

CAUSE NO. \_\_\_\_\_

Private home located at 5026 Autumn	§	IN THE _____ JUDICIAL
Forest Drive, Houston TX 77091,	§	
AKA the 1086470010020 Trust,	§	DISTRICT COURT
AKA acct #1086470010020	§	
Plaintiff,	§	IN AND FOR
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
HARRIS COUNTY APPRAISAL DISTRICT	§	
	§	
HARRIS COUNTY APPRAISAL REVIEW	§	
BOARD	§	
	§	
STATE OF TEXAS	§	
	§	
TEXAS COMPTROLLER	§	
	§	
HARRIS COUNTY COMMISSIONERS COURT	§	
	§	
HARRIS COUNTY TAX ASSESSOR	§	
Defendants	§	

**WRIT OF MANDAMUS TO HOLD ADMINISTRATIVE HEARING**  
**PURSUANT TO TAX CODE §41.41(a)(3)**

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**WRIT OF MANDAMUS TO HOLD ADMINISTRATIVE  
HEARING PURSUANT TO TAX CODE §41.41(a)(3)**

COME NOW Michael Francis Palma, beneficiary, (hereinafter Palma), a man, In Propria Persona. Palma is not a lawyer and is without benefit of counsel, who petitions this Court to order defendants, or in the alternative this court to hold the Tax code §41.41(a)(3)<sup>1</sup> hearing as required by law.

**JURISDICTION AND VENUE**

The district courts have primary jurisdiction over property and hopefully the administrative procedures over the HCAD and ARB defendants. If this court does not have said jurisdiction over these two defendants perhaps the State of Texas or the Comptroller has the jurisdiction to order the HCAD and ARB to hold the required hearings.

Venue is proper as all events occurred in Harris County.

Property Tax Code remedies of administrative and judicial review [V.T.C.A., Tax Code § 41.41 et seq.] are property owner's *exclusive remedies* when he is unsatisfied with his property appraisal or **any other aspect of ad valorem property tax falling within grounds of protest allowed him under the V.T.C.A., Tax Code § 41.41, specifying grounds for protest.** *Valero Transmission Co. v. Hays Consol. Independent School Dist.* (App. 3 Dist. 1985) 704 S.W.2d 857, ref. n.r.e..

**STATEMENT OF FACTS**

1. Defendants are the State and political sub-divisions of the State.
2. Defendants have not declared a mode of acquiring jurisdiction over the property in this complex matter.
3. Palma hereby files this petition in the District Courts of Harris County for tax year 2018.
4. Palma files this suit to prevent defendants from circumventing the Constitution for the United States, the Texas Constitution and statutes by collecting an un-constitutional, or involuntary, ad valorem tax on this non-commercial and un-rendered home.
5. A protest on the ground that property qualifies for exemption from taxation as property exempt from ad valorem taxation by federal law is properly raised through proceedings before the appraisal review board. *Vitol, Inc. v. Harris County Appraisal District* (App. 14 Dist. 2017) 529 S.W.3d 159.

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<sup>1</sup> Even though this same statutory request was also made for 2015-2017.



- a. This is stated in §41.41(a): “A property owner is entitled to...”
  - b. Where “is entitled to” is defined in Gov. Code §311.016(4) to mean: “creates or recognizes a right.”
  - c. See also Tex. Cons. Art. VIII Sec. 1 and Federal Constitution and its Amendments.
6. For property owner who has protested property tax appraisal and is awaiting notice of hearing before appraisal review board, account should not be certified, no tax bill should be sent, and there should be no delinquency date on matters pending before board, even if board takes extraordinarily long time to determine protest. *Harris County Appraisal Review Bd. v. General Elec. Corp.* (App. 14 Dist. 1991) 819 S.W.2d 915, writ denied.
  7. Taxpayer, which fully complied with Property Tax Code in contesting property appraisal, ***was deprived of due process when county appraisal review board failed to hear protest.*** U.S.C.A. Const. Amends. *Harris County Appraisal Review Bd. v. General Elec. Corp.* (App. 14 Dist. 1991) 819 S.W.2d 915, writ denied.

EVENTS OCCURRING VIA PAPERWORK PROVIDED BY  
DEFENDANT(S) AND PROVIDED TO DEFENDANTS

8. Notice of Appraised Value dated: 2018.04.13 (Tab A)
9. Notice of Protest dated: 2018.04.20 (Tab B)
10. Notice of hearing for value dated: 2018.06.13 (Tab C)
11. Affidavit dated: 2018.06.29 for hearing indicating that two hearings were requested: 1) Tax code §41.41(a)(3) and 2) 25.25(c)(3) AND confirming that no situs or value hearing was being requested (Tab D)
12. Hearing occurs: 2018.07.18
13. Public Information act requested: 2018.07.26 and answered on 2018.08.06 containing information indicating that someone was a no show. (Tab E)
14. Plaintiff physically went to HCAD and spoke with Ms. Maria Flores who stated that the 2018.07.18 hearing would be canceled and redone for 2 reasons: 1) someone lost the affidavit – never presented (which was why the no show document) and 2) the hearing was a value hearing and never requested.
15. New affidavit filed on 2018.08.28 once again indicating that two hearings were requested: 1) tax code §41.41(a)(3) and 2) 25.25(c)(3) AND confirming that no situs or value hearing is being requested. (Tab F)

