

GAAO

ONE-DAY SEMINAR

Assessment Challenges for 2011

October 18, 2010

Unicoi State Park - Helen, GA

Presented By:



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AGENDA

1:30 to 2:00:

**OVERVIEW OF CHANGES TO THE APPEALS PROCESS
(EXCLUDING APPEALS TO ARBITRATION OR BEFORE
A HEARING OFFICER).**

*Joseph C. Peake, III, Esq.
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2:00 to 2:30:

**THE NEW ALTERNATIVE FOR APPEALING SEVEN
FIGURE PROPERTIES: APPEAL TO THE HEARING
OFFICER.**

*Christopher J. Hamilton, Esq.
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2:30 to 3:00:

**BINDING WITH NO MIDDLE GROUND: ARBITRATION
UNDER SB 346.**

*Stephen G. Smith, Esq.
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SB 304 – OVERVIEW OF CHANGES TO THE APPEALS PROCESS¹

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I. It All Starts with the Assessment Notice (Changes in Bold Print)

Part 1, Section 1-1 of SB 304 amends O.C.G.A. § 48-5-306 and adds new requirements for Assessment Notices:

- (1) Requires the County Board of Assessors to provide **ANNUAL NOTICE** of property tax value. (Higher, Lower, or Same FMV as prior year.)
- (2) Requires the assessment notice to be **UNIFORM** statewide.
- (3) The assessment notice **must contain**:
 - The amount of the previous notice;
 - The amount of the current assessment;
 - The year for which the new assessment applies;
 - A brief description of the assessed property – real and personal property classifications;
 - The FMV subject to taxation and the assessed value of the property subject to taxation;
 - The contact information for the person in the BOA office administratively responsible for handling the appeal (Name, Telephone, and “**Contact Information**”);
 - **Website address of the BOA (if applicable)**;
 - A statement that “**all documents and records used to determine the current value are available upon request²**.”

¹ This paper does not discuss the appeal provisions for appeals to a hearing officer contained in subsection (e.1) of O.C.G.A. § 48-5-311, or appeals to an arbitrator contained in subsection (f) of O.C.G.A. § 48-5-311, as those subsections will be addressed in detail by my colleagues, Christopher J. Hamilton and Stephen G. Smith.

- **An estimate of the current year’s taxes for all levying authorities based on the assessment, with the following required statement in bold print: “The estimate of your ad valorem tax bill is based on the previous year’s millage rate and the fair market value contained in this notice. The actual tax bill you received may be more or less than this estimate. This estimate may not include all eligible exemptions.”**

(4) The notice of assessment must also contain a notification of the taxpayer’s right to appeal, and that the taxpayer must select a method for appeal to either: (a) the BOE with appeal to Superior Court; (b) Arbitration without appeal to Superior Court; (c) to a Hearing Officer with appeal to Superior Court (for non-homestead property valued in excess of \$1 million). In particular, the right to appeal and appeal path options shall be provided to the taxpayer in the following form:

“The amount of your ad valorem tax bill for this year will be based on the appraised and assessed values specified in this notice. You have the right to appeal these values to the county board of assessors. At the time of filing your appeal you must select one of the following options:

- (i) An appeal to the county board of equalization with appeal to the superior court;**
- (ii) To arbitration without an appeal to the superior court; or**
- (iii) For a parcel of nonhomestead property with a fair market value in excess of \$1 million, to a hearing officer with appeal to the superior court.**

If you wish to file an appeal, you must do so in writing no later than 45 days after the date of this notice. If you do not file an appeal by this date, your right to file an appeal will be lost. For further information on the proper notice method for filing an appeal, you may contact the

² A uniform copying fee of 25¢ per page may be charged. However, no additional charges or fees may be collected from the taxpayer for search, retrieval, or other administrative costs associated with production of such records. The statute does not address any conflict with the Georgia Open Records Act.

county board of assessors which is located at: (insert address) and which may be contacted by telephone at: (insert telephone number).”

(*Please note: The notice does not address grounds for appeal, such as uniformity, taxability and value, and does not advise the taxpayer of appeal limitations related thereto.)

