

# **MONTGOMERY COUNTY BOARD OF REVISION RULES OF PRACTICE AND PROCEDURE**

**The Montgomery County Board of Revision hereby accepts the following as its Rules of Practice and Procedure governing matters set forth before the Board for tax year 2014, pursuant to Ohio Revised Code Section 5715.19**

## **1. RULES**

(A) The Montgomery County Board of Revision (BOR) hereby enacts the following Rules of Practice and Procedure governing conduct of matters before the BOR, pursuant to R.C. 5715.02, et seq.

(B) The Rules of Practice and Procedure shall be approved by the Auditor, Treasurer and the President of the Board of Commissioners and any amendments to the Rules of Practice and Procedure shall be enacted by the same.

## **2. ORGANIZATION**

(A) The BOR shall consist of the Auditor, Treasurer, and President of the Board of County Commissioners or their statutorily appointed designee.

(B) The office of the BOR shall be at 451 West Third Street, Third Floor, County Administration Building, Dayton, Ohio, 45422 and shall be open every day from 8:00 a.m. to 5:00 p.m., except for Saturdays, Sundays and legal holidays.

(C) The BOR shall be open for the transaction of business during the business hours herein provided. All sessions shall be open to the public and sessions of the Board shall stand and be adjourned without further notice thereof on its records.

(D) All of the proceedings of the BOR shall be a public record and each member's vote shall be recorded as cast.

(E) The BOR shall record each hearing and retain such record for a time period required by law, to ensure that a transcript may be made in the event of appeal.

## **3. SERVICE**

(A) All pleadings, briefs, papers and other documents filed by a complainant with the BOR, subsequent to the filing of the complaint, shall be served upon all parties.

(B) Said pleadings, briefs, papers and other documents shall contain a certificate of service indicating that the required service has been made, the manner in which service was made, and the names and addresses of the parties or attorneys upon whom service was made.

(C) Service upon an attorney or party shall be made by delivering or mailing a copy to the attorney's or the party's last known address. Service by mail is complete upon mailing.

(D) If the complainant requests a valuation change of \$17,500 or greater (taxable value), the secretary of the BOR shall give notice by certified mail to each board of education whose school district may be affected by complaint. Such notice shall be given no later than 30 days after the last day for filing of complaints.

(E) When a complaint is filed by an entity other than the property owner, the secretary of the BOR shall give notice by certified mail to the property owner. Such notice shall be given no later than 30 days after the last day for filing of complaints.

#### **4. APPEARANCE AND PRACTICE BEFORE THE BOARD**

##### **(A) Filing Complaint Against the Valuation of Property**

The following persons are allowed to file complaints against the valuation of property:

- Owners of record of the affected properties
- An Ohio licensed attorney representing the owner of record of the affected properties
- Ohio licensed attorneys representing a Board of Education where the property is situated or a political jurisdiction within the county
- The Prosecuting Attorney of the county
- An officer of a corporation which is owner of affected property
- A limited partner of a limited partnership which is the owner of the affected property
- A general partner of a general partnership which is the owner of the affected property
- A trustee of a trust which is the owner of the affected property
- An attorney authorized to practice law in a state other than Ohio may be permitted, upon presenting proper documentation to the Board, to practice before the Board in a particular proceeding

##### **(B) Practice Before the Board**

Officers of corporations, partners of general and limited partnerships and trustees may now sign complaints. However, questioning witnesses and making legal arguments are still included within the practice of law and may only be performed by the actual owner of record of a property or by the owner's Ohio licensed attorney. Attorneys representing a party to the complaint will not be permitted to testify or appear in any capacity other than counsel.

##### **(C) Legal Advice**

The Board and the Auditor's office will not provide legal advice. Questions regarding specific legal issues must be directed to the appropriate attorney.