16. Affirmation filed on 2018.08.28 once again indicating that two hearings were requested: 1) tax code §41.41(a)(3) and 2) 25.25(c)(3) AND confirming that no situs or value hearing was being requested. (Tab G)
17. New hearings dated 2018.09.11 for scheduled hearing on 2018.09.25 one for 1) situs under §41.42 and 2) §25.25(c)(3) – at this point plaintiff is banging head up against the wall because no one at HCAD has a clue what is going on!!! (Tab H)
18. No other documents were received until the document dated 2018.10.12 was received indicating that the panel recommendation regarding the hearing should be disapproved. (Tab I)
  - a. NOTICE that this document does not state which hearing was disapproved.
19. And finally plaintiff received on 2018.12.19 the document dated 2018.12.17 which is an “Order Denying Correction” under §25.25. There was NO document indicating that a situs hearing every occurred which makes sense since none was requested. (Tab J)
20. Plaintiff went back to the HCAD offices and again spoke to Ms. Maria Flores on 2018.12.20. She attempted to determine what the disapproval document (Tab I) was for, was unable to, and indicated that she would need to speak to Ms. Susan Herrera, the HCAD attorney.
  - a. The ONLY hearings that plaintiff found out that actually occurred from Ms. Maria Flores was the original value hearing and the correction hearing, meaning that the disapproval document must be for one of these.
    - i. IF the value hearing was disapproved and NO OTHER value hearing occurred, since none were ever requested, then how in the world can the 2018.12.17 (Tab J) document have a value, hence indicating that it is a fraudulent document?
    - ii. IF the correction hearing was disapproved then the property needs to be removed from the roles immediately and Tab J is a fraudulent document.
  - b. Ms. Maria Flores also notified plaintiff that this appraisal district does NOT hold §41.41(a)(3)<sup>2</sup> hearings thereby undermining *Valero Transmission Co. v. Hays Consol. Independent School Dist.* (App. 3 Dist. 1985) 704 S.W.2d 857, ref. n.r.e. and *Vitol, Inc. v. Harris County Appraisal District* (App. 14 Dist. 2017) 529 S.W.3d 159 and denying due process under *Harris County Appraisal Review Bd. v. General Elec. Corp.* (App. 14 Dist. 1991) 819 S.W.2d 915, writ denied.

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<sup>2</sup> This specific hearing was also requested for tax years 2015, 2016 and 2017. Now with the understanding that the HCAD does NOT hold this hearing it is abundantly clear that denial of due process for each year occurred.

- c. Additionally even the 2019 Appraisal Review Board Manual on page 14, exhibit 6 of that manual, states that the ARB MUST hold the hearing requested.
- i. For the reasons stated above, the statement presented to plaintiff by the tax collector should not have been sent in accordance with *Harris County Appraisal Review Bd. v. General Elec. Corp.* (App. 14 Dist. 1991) 819 S.W.2d 915, writ denied thereby making it a fraudulent government document and being sent through the US Postal Service – mail fraud. (Tab K)
21. Palma brings this petition due to the simple fact that Defendants have no authority to appraise, value, assess or collect from the property, owner or beneficiary, where defendants failed to perform the required hearing under §41.41(a)(3), that is to say – they failed to provide due process.
22. The §41.41(a)(3) hearing runs in tandem with the Texas Constitution Article VIII Section 1 where it states that [some] property can be “exempt as required” and Tax code §11.01(a) states that some property is “exempt by law” and §11.01(b-c) indicates that property is taxable but only **IF** it is “located in this state.” 1) *City of Houston v. Morgan Guar. Intl. Bank*, 666 S.W.2d 526, (Tex. App.– Houston (1st Dist.)1983, (rehearing denied) and 2) *Dallas County Appraisal District v. L.D. Brinkman & Co.* 701 S.W.2d 20 (Tex. App.–Dallas 1985, writ ref’d n.r.e.) where this phrase means **both** 1) domiciled and 2) in business in Texas.
23. These facts cannot be disputed or contested:
- a. The Texas Supreme Court stated in *Severance v. Patterson*, 370S.W.3d 705, 55 Tex. Sup. Ct. J. 501: Private property rights have been described “as fundamental, natural, inherent, inalienable, not derived from the legislature and as pre-existing even constitutions.” *Eggemeyer v. Eggemeyer*, 554 S.W.2d at1403.
- b. And the U.S. Supreme Court stated in:

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<sup>3</sup> Private property rights are considered fundamental rights under the Constitution. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (describing “one’s right to life, liberty, and property” as “fundamental rights”); *In re Kemmler*, 136 U.S. 436, 448, 10 S.Ct. 930, 34 L.Ed. 519 (1890) (“Protection to life, liberty, and property rests primarily, with the states, and the [14th] amendment furnishes an additional guaranty against any encroachment by the states upon those fundamental rights which belong to citizenship....”); *Kelo v. City of New London*, 545 U.S. 469, 510–11, 125 S.Ct. 2655, 162 L.Ed.2d 439 (2005) (Thomas, J., dissenting) (“The Public Use Clause, in short, embodied the Framers’ understanding that property is a natural, fundamental right....”); see James Madison, *Property*, 27 Mar. 1792, reprinted in 14 THE PAPERS OF JAMES MADISON 266 (Robert A. Rutland et al., eds., 1983) (“Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that that alone is a just government, which *impartially* secures to every man, whatever is his *own*.”).