(5) **Assessment Notices** must be **mailed** to taxpayers **by July 1**. (Except in the case of corrections or mapping changes.)

(6) **All taxpayers** now have **45 days** to **appeal**.

(7) A list of **undeliverable notices** shall be posted on the (a) **County courthouse** or (b) on the **County BOA website**.

II. Two New Dynamics of O.C.G.A. § 48-5-311

(1) A new provision has been added allowing the governing authorities of two or more counties to establish **regional boards of equalization** by intergovernmental agreement.

- The IGA must specify how the BOE members are appointed by the respective grand juries of each county, and which Clerk of Court will have oversight and supervision over the board.
- All Regional BOE hearings must be held in the taxpayer’s county.
- (The establishment of Regional BOE’s appears to make available potential cost savings by sharing the functions of the BOE between counties. It remains to be seen if counties will implement this potential arrangement.)

(2) **Clerk of Court Oversight:** The Clerk of Superior Court has been given the responsibility to oversee and supervise the BOE and Hearing Officers.

- Clerk of Court duties now include:
 - (a) Requiring the grand jury to appoint BOE members;
 - (b) Giving the notice required by O.C.G.A. § 15-12-81 to the grand jury.
 - (c) Presenting the names of possible appointees to grand jury.
 - (d) Processing the appointments.

- (e) Administering the oath of office to the BOE.
- (f) Ensuring that all BOE members are trained.
- (g) Maintaining records of training, attendance records, compensation and appointment dates.
- (h) Presenting names of possible appointees to the grand jury to fill vacancies.
- (i) Maintaining a roster of BOE members and alternates.
- (j) Informing BOE that it must establish by regulation procedures for conducting appeals.
- (k) Scheduling BOE hearings.
- (l) Scheduling the particular appeals hearings before the BOE.
- (m) Giving notice of BOE hearings to taxpayers and BOA.
- (n) Giving notice of BOE decisions.
- (o) Maintaining records from the BOE hearings until the deadline to file an appeal to Superior Court has expired. (If no appeal is filed, the records may be destroyed. If the appeal is filed, the Clerk of Court shall file such records in the civil action to become a part of the record.)

III. Changes to the Appeal Process in O.C.G.A. § 48-5-311(e)

(1) Section (e)(1)(A) now provides that an appeal may be filed by *any taxpayer or property owner as of the last date for filing an appeal.*

- The taxpayer is the January 1 owner. If the taxpayer sells the property between January 1 and before the last date for filing the appeal, the new owner may appeal.

(2) Pursuant to Section (e)(1)(A)(i) thru (iii), the appellant must elect the avenue of appeal to either:

- (a) The **BOE** as to matters of taxability (whether or not the property is subject to, or exempt from, taxation), uniformity (whether the values are the same as,

or different from, the same class of property), and value (assessed FMV), and as to denials of homestead exemptions;

(b) An **Arbitrator** – as to matters of value; or

(c) A **Hearing Officer** - for nonhomestead property over \$1 million.³

- The Revenue Commissioner is required to establish a uniform appeal form that the taxpayer may use.

(3) The appeal may be filed by **email**, if the BOA has adopted a written policy allowing same.

(4) The appeal must be mailed or filed by all taxpayers within **45 days** from the date of the Notice of Assessment.

(5) The BOA's 21-day notice for changes or corrections following receipt of an appeal is now a **30-day notice**.

- If no change is made, the BOA sends notice to the taxpayers and the appeal on to the BOE.
- If the taxpayer and the BOA agree on a value or otherwise resolve the matter appealed, the **appeal can terminated via a written agreement**. (This is true at any time during the appeal process, before or after certification by the BOA to the BOE, and it appears that the 3-year lock-in provisions of O.C.G.A. § 48-5-299(c) apply to such a written agreement, unless waived in the written agreement by both parties.)
- If changes are made, notice of change is sent to the appellant, and the taxpayer has **30 days** from the BOA's mailing of the notice to appeal the change.

(6) **Clerk of Court has oversight and supervision of the BOE appeals process.** (See above.)

