5/02; am and comp 6/5/10] (Auth: HRS Chapter 246A, §§91-2, 91-12; MCC §3.48.680) (Imp: HRS §§91-2, 91-12)

§5-203-30 Forms. Forms of notices of appeal shall be available in, and may be obtained from, the offices of the division. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC § 3.48.680) (Imp: MCC §3.48.680)

SUBCHAPTER 4

ANNUAL REPORT AND COMPLAINTS

§5-203-31 Annual report. Upon completion of its review of tax appeals for the year, the board shall compile and submit to the mayor and the county council, and shall file with the director for use by the public, a copy of a report of such features of its work as, in the opinion of the board, will be useful in attaining the objectives set forth in chapter 3.48, Maui County Code. In the report, the board shall additionally note instances in which, in the opinion of the board, the director erred in the application of the methods selected by the director in the assessment of any property not brought before the board by any appeal, whether the error is deemed to have been by way of underassessment or overassessment. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC §§3.48.635, 3.48.680) (Imp: MCC §3.48.635)

§5-203-32 Complaints. (a) The board shall publish during the first week of September a notice specifying a period of at least ten days within which complaints may be filed by any taxpayer.

(b) A complaint shall:

- (1) Be in writing.
- (2) Identify the property involved.
- (3) State the valuation claimed by the taxpayer.
- (4) State the grounds of objection to the assessment.
- (5) Be filed with the director at the offices of the division for transmission to the board.

(c) The board shall hear complaints after giving reasonable notice of hearing to all interested taxpayers and the director. Such hearing shall not occur earlier than one week after the close of the period allowed for filing complaints. The board may proceed by districts designated by their tax map designation, and may from time to time publish notice of hearing as work proceeds by districts. [Eff 12/5/02] (Auth: HRS Chapter 246A; MCC §§3.48.635, 3.48.680) (Imp: MCC §3.48.635)