- i. *Wellness Int’l Network, Ltd. v. Sharif* , 135 S. Ct. 1932, 1966 (2015) (Thomas, J., dissenting) (some internal alterations, citations, and quotations omitted) (quoting *Johnson* , 80 U.S. at 85):

“Although Congress could authorize executive agencies to dispose of public rights in land— often by means of adjudicating a claimant’s qualifications for a land grant under a statute— the United States had to go to the courts if it wished to revoke a patent. . . . That differential treatment reflected the fact that, once “legal title passed out of the United States,” the patent “undoubtedly” constituted “a vested right” and consequently could “only be divested according to law.””

1. Is it the intent of the defendants to revoke the McClelland land patent (Tab F exhibit 5) by not providing the guaranteed right under §41.41(a)(3) thereby divesting the non-commercial 6205 Trust of the right to own the property allodially?

- ii. And as stated in *B & B Hardware, Inc. v. Hargis Indus., Inc.* , 135 S. Ct. 1293, 1317 (2015) (Thomas, J., dissenting) emphasis added) (quoting *Johnson v. Towsley*, 80 U.S. 72, 87 (1871)):

“And in the context of land grants, this Court recognized that once “title had passed from the government,” a more complete form of judicial review was available because “the question became one of private right.”

1. Currently the ARB members held responsible to adjudicate the private rights of owners are not elected officials yet have judicial immunity.

24. Defendants, for the reasons listed herein, have no standing to appraise, assess or collect ad valorem taxes on said non-commercial and un-rendered property.

25. Additionally local ad valorem property taxation runs afoul of the Tex. Cons. Art. VIII, Sec. 1 Clause (e): “No State ad valorem taxes shall be levied upon any property within this State” as there is no Texas Constitutional provision that grants the State the power to delegate the jurisdiction of this form of taxation to any political subdivision of the State.

- a. NOTE: this does not prohibit the State or its political subdivisions the right to administer an ad valorem tax over those “persons” it allows to do business in this state, see *Morgan* and *Brinkman*, or those men/women or others who sign a contract (an exemption document) with full knowledge that they are divesting themselves of

the RIGHT to maintain their Constitutional Homestead under Tex. Cons. Art. XVI Sec. 50.

**DOUBTS AS TO THE VALIDITY OF THE STATES**  
**SEPARATION OF POWERS DOCTRINE**  
**TEX. CONS. ART. 2**  
**AND BIAS**

26. “[T]he doctrine of separation of powers is a structural safeguard . . . .” *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995) (emphasis in original)
27. In *The Texas Workforce Commission v. Harris County Appraisal District* No. 14-14-00631-CV (March 31, 2016) the court stated that the Harris County Appraisal Review Board (ARB) members are paid by the HCAD.
- a. Because the ARB members obtain their pay directly from the HCAD, which obtains money collected by the tax collectors (Tax code §6.06), this renders the ARB members biased, or at least having the appearance of bias, in favor of the HCAD and the HCAD in favor of the taxing agencies.
  - b. Additionally in §6.06(e) should the chief appraiser and the taxing unit agree to a different method of payment, then each taxing unit shall pay the appraisal district in four equal payments.
28. Not only is there a conflict of interest between the taxing agencies, the AD’s and the ARB’s; plaintiff has also found out that the District court AND the Appellate Court judges get paid by the counties they serve!!
29. And of course the counties get funds by taxing property. Everybody gets paid on the backs of the alleged taxpayers, so how can this plaintiff be certain that bias is not going to occur by any agency or even this court? How can this scheme, its payment structure, be considered separation of powers? Will this court allow due process since the HCAD and ARB has not?
30. On the issue of bias or perceived bias:
- a. Tax code §6.03(a) – taxing units appoint the appraisal district (AD) board;
  - b. Tax code §6.03(e) - The chief appraiser calculates the number of votes each qualified taxing unit is entitled to have to appoint the appraisal district board;
  - c. It has recently come to my attention that ARB members are appointees of the commissioners court county judge (Tax code §6.41(d-1));<sup>4</sup>

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<sup>4</sup> This was stated at the Senates sub committees’ hearing in Conroe Texas having populations over 120,000.

- i. or the members of the appraisal review board are appointed by the appraisal district board of directors (§6.41(d));
  - d. Additionally the ARB members have judicial immunity.<sup>5</sup>
31. Exactly how does the separation of powers doctrine or non-biased officers exist:
- a. If an executive branch of government can appoint judicial branch, or at a minimum judicially immune, officers?
  - b. Or when the appraisal district appoints the appraisal review board members?
  - c. When the tax agencies vote on who sits on the AD's board based upon whose vote is calculated by the chief appraiser?
  - d. When the entire tax scheme is apparently based on the same tenants as nepotism?
  - e. When time after time after time the various agencies acting within the scheme fail to abide its own basic statutory guidelines.
32. It is for the reasons stated herein that this plaintiff is now also challenging the constitutionality of the ad valorem tax scheme in the State of Texas when it is applied to non-business property of any sort (real or personal) and property that has not been lawfully rendered.

**POSSIBLE OFFENSE BY ARB OR AD ATTORNEY?**

33. Tax code §6.43(d):

*“An attorney who serves as legal counsel for an appraisal review board may not act as an advocate in a hearing or proceeding conducted by the board. The attorney may provide advice to the board or a panel of the board during a hearing or proceeding **and shall disclose to the board all legal authority in the controlling jurisdiction known to the attorney to be relevant to the matter** and not disclosed by the parties. **The attorney shall disclose to the board a material fact that may assist the board or panel in making an informed decision regardless of whether the fact is adverse to the position of a party.**”*

- a. Is it possible that one or the other attorney told the members of the board or HCAD not to hold the §41.41(a)(3) hearing?