Following the Clerk of Court's notification to the taxpayer of the date, time and location of the BOE hearing, the taxpayer is authorized to exercise a one-time [no questions

³The grounds for appeal (uniformity, taxability and value) – and the particular pathway for same -- are set forth within O.C.G.A. § 48-5-311(e)(1)(A)(i)-(iii). However, they are not required to be placed in the mandated § 48-5-306 notice.

asked] option of changing the date and time of the hearing to a day and time acceptable to the taxpayer. In addition, the Clerk of the Superior Court shall grant additional extensions to the taxpayer or the BOA for good cause shown.

(7) The BOE is **required** to render its **decision** at the **conclusion** of the **hearing**.

IV. Changes to O.C.G.A. § 48-5-311(g) – Appeals to the Superior Court

(1) By mutual written agreement, the taxpayer and the BOA may **waive an appeal** to the BOE and **proceed directly to the Superior Court**.

- Presumably, this eliminates the rule that requires a taxpayer to exhaust his or her administrative remedies (via the BOE) before a Superior Court can have jurisdiction to decide an appeal from a tax assessment. See Hooten v. Thomas, 297 Ga. App. 487, 677 S.E.2d 670 (2009).

(2) If the BOE or Hearing Officer does not change an assessment by more than **20%**, the BOA cannot appeal to the Superior Court without notifying the County governing authority, and the governing authority does not vote to prohibit the appeal.

(3) An appeal to Superior Court from the Decision of the BOE or Hearing Officer must be mailed or filed within 30 days of the date of the mailing of the Decision.

- The appeal may be emailed, if the BOA has adopted a written policy allowing for electronic service. (If so adopted, the subject line of the email must state in capital letters: "STATUTORY ELECTRONIC SERVICE.")

(4) Fast Track -- The appeal is placed on the Court's **next available jury or bench trial calendar, at the taxpayer's election**, following the filing of the appeal unless continued by the Court upon a showing of good cause.

- No discovery, motions, or other pleadings may be filed by the BOA in the appeal until service of the copy of the notice of appeal with the civil action file number assigned thereto has been made.

(5) A new definition for "**Service of Notice**" has been added.

- Notice of Appeal to BOA is deemed filed as of:
 - (a) The date of the U.S. Postal Service postmark;

(b) Receipt of Statutory Overnight Delivery;

(c) Via Email, if BOA has a written policy allowing for same, with subject line containing the words “STATUTORY ELECTRONIC SERVICE” in caps.

- The subsection further provides that “[P]roof of service may be made within 45 days of receipt of the notice of current assessment to the taxpayer by certificate of the taxpayer, the taxpayer’s attorney, or the taxpayer’s employee by written admission or by affidavit. Failure to make proof of service shall not affect the validity of service.”
- This language regarding “proof of service” is borrowed directly from the Georgia Civil Practice Act in O.C.G.A. § 9-11-5, and appears to contemplate the filing of a “certificate of service” by the taxpayer at the time of filing the original appeal with the BOA, as a means for the taxpayer to prove his or her timeliness of service of the appeal.⁴ (Please Note: The language within the statute does not address “making proof of service” for other deadlines, specifically including the taxpayer’s 30 day appeal of the BOE’s decision. (Compare O.C.G.A. § § 48-5-311(n) / SB at 717-728 with O.C.G.A. § 48-5-311(e)(2)(C) / SB 304 at lines 411 – 417.)
- Please Note: According to the Georgia Supreme Court’s holding in Fulton County Board of Tax Assessors v. Boyajian, 271 Ga. 881, 525 S.E.2d 687 (2000), the BOA does not have the discretion to not certify an untimely appeal: “The statute [O.C.G.A. § 48-5-311(g)] states that the county board of tax assessors ‘shall certify’ the notice of appeal and any other specified papers to the superior court clerk. We have interpreted this statutory language as divesting the board of any discretion in the certification process (See Fulton County Board of Tax Assessors v. Jones, 264 Ga. 828, 829, 452 S.E.2d 99 (1995).

⁴ However, given that the statute specifically provides that the notice of appeal to the BOA under subsections (e), (e.1), (f), or (g) of O.C.G.A. § 48-5-311 shall be deemed filed as of the date of the U.S. Postal Service postmark, the BOA would have grounds to challenge the timeliness of the appeal via motion to dismiss in the event that the taxpayer’s “proof of service” document conflicts with the postmark.