## 5. COMPLAINTS-FILINGS

(A) The complaint filing period is January 1 through March 31. Complaints which have not been received in the Auditor's office by March 31 or post marked by the United States Postal service by the same date will be dismissed by the Board. The complaint or counter-complaint (DTE Form 1) must be completed in its entirety, and signed by the owner of the property or their agent and notarized. Failure to do so may result in a dismissal. **THE BURDEN OF PROOF LIES WITH THE COMPLAINANT**

(A) Complainants on residential property shall provide the following information where applicable:

1. Closing statements, purchase contract and a copy of the conveyance form
2. Market data analysis with all comparable sales and conveyance statements
3. Photographs of the property, if applicable
4. Construction cost of new building, (certified by the builder) including both hard and soft costs
5. Appraisal report if such is being offered as evidence
6. Certified estimates from a contractor for repairs cited on complaint
7. Any other supporting documentation

(B) Complainants on commercial/industrial property shall provide the following information where applicable:

1. Closing statement, purchase contract or a copy of the conveyance statement, if applicable
2. Market data analysis with all comparable sales and conveyance statements
3. Lease agreements and/or rent rolls, if applicable
4. Photographs of the property, if applicable
5. Income and expense statements (certified by a public accountant) or appropriate schedules of the complainant's federal income tax return
6. Construction cost of new building, if applicable, (certified by the builder) including both hard and soft costs
7. Appraisal report if such is intended to be offered as evidence
8. Certified estimates from a contractor for repairs cited on the complaint
9. Any other supporting documents

(C) For complaints on agricultural land the following information should be submitted:

1. Closing statement, purchase contract and a copy of the conveyance statement, if applicable
2. Market data analysis with all comparable sales and conveyance statements
3. Topography Map (may be obtained from the Montgomery County GIS/Mapping department)

## **6. PRELIMINARY MOTIONS**

(A) Any preliminary motion made by a party shall be presented to the BOR at least ten days before the scheduled hearing.

(B) The BOR may refer motions to its statutory counsel for an opinion on the merits of such motion.

## **7. HEARINGS**

(A) Giving at least ten (10) days notice, the BOR's secretary will schedule each complaint for hearing and written notice thereof shall be given to the parties or their representatives of the time and place of the hearing by certified mail. For good cause shown, hearings may be continued at **the complainant's request only once**. Requests for continuances should be directed to the BOR's secretary.

(B) In the event that a party does not wish to appear, they may authorize the BOR to hear the case in their absence or participate in the hearing via telephone. All telephone conference hearings will be scheduled by Eastern Standard Time and our office must be notified ten (10) days before the scheduled hearing date. Otherwise the case may be dismissed.

(C) If any party fails to appear at a scheduled hearing, the Board may decide a case based on documentary evidence provided.

(D) All hearings are open to the public.

(E) The BOR reserves the right to maintain control of the length of each hearing and to limit testimony solely to matters which will help resolve the complaint. The BOR also reserves the right to maintain proper decorum in the hearing room.

(F) The complainant shall present his evidence first. Any counter-complaint shall proceed next.

(G) The BOR or its counsel may interrupt or examine the parties or their witness at any time.

(H) Limited cross-examination shall be permitted between the parties at the BOR's discretion.

(I) When a complainant has acknowledged receipt of certified notification of the hearing date and fails to appear for the hearing, the BOR reserves the right to render a decision on the merits of the complaint on the basis of the facts before the Board.

## **8. EVIDENCE**

(A) Any documentary evidence i.e. appraisal report, closing statement, construction costs, comparable sales, lease agreements and income statements must be submitted to all parties including the Board at least seven (7) business days prior to the date of the hearing.

(B) The BOR need not consider as evidence any document or exhibit other than those specifically enumerated in these rules that are prepared by a person not present at the hearing and therefore not capable of being questioned or cross-examined by the BOR.

## **9. CONTINUANCE IN PROGRESS BY THE BOARD**

(A) The BOR may continue a hearing in progress for the purpose of additional investigation of disputed matters or for the purpose of taking matters under advisement or for the opinions from counsel.