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<sup>5</sup> *Sledd v. Garrett*, 123 S.W.3d 592 (Tex.App.—Houston [14th Dist.] 2003, no pet.)

**CONCLUSION AND PRAYER**

For the reasons stated herein it is respectively demanded in the interest of justice that:

- 1) The Judge of this court sign an affidavit stating that he will not be biased against plaintiff for the reason stated herein and provide due process,
- 2) Order that any of the defendants, or this court, have the §41.41(a)(3) hearing as requested and required and show how this non-commercial, un-rendered, private home is taxable,
- 3) Order the assessor/collector to cease any collections for this year, and all other years, until this hearing occurs, and
- 4) The court rules on the constitutionality of tax scheme itself, specifically as to how the ARB's, AD's, commissioners court and tax agencies inter-relate with each other.
- 5) Should no higher state office, court, or agency have the required jurisdiction, then by law the "exclusive remedy" spoken of in *Valero* is lost which leads to the only course of action permitted which cannot and will not violate the rights under Tax Code § 41.41, the Declaration of Independence, the Federal and State Constitutions, the absolute and complete removal of the property from the past, current and future appraisal rolls,
- 6) Or show cause why this Court failed in its duty to protect property rights, enforce the rights provided under §41.41 et seq. and deny due process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 6 January 2019. (28 U.S.C. 1746)

**Respectfully Submitted**



**Michael Francis Palma, beneficiary  
In Propria Persona  
In care of: 5026 Autumn Forest Dr.  
Houston [77091]  
Texas**

# **TAB A**

*Notice of Appraised Value dated: 2018.04.13*

**A**





# HARRIS COUNTY APPRAISAL DISTRICT

## NOTICE OF APPRAISED VALUE FOR PROPERTY TAX PURPOSES

This is **NOT** a tax bill. Do **NOT** pay from this notice.

Tax Year: 2018

iFile Number: 87255960

[www.hcad.org/iFile](http://www.hcad.org/iFile)

Please use this ACCOUNT NUMBER → **1086470010020**  
when inquiring about your property.



89-1

2018 1086470010020 04/13/2018 0000054272

6205 TRUST  
MICHAEL PALMA  
5026 AUTUMN FOREST DR  
HOUSTON TX 77091-5002

0392



Mailing Address:  
Information & Assistance Division  
P.O. BOX 922004  
Houston, TX 77292-2004



PROPERTY DESCRIPTION: 04/13/2018  
LT 20 BLK 4  
CANDLELIGHT OAKS VILLAGE

PROPERTY LOCATION:  
5026 AUTUMN FOREST DR  
HOUSTON, TX 77091

Dear Property Owner:

This letter is your official notice of the 2018 property tax appraisal for the account listed above. Harris County Appraisal District (HCAD) appraises all of the property in Harris County for property tax purposes. Please review it carefully. **We noted you do not have a homestead exemption on this account; please see the information on back and the enclosed form.** If you qualify, the exemption provides significant tax savings.

By law, we must appraise property at market value. Market value is the price for which it would have sold on January 1 in the open market. You can find additional information about the reappraisal on our website at [www.hcad.org](http://www.hcad.org) and selecting Resources and then Reappraisal from the menu. If you have a homestead exemption and your 2018 market value increased by more than 10%, your 2018 appraised value may be less than the market value.

As of January 1, 2018, we appraised your property as shown below:

**2018 Market Value:** \$164,900

**2018 Appraised Value:** \$164,900

If you believe our market value appraisal is not accurate, you should file a protest with the Appraisal Review Board of Harris County. I have enclosed more information about the protest process with this letter. You can file until **May 15, 2018**, or 30 days after the date this letter was mailed, whichever is later.

I have also included a protest form, but the easiest way to protest is to file online at [www.hcad.org/iFile](http://www.hcad.org/iFile), using the iFile number in the upper right corner of the page. You will need to create a user name and password if you have not already done so. After filing you may also wish to take advantage of our online settlement process, called iSettle™. You can find more information about iFile and iSettle™ at [www.hcad.org](http://www.hcad.org).

Sincerely,

Roland Altinger, CAE, RPA, CTA  
Chief Appraiser  
Harris County Appraisal District

# **TAB B**

Notice of Protest dated: 2018.04.20

# **B**



Harris County Appraisal District  
 Information & Assistance Division  
 P.O. Box 922004  
 Houston TX 77292-2004  
**FORM 41.44** (01/18)



# PROPERTY APPRAISAL - NOTICE OF PROTEST

HCAD Account Number: **1086470010020** Tax Year: **2018**

Save a Stamp!  
 File Online at [www.hcad.org/iFile](http://www.hcad.org/iFile)

If you want the appraisal review board (ARB) to hear and decide your case, you must file a written notice of protest with the ARB for the appraisal district that took the action you want to protest.

GENERAL INSTRUCTIONS: Pursuant to Tax Code Section 41.41, a property owner has the right to protest certain actions taken by the appraisal district. This form is for use by a property owner or designated agent who would like the ARB to hear and decide a protest. If you are leasing the property, you are subject to the limitations set forth in Tax Code Section 41.413.

FILING DEADLINES: The usual deadline for filing your notice is **midnight, May 15**. A different deadline may apply in certain cases. For more information, see Page 2.