Because whether an appeal is procedurally defective is a judicial decision, not a clerical determination, we conclude that the trial court correctly ruled that the board should have certified the taxpayer's appeal to the superior court. If we were to adopt the board's position that the statute does not give it authority to certify untimely appeals, then the board would act in the dual role of party and judge. This inherent conflict would be unfair to other parties in the dispute and would deprive taxpayers of the right to appeal when, as here, the board concluded that the notice of appeal was defective."⁵

- (6) **Notice to Taxpayer's Attorney:** When a taxpayer authorizes an attorney in writing to act on his/her/its behalf, all notices required to be provided to the taxpayer regarding hearing time, dates, certifications, or official actions shall be instead be provided to the taxpayer's attorney.
- (7) **All interviews / proceeding may now be recorded by audio or video:** "In the course of assessment, appeal, or arbitration, or any related proceeding, the taxpayer shall be entitled to make recordings of any interview with any officer or employee of the taxing authority relating to the valuation of the taxpayers property subject to such assessment, appeal, arbitration, or related proceeding, at the taxpayer's expense and with equipment provided by the taxpayer, and no such officer or employee may refuse to participate in an interview relating to such valuation for reason of the taxpayer's choice to record such interview.

V. Amendments to O.C.G.A. § 48-5-2

- (1) Section 5-1 amends O.C.G.A. § 48-5-2 by adding a new definition of an "Arm's length, bona fide sale."

⁵ The discretion to determine timeliness appears to be treated differently in the arbitration provisions contained in Section (f) of O.C.G.A. § 48-5-311, in that the arbitration provisions provide that the failure of the taxpayer to provide the certified appraisal and arbitration filing fee within 45 days of notice of same from the BOA shall terminate the appeal unless the taxpayer within such 45 day period elects to have the appeal forwarded to the Board of Equalization.

- “.1) ‘Arm’s length, bona fide sale’ means a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction.”
 - Thus, sales under power conducted on the courthouse steps are **excluded** from the definition of an arm’s length, bona fide sale because the lender is considered a related or affiliated party.
- (2) Sections 5-2 & 5-3 amends O.C.G.A. § 48-5-2 by adding *new language* to the definition of “fair market value of property.” (The additional language is bolded and underlined below.)
- “.3) ‘Fair market value of property’ means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm’s length, bona fide sale. **The income approach, if data is available, shall be considered in determining the fair market value of income producing property. Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm’s length, bona fide sale in any year shall be the maximum allowable fair market for the next taxable year.** With respect to the valuation of equipment, machinery, and fixtures when no ready market exists for the sale of the equipment, machinery, and fixtures, fair market value may be determined by resorting to any reasonable, relevant, and useful information available, including, but not limited to, the original cost of the property, any depreciation or obsolescence, and any increase in value by reason of inflation. Each tax assessor shall have access to any public records of the taxpayer for the purpose of discovery such information.”
 - Subsection (B) related to FMV has also been amended to remove the word “*consider*” and replaces it with shall “**apply**” relating to the criteria that tax assessor must use in

determining the fair market value of real property. (Thus, to the extent that there was any uncertainty, application of the criteria set forth in O.C.G.A. § 48-5-2(3)(B)(i) thru (vi) is mandated.

- Further, the language within this criteria is amended in O.C.G.A. § 48-5-2(3)(B)(iv) by striking “*Foreclosure sales*” and beginning the paragraph with “Bank sales.”
- The subsection is further amended in O.C.G.A. § 48-5-2(3)(B)(vi) by providing that the Revenue Commissioner may, by rule or regulation, establish other criteria to be applied in the determination of fair market value.

(3) Section 5-4 further amends O.C.G.A. § 48-5-2 by a new subsection (B.2):

- “In determining the fair market value of real property, the tax assessor shall not include the value of intangible assets used by a business, wherever located, including patents, including patents, trademarks, trade names, customer agreements, and merchandising agreements.