## **10. VOLUNTARY WITHDRAWAL**

(A) The complainant may withdraw a complaint by filing a written notice of withdrawal at any time before the commencement of the hearing. The notice of the dismissal is without prejudice, and does not limit the complainant's right to file again during that triennial period except as provide by law (see ORC 5715.19). In the event the dismissal will prejudice another party to the complaint, the BOR may, for good cause shown, deny the dismissal and allow the matter to go forward.

(B) After commencement of the hearing, a dismissal may be granted with consent of all the parties and the approval of the Board. The dismissal of an appeal is with prejudice.

## **11. GROUNDS FOR DISMISSAL**

(A) The Board shall dismiss any complaint which is not received by the Board or postmarked by the United States Postal service on or before the deadline of that tax year.

(B) The Board may dismiss a complaint when the complaining party fails to appear and fails to provide evidence to support their opinion of value.

(C) Only one complaint may be filed during each triennial or sexennial update period, as provided for by law, subject to statutory exceptions. If any additional unauthorized complaints are filed, the Board shall dismiss the additional complaint(s).

## **12. DECISIONS**

(A) All decisions by the Board shall be made on the record. Copies of said decision will be mailed to all parties by certified mail.

### **13. DOCUMENTS**

(A) Pursuant to Revised Code Section 5715.07, all documents of any kind presented to the Board shall be open to public inspection.

### **14. FEES**

(A) The Board may charge anyone requesting a copy of any document of the Board a reasonable fee as established by the Board.

### **15. EXPEDITED FORECLOSURE**

In accordance with Section 323.66 (B) (1) of the Ohio Revised Code, the Montgomery County Board of Revision hereby adopts these rules as are necessary to administer cases subject to its jurisdiction under Chapter 5715 or adjudicated under sections 323.65 to 323.79 of the Revised Code and consistent with rules adopted by the tax commissioner under Chapter 5715 of the Revised Code.

#### **(A) Hearing Procedure**

1. Hearings in the Board of Revision as they pertain to Expedited Foreclosure will follow the same procedures and rules as set forth for matters concerning valuation against real property.
2. The Board of Revision can hold a final hearing in 30 days after service of notice of summons and complaint has been perfected.
3. Board Members may designate an alternate of their choosing to represent the Board Member for matters pertaining to Expedited Foreclosure before the Board of Revision.

#### **(B) Scheduling and Location of Proceedings**

1. Staff of the BOR in accordance with Section 323.66 (C) of the Ohio Revised Code will schedule, execute, and file with the Clerk of Courts notices of hearing. Board of Revision staff will adhere to the Ohio Rules of Civil Procedure Rule 4 and 5 as it pertains to service.
2. Hearings will be held in the office of the Montgomery County Board of Revision at 451 West Third, Third Floor, County Administration Building, Dayton, Ohio 45422. The Board of Revision will be open every day from 8:00am to 5:00 pm except for Saturdays, Sundays and legal holidays.

#### **(C) Case Management**

1. All original case files will be handled and maintained by the Clerk of Courts.

#### **(D) Practice Forms**

1. All practice forms, forms of notice of hearing and notices to parties, forms or orders of adjudication or any other legal publications will be designed by the County Prosecutor or his agent and approved for use by the Board of Revision.

## **16. SETTLEMENT OFFERS**

- (A) The Montgomery County Board of Revision may offer to settle complaints against the valuation of real property without a hearing. The offers will be limited to complaints for residential property that request less than a fifty thousand dollar (\$50,000) change in value and must be supported by evidence of a complete settlement statement from a recent sale that does not reflect a forced or distressed real estate transaction.

## **17. ELECTRONIC FILING**

- (A) The Montgomery County Board of Revision will accept electronic filings online during the period in which filings are accepted by law. All filings will have been deemed to be received on the date sent as long as a filing is submitted before midnight. All rules regarding paper filings including rules regarding service of the complaint shall apply to electronic filings.