**Step 1: Owner's or Lessee's Name and Address**

Owner's or Lessee's First Name and Initial: **6205 Trust** Last Name

Owner's or Lessee's Current Mailing Address (*number and street*): **c/o 5026 Autumn Forest**

City, State, ZIP Code: **Houston Texas 77091**

Phone (*area code and number*): **(713) 263-9937**

Email: **mpalma1@gmail.com**

This space is reserved for HCAD use only

**\* NEWPT611 \* RECEIVED**

**COPY**

**APR 20 2018**

**HCAD  
INFORMATION & ASSISTANCE**

**Step 2:  
Describe  
Property Under  
Protest**

Give Street Address and City if Different from Step 1, or Legal Description if No Street Address

Mobile Homes (*give make, model, and identification number*)

**Step 3:  
Check  
Reason(s) for  
Your Protest**

To preserve your right to present each reason for your protest to the ARB according to law, be sure to select all boxes that apply. For example, if you select the first box indicating an incorrect appraised (market) value for your property, you are representing that the value is incorrect- usually that the value should be lowered. If you also want to protest that your property is not appraised at the same level as a representative sample of comparable properties appropriately adjusted for condition, size, location and other factors, you must also select the box indicating the value is unequal compared with other properties. Your property may be appraised at its market value, but be unequally appraised. Failure to select the box that corresponds to each reason for your protest may result in your inability to protest an issue that you want to pursue.

- Incorrect appraised (market) value.
- Value is unequal compared with other properties.
- Property should not be taxed in \_\_\_\_\_ any taxing unit (name of taxing unit)
- Property is not located in this appraisal district or otherwise should not be included on the appraisal district's record.
- Failure to send required notice \_\_\_\_\_ (type)
- Exemption denied, modified, or cancelled.
- Ag-use, open-space or other special appraisal was denied, modified, cancelled.
- Change in use of land appraised as ag-use, open-space or timberland.
- Incorrect appraised or market value of land under special appraisal for ag-use, open-space or other special appraisal.
- Owner's name incorrect.
- Property description is incorrect.
- Other Primary Jurisdiction over said property

**Step 4:  
Give Facts That  
May Help  
Resolve Your  
Case**

Without jurisdiction over the home there can be no situs. Property is NOT residential in nature.

Continue on additional pages as needed

What do you think your property's value is? (*Optional*) \$

**Step 5: Check to  
Receive ARB  
Hearing Procedures**

I want the ARB to send me a copy of its hearing procedures.  Yes  No \*  
 \*If your protest goes to a hearing, you will automatically receive a copy of the ARB's hearing procedures.

**Step 6:  
Signature**

Signature of Owner  Signature of Lessee  Agent Agent Code # \_\_\_\_\_

Print Name: **Michael Francis Palma, Beneficiary**

Sign Here:  Date: **04/20/2018**

**ADDITIONAL INFORMATION ON BACK**

# **TAB C**

Notice of hearing for value dated: 2018.06.13

**C**



**Mailing Address:**  
**Appraisal Review Board**  
P.O. BOX 920975  
Houston, TX 77292-0975



**PROPERTY DESCRIPTION:**  
**LT 20 BLK 4**  
**CANDLELIGHT OAKS VILLAGE**

**PROPERTY LOCATION:**  
**5026 AUTUMN FOREST DR**  
**HOUSTON, TX 77091**

**DATE: 06/13/2018**  
**ACCOUNT #: 1086470010020**  
**YEAR: 2018**



Dear Property Owner or Authorized Representative:

This is your official notice of the rescheduled time and date for the protest hearing.

**ARB Hearing**

Date: **07/18/2018** Time: **1:00 PM**

Place: **1st floor, 13013 Northwest Freeway, Houston, TX, 77040**

This particular hearing will consider the issues raised in the written protest: market value of the property and related matters.

**Please bring this notice with you to your hearing and be on time.** Your protest will be dismissed if you do not check in at the first floor Appraisal Review Board (ARB) check in counter at least 15 minutes before the ARB hearing time shown on this notice. Plan to spend about 2 hours during peak periods. On some days, access to the building is limited because of city fire marshal regulations. On those days, you will not be admitted to the building more than 30 minutes before your hearing. If you are a property owner appearing for your own protest hearing, and are not represented by an agent, and wait more than two hours after your scheduled hearing before the ARB, you may request to postpone your hearing to another day.

If evidence is presented in electronic format, at least one paper copy must still be provided for evidence. Audio visual equipment has been installed in all formal hearing rooms and is available for use by property owners or their agents through HDMI and VGA cable connections to connect a laptop or tablet to a projector.

If you do not want to or cannot personally appear at your protest hearing, you can designate a friend or family member to appear in your place. Space to make that designation is on the second page of the protest form. If you no longer have your protest form, you may print one from HCAD's website at [www.hcad.org](http://www.hcad.org), or simply send a signed letter with your representative naming that person to represent you at the protest hearing. If you filed your protest by *iFile*™ and designated someone to represent you at that time, we will have the name on file. In order to have a paid property tax agent represent you, you must file an appointment of agent form with the appraisal district. This form is available on HCAD's website, from the district's Information & Assistance Center on the 3rd floor of our building, or from the Texas Comptroller's Property Tax Assistance Division [www.cpa.state.tx.us](http://www.cpa.state.tx.us).