THE NEW ALTERNATIVE FOR APPEALING
SEVEN FIGURE PROPERTIES:
THE HEARING OFFICER APPEAL

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I. Introduction

Through SB 346, the Legislature has now provided a new avenue for select taxpayers owning nonhomestead real properties in excess of \$1,000,000.00 to appeal to a hearing officer who is either a state certified licensed general real property appraiser or a state certified residential real property appraiser pursuant to O.C.G.A. § 48-5-311(e.1):

II. Basics of Hearing Officer Appeal Procedure:

A. Dispute must involve either value and/or uniformity. Taxability questions are not reviewable by a hearing officer.

O.C.G.A. § 48-5-311(e.1)(1).

B. The hearing officer option belongs to the Taxpayer, not the Board of Tax Assessors.

Id.

C. Property must be assessed in excess of \$1,000,000.

Id.

D. Only nonhomestead real property can be considered.

Id.

E. Hearing Officers must be either:

- 1) State certified general real property appraiser, or
- 2) State certified residential real property appraiser.

O.C.G.A. § 48-5-311(e.1)(2).

F. Individuals desiring to serve as hearing officer must:

- 1) complete and submit an application,
- 2) provide a list of counties the hearing officer is willing to serve,
- 3) complete a disqualification questionnaire,
- 4) provide a resume,
- 5) must be approved by the Georgia Real Estate Commission and Georgia Real Estate Board to serve as a hearing officer.

Id.

G. Clerk of Court is tasked with providing necessary facilities for hearing officer.

O.C.G.A. § 48-5-311(e.1)(3).

H. Taxpayer must note election of hearing officer method in notice of appeal within 45 days after 48-5-306 notice of assessment is mailed.

- 1) Notice of Appeal must contain written objection to the assessment.

2) Notice of Appeal must contain election to have case heard by Hearing Officer.

3) Notice of Appeal must contain location of the property.

4) If Board of Tax Assessors has adopted a written policy consenting to electronic service, the Notice of Appeal may be submitted by e-mail.

O.C.G.A. § 48-5-311(e.1)(4).

I. The Board of Tax Assessors may take up to 90 days to review the taxpayer's written appeal.

1) If changes or corrections or made, the Board of Tax Assessors must notify Taxpayer in writing.

2) If, within 30 days of the date of mailing of the notification, the Taxpayer notifies the Board of Tax Assessors in writing that the changes are not acceptable, the Board of Tax Assessors must send or deliver the notice of appeal and all necessary papers to the Clerk of the Superior Court.

O.C.G.A. § 48-5-311(e.1)(5).

J. The Clerk of the Superior Court shall randomly select a hearing officer who shall have experience or expertise in hearing or appraising the type of property that is the subject of the appeal.

1) Would need a certified general real estate appraiser for commercial properties.

2) Taxpayer and Board of Tax Assessors have the option to mutually agree upon a hearing officer from the list.

O.C.G.A. § 48-5-311(e.1)(6).

K. The Hearing Officer will swear in all witnesses, perform the powers, duties, and authority of a county or regional board of equalization, and determine the value of the real property based upon the testimony and evidence presented during the hearing.

1) Any issue other than value or uniformity is preserved for the Superior Court.

2) Board of Tax Assessors has the burden of proof by a preponderance of the evidence.

3) The hearing officer must determine value at the conclusion of the hearing.

4) The hearing officer must send the taxpayer the decision in writing.

O.C.G.A. § 48-5-311(e.1)(7).

L. Either the Taxpayer or the Board of Tax Assessors may appeal the Hearing Officer's decision to the Superior Court in the same manner as they would for appeals from the Board of Equalization.

O.C.G.A. § 48-5-311(e.1)(8).

M. During the Hearing Officer Appeals Process, the Taxpayer or the Board of Tax Assessors may execute a signed written agreement on the fair market value or any other issue that was raised in the appeal.

1) The appeal shall terminate as of the date the agreement is signed.

2) O.C.G.A. § 48-5-299(c), the lock in statute, applies to value unless its provisions are waived by the parties.

O.C.G.A. § 48-5-311(e.1)(9).

N. The Hearing Officer is to be compensated for time considering appeals at not less than \$25.00 per hour.

1) The county governing authority sets rate of compensation for hearing officers.