You may also submit your evidence in writing (appearance by affidavit). If this is done, your written evidence must be in the form of an original sworn affidavit. The affidavit should include your opinion of value and must contain evidence or argument. It must contain a statement by you that you swear or affirm that all supporting documentation is true and correct, and it must be properly notarized. If you use an affidavit it is a good idea to hand-deliver it. Affidavits sent by fax will not be considered. In any case, be sure it is sent to and received by the Appraisal Review Board before your hearing date. Be sure it contains your name, your address, the property account number, the property description shown above, and the date and time of your hearing.

A hearing before the ARB is open to the public unless you ask for it to be closed. If you intend to disclose confidential or proprietary information at your hearing, you or your authorized representative may request the ARB to close the hearing. At the beginning of the hearing simply ask the chief appraiser or his representative to join you in requesting the hearing be closed. Then both parties sign a prepared joint motion document for the hearing record.

If you have any questions regarding the date and time of the hearing, please call the hearings support staff at (713) 812-5860. When contacting this office please have your account number handy. All other questions regarding this account or any other concern should be directed to the Information & Assistance Division at (713) 957-7800.



# Appraisal Review Board

of Harris County  
13013 Northwest Fwy., Houston, Texas  
Telephone: (713)957-7800

## Notice of Protest Hearing

**iFile™ Number: 87255960**

[www.hcad.org/iFile](http://www.hcad.org/iFile)

1-1  
2018 1086470010020 0000088354 0000023  
6205 TRUST  
% MICHAEL PALMA  
5026 AUTUMN FOREST DR  
HOUSTON TX 77091-5002



1538



Set: 0000086646 - Hearing: 0000088354 RCH 20180613 - 0000023

# **TAB D**

Affidavit dated: 2018.06.29

**D**



BENEFICIARY'S BRIEF TO ARB MEMBERS

Account #1086470010020

TAX YEAR: 2018

Property owner: 6205 Trust, A private non-commercial unregistered Trust  
Mailing Address: 5026 Autumn Forest Dr., Houston Texas 77091

Legal Description: Private home having government imposed lot and block of LT20 BLK 4 of Candlelight Oaks Village

Type of Property subject to protest: Private home – HOMESTEAD in accordance with Article 16 Section 51 Texas Constitution

Action being protested: Constitutional ability of the ARB to place a homestead (<10 acres) on the appraisal roll for taxation purposes (Tax Code Ann. 41.41(a)(3), Article 16 Section 51 Texas Constitution

Evidence: Texas Constitutions from 1875 through today backed up by HCAD documents, one section of Texas Tax code and the *Constitution of the State of Texas: an Annotated and Comparative Analysis* by George D. Braden published in 1937.

NOTICE 1: Each of you, as members of the ARB, have an oath of office and must abide by that oath. Hence, should you find that the HOMESTEAD must be included on the appraisal roles you must state the exact clause in the Texas Constitution which creates the ANNUAL taxation of a HOMESTEAD and explain why you believe it to be true, failure to do so will result in a federal civil charges being brought against you. You may state your case by completing Form 1024a for tax year 2018.

NOTICE 2: The HCAD person has NO oath and will most likely only mention situs as he has no authority to discuss the Constitution. Without the Constitutional jurisdiction to place the HOMESTEAD on the appraisal role situs is irrelevant. The HCAD person cannot be charged as he signs no oath to the Constitution. The HCAD is supported by the tax revenue it helps the collectors bring in.

- |   |          |
|---|----------|
| 1) Form 1024a   | Pages 1  |
| 2) <i>Constitution of the State of Texas: an Annotated and Comparative Analysis</i> | Pages 13 |
| 3) <i>HCAD Lister's Manual</i>  | Pages 1  |
| 4) <i>HCAD real property acct. information for Apartments at 4114 Broadway LLC</i>  | Pages 1  |
| 5) <i>Deed for 6205 Trust</i>   | Pages 1  |

Comments: You are to review each of the above documents

Statement of intent: I do not intend to appear at the hearing. The following documentation can be found online and are being used as evidence for this hearing: Texas Constitution(s), *Constitution of the State of Texas: an Annotated and Comparative Analysis* (all sections but one are provided for convenience), and the Texas Tax code. The HCAD Lister's manual is certified by the HCAD as is the account used for reference of the definition of "residential."

2018 JUN 29 AM 2:21  
HCAD 18A  
RECEIVED

COPY

## BENEFICIARY'S BRIEF TO ARB MEMBERS

Summary: According to your administrative rules (the tax code) I am to show that the HOMESTEAD is to be excluded from the appraisal/tax roles, this is done via the documents in this Affidavit. I strongly urge each ARB member to read the attached documents – paying particular attention to the items in yellow and the side notes.

The Great State of Texas convenes in 1875 its Constitutional Convention after the War Between the States. Said Constitution having been signed by the Conventioneers in the City of Austin on the 24<sup>th</sup> day of November, 1875 and approved by Texans in 1876. Although amended over 450 times, the 1876 Constitution remains the current charter for the State.

1) Article 1

- a. Sec 2: *All political power is inherent in the people* and all free governments are founded on their authority, *and instituted for their benefit*. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.
- b. Sec 19: *No citizen* of this State *shall be deprived* of life, liberty, *property*, privileges, immunities, or in any manner disfranchised, except by the due course of the law of the land.

2) Art 3

- a. Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing: *The creation, extension or impairing of liens*; (self-explanatory and not included as an exhibit)

3) Art. 8

- a. Sec. 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; *provided*, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State, shall be exempt from taxation, and provided further that the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business.

4) Art 16

- a. Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town, or village, ***shall consist of lot, or lots, not to exceed in value five thousand dollars***, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.



## BENEFICIARY'S BRIEF TO ARB MEMBERS

- b. Sec 52. On the death of the husband or wife, or both, the homestead shall descend and vest in *like* manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband and wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

The above are the pertinent sections of the Constitution of 1875; hence using analytical thought processes the following intent of the Conventioneer's may be ascertained until shown otherwise:

- 1) The state (be aware the "state" means you as ARB members, the ARB and the HCAD) must only do things, pass laws, etc. that benefit the people.
- 2) The state must only do things, pass laws, etc that *protect* the life, liberty and *property*, etc of the people.
- 3) In Art. 3 Sec. 56 states that the State cannot create a local or special law authorizing a lien
  - a. This clause thereby prohibits a lien being filed by the state/county on non-taxable property. Which makes sense even today as the state/county cannot put a lien on your dishwasher, washing machine or refrigerator.
  - b. In Art. 16 Sec. 51 a HOMESTEAD is what cannot be liened as explained herein.
- 4) Looking at Art. 8 Sec. 1 it *appears* to state that ALL property in this state is taxable, however when one analyses this section it becomes apparent that the intent of the Conventioneers is to tax property and natural persons that produce income...to wit:
  - a. "All property..." but it does not specify the definition of "property" or when it shall be taxed.
  - b. However it does state that:
    - i. the property may be owned by corporations - doing business/producing *income*
    - ii. That the legislature may impose an occupation tax - doing business/producing *income*
    - iii. That the legislature may impose an *income* tax
  - c. The above, i-iii, surely makes it apparent that all taxes should be based on if the property or person makes or creates an income, hence if "all property" is taxable the one logical conclusion is that if a natural person holds property that is in business and being used for the production of income then it would be taxable.
  - d. And there is no provision in the 1875 Constitution that authorizes the legislature to exempt such property from taxation.
    - i. Note that the legislature cannot "exempt" taxable property they also may not make "exemptions" for such property. (hence today's "exemption" forms are technically unconstitutional)
    - ii. To see if this inference is correct look to Art. 8 Sec 2 and Art. 16 Sec. 51 and 52.
- 5) Although not listed above the Tex. Cons. 1875 Art. 8 Sec 2 states that places of burial may be made exempt from taxation by the legislature *IF* not held for private or corporate profit.

## BENEFICIARY'S BRIEF TO ARB MEMBERS

- a. Thereby showing once again that the only property that can be taxed is income producing properties.
- 6) Art. 16 Sec. 51 states that a homestead:
- a. *shall consist of lot, or lots, not to exceed in value five thousand dollars...without reference to any improvements thereon,*
  - b. But in the country a free ride was given to two hundred acres of land with improvements.
  - c. Hence if one was “wealthy” and owned more than \$5000 in city lots (today the homestead can be up to 10 acres) or more than 200 acres in the country you could be taxed. Indicating that one could run a business that produces income on the other lots worth over the \$5000 cap or run a ranch on the acreage over the 200 acres the state allowed you to live on, making the overage taxable due to the income it makes thereby funding the state and counties.
  - d. There was no Homestead “Exemption” or any other type of exemption on the lot or acreage as it was not needed. The 1875 homestead in today’s Constitutional vernacular is “exempt as required”.
  - e. There is no reference in 1875 to property being “exempt as required”, “residential,” or even “commercial.” It appears clear that the intent of the 1875 Constitution was to tax property that produces “income” and not a homestead that was protected under Art. 1 Sections 2 and 19 of the Texas Constitution and in the Federal Constitution which are still in force today.
- 7) Art. 16 Sec. 52 makes it clear as to the apparent intent of the Conventioneers:
- a. That a “homestead shall descend and vest in *like* manner as other real property” indicating that a homestead even though it may “vest like” “real property” it is still not to be considered “real property” that produces income given the parameters of Art. 16 Sec. 51. This is because there is no provision in Art. 16 Sec. 51 that refers to, or infers, that the amount of land or value of lots that is considered a homestead is, or shall be even considered, property that is taxable unless over said value or acreage.

In summary it appears the general intent of the Conventioneers – until shown otherwise - was this:

- a) People had a right to property as part of life, liberty and property. Anything over the amount of 200 acres or what amounted to your *LOT(s)* having exceeded \$5000 was then taxable by the state because the presumption is that income is being made on it.
  - 1) How much was a *LOT* in a city back then ... \$200 at best? The point is that the Convention allowed for the value of a *LOT* to increase knowing, or at least believing, that the value of the lot would go up but not to exceed \$5000 for a long, long time.
  - 2) When Braden wrote his *Annotated and Comparative Analysis* the homestead exemption was \$10,000.
  - 3) Today the homestead is described to be 10 acres or less if in a city without reference to improvements or the lots monetary value.
- b) The Federal documents allow for a person to be secure in his life, liberty and the protection of property. The Texas Constitution could not negate this so they made the value of the *LOT* and

## BENEFICIARY'S BRIEF TO ARB MEMBERS

the acreage high enough so a man could live or farm to provide a home or a home and sustenance for his family without fear of it being taken by the tax man.

- c) What is noteworthy is that the Conventioneer's talk about a **LOT** without reference to improvements. So what makes it taxable back in 1875 if I use it as a home or for shelter? Answer – if the lot(s) is/are worth over \$5000. Hence a HOMESTEAD of yesteryear, no matter what you call it today, be it real property or real estate or residential, is still your HOMESTEAD not being taxable unless the **LOT** is in excess of \$5,000 or 10 acres today, **without reference** to the value of any improvements thereon.