2) Compensation shall be paid from county treasury upon certification by hearing officer of the hours expended in hearing the appeal.

3) Attendance at any training required by the commissioner shall be part of the qualifications of the hearing officer and any nominal charge must be borne by hearing officer.

O.C.G.A. § 48-5-311(e.1)(10).

O. If the Clerk of Superior Court, after diligent search, is unable to find a qualified hearing officer to serve, the clerk shall notify the Board of Tax Assessors in writing. The Board of Tax Assessors will then certify the appeal to the County or Regional Board of Equalization.

O.C.G.A. § 48-5-311(e.1)(10).

P. The Commissioner of the Department of Revenue is tasked with promulgating rules and regulations for the proper administration of this subsection including, but not limited to:

- 1) A uniform appeal form;
- 2) qualifications of hearing officer including;
 - a) Eight-hour course on Georgia property law,
 - b) Georgia evidence law,
 - c) preponderance of evidence,
 - d) burden of proof,
 - e) credibility of witnesses, and
 - f) weight of evidence;
- 3) disqualification questionnaire;
- 4) selection;
- 5) removal;
- 6) and any other matters necessary to the proper administration of this subsection.
- 7) Commissioner shall seek input from all interested parties prior to promulgating rules.

O.C.G.A. § 48-5-311(e.1)(11).

III. Potential Issues And Concerns

- A. Minimum compensation affecting willingness of potential hearing officers to serve?
- B. Should Assessor's office navigate this new avenue of appeals without legal representation?
- C. What are "all necessary papers" in the context of sending appeal to Clerk of Court.
- D. Does compensated time include travel time?

IV. Comparison of Hearing Officer Method with Special Master Method in Condemnation Cases under O.C.G.A § 22-2-101.

- A. Special Master is appointed by Judge after filing petition to Superior Court. Hearing Officer is appointed by Clerk of Court prior to appeal to Superior Court.
- B. Special Master must be an attorney with three years of experience. Hearing Officer must be a certified appraiser who meets the training requirements set by the statute and rules and regulations to be promulgated by Commissioner of the Department of Revenue.
- C. Special Master may hear and determine valuation and legal issues. Hearing Officer is limited to value and uniformity issues. Both would have authority to rule on evidentiary issues.
- D. Condemnee has the right chose an assessor to form a Special Master Panel. No panel authorized by new Hearing Officer Procedure.

- E. Judge has power to set compensation for Special Master not to exceed a reasonable hourly rate consistent with local standards. Hearing Officer's compensation set by governing authority at no less than \$25.00 per hour.

V. **Other Issues of General Concern:**

- A. Certification of Appeals to Superior Court.
- B. Right to Jury Trial.
- C. Must consider income approach If data is available.
- D. Shall apply the following criteria in determining FMV:
 - 1) Existing Zoning.
 - 2) Existing Use of Property.
 - 3) Existing covenants or restrictions in deeds
 - 4) Bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of comparable property.
 - 5) Any other existing factors provided by law or by rule or regulation of the commissioner deemed pertinent in arriving at fair market value.

“BINDING WITH NO MIDDLE GROUND: ARBITRATION UNDER SB 346”.

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I. Introduction

Through SB 346, the Legislature has extensively revised the arbitration procedures applicable to tax appeals (O.C.G.A. § 48-5-311(f) Arbitration):

A. INITIATING THE ARBITRATION APPEAL

- 1) OCGA 48-5-311(f)- Effective June 4, 2010
- 2) Defines Certified Appraisal as “an appraisal or appraisal report given, signed, and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board.” These elements must be met. O.C.G.A. § 48-5-311(f)(1) (emphasis added).
- 3) Only the taxpayer can elect arbitration. O.C.G.A. § 48-5-311(f)(2).
- 4) The taxpayer shall initiate his appeal to arbitration by:
 - a. filing a written notice of arbitration appeal with the BTA; or
 - b. by emailing a written notice of arbitration appeal, **but only if the BTA has adopted a written policy consenting to electronic service.** O.C.G.A. § 48-5-311(f)(3)(A).
- 5) The notice of arbitration appeal must state the “grounds for arbitration.” O.C.G.A. § 48-5-311(f)(3)(A). See also O.C.G.A. § 48-5-311(e) current and future. Current law suggests it can be for any issue, but future law limits it to value. Under subsection (f), the ruling which the arbitrator may make is as to value only.
- 6) The notice of arbitration appeal must be filed within “45 days from the date of mailing the notice pursuant to Code Section 48-5-306.” O.C.G.A. § 48-5-311(f)(3)(A).
- 7) “Within ten days of receipt of a taxpayer’s notice of arbitration appeal,” the BTA must send the taxpayer:

- a. an acknowledgment of receipt of the arbitration appeal. O.C.G.A. § 48-5-311(f)(3)(A);
- b. a notice that the taxpayer must , within 45 days of the filing of the notice of arbitration appeal, provide the BTA with a copy of a certified appraisal (as defined at O.C.G.A. § 48-5-311(f)(1));
- c. a confirmation of the amount of filing fees, if any, required under Code Section 15-6-77; and
- d. “notice that within 45 days the taxpayer shall pay to the clerk of the superior court the fees.” O.C.G.A. § 48-5-311(f)(3)(A).

8) Failure of the taxpayer to provide the certified appraisal and the filing fees with the 45 days shall terminate the appeal unless the taxpayer within the 45 day period elects to have the appeal forwarded to the BOE. (No criteria is provided for this election.) O.C.G.A. § 48-5-311(f)(3)(A) (emphasis added).

9) The taxpayer must provide a copy of the certified appraisal prior to the appointment of the arbitrator. O.C.G.A. § 48-5-311(f)(3)(A).

10) Within 45 days of the receipt of the appraisal, the BTA shall either accept or reject the taxpayer’s appraisal. (Please note that the word “value” is not used in this provision.)

- a. If accepted, the taxpayer’s appraisal value becomes final.

- b. If rejected, the BTA shall certify, within 45 days, the appeal to the superior court clerk of “the county in which the property is located along with any other papers specified by the person seeking arbitration under this subsection, including, but not limited to, the staff information from the file used by the county board of tax assessors .” O.C.G.A. § 48-5-311(f)(3)(A). **Please note that this statute does not specify from what date the 45 days runs. A common sense reading suggests that it runs from the date of the rejection, however, it could be argued that it runs from the date of the filing of the notice of arbitration appeal.**

11) If the BTA fails to accept or reject the certified appraisal within 45 days of receiving it, the certified appraisal shall become the final value. (Again, the language refers to the appraisal and not the appraisal value.) O.C.G.A. § 48-5-311(f)(3)(A).

12) For tax year 2009, in those circumstances where the taxpayer submitted a certified appraisal after properly electing a binding arbitration appeal, and the BTA failed to accept or reject the value set forth in the certified appraisal within the 30 day period previously allowed, then for the 2009 tax year, the value set forth in that certified appraisal shall be final. (This is a retroactive application.) O.C.G.A. § 48-5-311(f)(3)(A).

13) All papers and information certified to the superior court clerk shall become a part of the record on arbitration. O.C.G.A. § 48-5-311(f)(3)(A).

14) "At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer and the taxpayer's attorney of record, if any, or employee with a copy of the certification along with any other papers specified by the person seeking arbitration along with the civil action file number assigned to the appeal." O.C.G.A. § 48-5-311(f)(3)(A)(emphasis added). (It is a little unclear whose employee is at issue.)

15) "Within 15 days of filing the certification to the clerk of superior court, the chief judge of the superior court of the circuit in which the property is located shall issue an order authorizing the arbitration." O.C.G.A. § 48-5-311(f)(3)(A).

B. CONDUCTING THE ARBITRATION

1) A single arbitrator shall be used. If the parties are unable to agree on an arbitrator, the arbitrator will "be chosen by the chief judge of the superior court of the circuit in which the property is located." O.C.G.A. § 48-5-311(f)(3)(B)(i).

2) The arbitrator must "be classified as a state certified general real property appraiser or state certified residential real property appraiser pursuant to the rules and regulations of the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board and shall have experience or expertise in appraising the type of property that is the subject of the arbitration." O.C.G.A. § 48-5-311(f)(3)(B)(ii). (This leaves open the possibility that an appraiser with limited experience in a certain field could arbitrate a dispute.)

3) Within 30 days after appointment, the arbitrator "shall set a time and place to hear evidence and testimony from both parties." O.C.G.A. § 48-5-311(f)(3)(B)(iii). (The fact that the arbitrator need not be trained as an arbitrator and will likely not have legal experience may present significant challenges. In addition, this section suggests that the 30 day period is the period within which the arbitrator must act, not the time within which the arbitration must be set.)

4) The arbitrator shall provide notice to the parties either personally or via registered mail, certified mail or "statutory overnight delivery not less than ten days prior to the hearing. The arbitrator may adjourn or postpone the arbitration. " The chief judge, may order an arbitration to proceed promptly, upon application by any party. O.C.G.A. § 48-5-311(f)(3)(B)(iii) (emphasis added). (In light of this short notice time frame, the BTA must be ready to get prepared for the arbitration on an expedited basis.)

5) "At the hearing, the parties shall be entitled to be heard, to present documents, testimony, and other matters, and to cross examine witnesses. The arbitrator may hear and determine the controversy upon the documents, testimony, and other matters produced, notwithstanding the failure of a party duly notified to appear;" O.C.G.A. § 48-5-311(f)(3)(B)(iv) (emphasis added). (The fact that the arbitrator need not be trained as an arbitrator and will likely not have legal experience may present significant challenges. In addition, this provision suggests that a party could not appear and still win the arbitration although the language refers to the "evidence produced." It is the arbitrator's decision as to whether to proceed.)

6) The arbitrator is required to maintain a record of all pleadings, documents, testimony, and other matters introduced at the hearing. The arbitrator or any party may have the arbitration transcribed. O.C.G.A. § 48-5-311(f)(3)(B)(v).

7) The provisions of paragraph (f) may be waived by written consent of the parties. O.C.G.A. § 48-5-311(f)(3)(B)(vi).

8) "At the conclusion of the hearing, the arbitrator shall render a decision regarding the value of the property" at issue. O.C.G.A. § 48-5-311(f)(3)(B)(vii)(emphasis added). (There should therefore be no delay unless otherwise agreed to by the parties.)

9) "In order to determine the value, the arbitrator shall consider a single value for the property submitted by the board of tax assessors and a single value submitted by the taxpayer. O.C.G.A. § 48-5-311(f)(3)(B)(viii). (Please note that neither party is limited to the values previously declared.) "The tax payer shall be responsible for the cost of any appraisal by the taxpayer's appraiser;" O.C.G.A. § 48-5-311(f)(3)(B)(viii).

10) Based upon the evidence presented, the arbitrator will select one of the two values presented. O.C.G.A. § 48-5-311(f)(3)(B)(ix).

11) If the taxpayer's value is selected, the BTA shall be responsible for the filing fees and the fees and costs of the arbitrator.

12) If the BTA's value is selected, the taxpayer shall be responsible for the filing fees and the fees and costs of the arbitrator. O.C.G.A. § 48-5-311(f)(3)(B)(x).

13) The BTA must prove its value by a preponderance of the evidence. O.C.G.A. § 48-5-311(f)(3)(B)(xi).

14) OCGA 48-5-299(c) applies. O.C.G.A. § 48-5-311(f)(4).

15) If the county's bills are issued before an arbitrator has rendered his/her decision on an appeal, the BTA shall specify to the tax commissioner's office the higher of the taxpayer's return valuation or 85% of the current year's valuation as set by the BTA. Said amount shall be the basis of the temporary tax bill. The statute has certain language which must be included in a notice to accompany the temporary tax bill. O.C.G.A. § 48-5-311(f)(5).

C. OTHER ISSUES

1) The arbitration process as of January 1, 2011 will be binding as the amended language under O.C.G.A. § 48-5-311(g) does not contemplate appeals to superior court from arbitration. O.C.G.A. § 48-5-311(g). However, for the time being, it appears that an arbitration decision issued prior to January 1, 2011 will be subject to appeal to superior court as the binding arbitration provisions have been eliminated effective June 4, 2010.

2) An arbitration is like a mini-trial and could prove costly.