How can this be proven?

The 1875 Conventioneers in Art. 16 Sec 51. talks about renting property as well. The Constitution states that you may temporarily rent your home without changing its characteristic. It then follows that if you use a home as a rental to generate **income** and have an additional lot as a homestead then the rental property alone is taxable.

The logical presumption follows that the “All property” being talked about in Art. 8 Sec. 1 is property that generates income.

This can be proven using today's code:

- 1) In today's code the legislature allows for a property tax on inventory of homes for **sale** as stated in Tex. Tax Code Ann. Sec. 23.12.
  - a. INVENTORY. (a) Except as provided by Sections 23.121, 23.1241, 23.124, and 23.127, the market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business. An inventory shall **include residential real property** which has never been occupied as a residence and **is held for sale in the ordinary course of a trade or business**, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income.
- 2) Hence “real property” from 1875 to today is primarily a commercial term, but may still be used as a reference to a homestead.
- 3) The term “residential” used today can be proven to be commercial in nature:
  - a. Simply look at the HCAD's Lister's Manual when it calls “apartment complexes” commercial.
  - b. Now look at the HCAD information for the Apartments at 4114 Broadway LLC. It clearly states that the apartment is “residential,” thereby leading anyone to believe “residential” must be commercial.
- 4) Hence once sold property can become either a homestead or income producing, it cannot be both.

From the Texas Constitution of 1875 allowing a man to have a lot(s) or 200 acres to live on without taxation and not mentioning any tax, let alone any value on the improvements itself; to today's

## BENEFICIARY'S BRIEF TO ARB MEMBERS

code showing when “residential real property” is taxable, thereby indicating that “real property” must, using common sense, be considered as primarily commercial property from 1875 to today and residential is without fail commercial in nature.

The reasoning behind the 1875 State Constitution makes clear why the current State Constitution is written in such a way that property may be “exempt as required” and the Tex. Tax Code Ann §11.01 states that property may be “exempt by law.” The unrepealed portions of the 1875 Texas Constitution, the current State and Federal Constitutions are the law.

Until proven otherwise, beneficiary believes that it was never the 1875 Conventioneer’s intent that a “homestead” would be taxable, if below the constitutional limits, nor can it be implied today that this has changed. This home is NOT residential and the records of the HCAD are clearly incorrect and is, in fact, a fraudulent government document.

Should the ARB members, having read the above AND the attachments, believes that a private non-commercial home – a HOMESTEAD being less than 10 acres - is still taxable, I would strongly advise you to re-read pages 69 through 71 (highlighted portions again) of Braden’s *Annotated and Comparative Analysis* and ask the following:

- 1) Did the appraisal district representative justify the counties interference with the homestead:
  - a. By stating any part of the Texas Constitution that mandates a HOMESTEAD is appraisable for taxation every single year? Or
  - b. That the home sits on more than 10 acres of land? Or
  - c. That the home is in business? (proof that it is not is recorded on the Deed) Or
  - d. That the lot is NOT formally designated as a “homestead” – if yes then see page 792 of Braden’s *Annotated and Comparative Analysis* (also in yellow)
- 2) Based on a through d above: if the HCAD representative could not overcome the overwhelming presumption that a homestead under 10 acres in the city is not subject to taxation then you must remove the homestead from the appraisal roles or be subject to the Texas or even the Federal Courts for violating your Oath to uphold the Constitution of Texas.

One last thing...as an offer of proof of the above:

US Supreme Court stated in *Smith v. Texas*, 233 US 630, 636, 58 L.Ed. 1129 (1913) which has not been overturned:

- a. “Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and

**BENEFICIARY'S BRIEF TO ARB MEMBERS**

the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.”

State of Texas  
County of Harris

I, Michael-Francis: Palma being first duly placed under oath by the undersigned official authorized to administer oaths under the laws of this state, do solemnly swear that the information herein and attached is true and correct.

Subscribed an sworn before me this 29 day of June 2018



Signature  
Michael – Francis: Palma  
Printed name

August 20, 2019  
Commission expires

2018 JUN 29 PM 2:21  
HOAD-R&A  
RECEIVED

Property owner: 6205 Trust, A private non-commercial unregistered Trust

Mailing Address: 5026 Autumn Forest Dr., Houston Texas 77091

Legal Description: Private home having government imposed lot and block of LT20 BLK 4 of Candlelight Oaks Village

Type of Property: Home/Homestead

Action being protested: Inclusion of the property on the appraisal role

Complete form 1024a: Each ARB member on the panel is to complete this Form and return it to the property address if you find that the property is appraisable for taxation.

Statement of intent: As the requestor is not an attorney it is my intent to find out how the ARB members, each having an oath of office, justify placing a homestead having less than 10 acres in a city on the appraisal role for tax purposes.

Form 1024a
Notice to ARB members

It is the obligation of the ARB members to ensure that laws are correctly applied and you adhere to your Oath of Office. As the requestor is not an attorney, to ensure that the tax laws are correctly applied, requestor requests the following information from the ARB members sitting on the panel.

Complete this Form to enable requestor to understand and lawfully comply with the law.

When completed requestor shall be able to more fully understand how situs was attained by the County and how to challenge it.

1. Does the ARB have the jurisdiction to place a less than 10 acre homestead on the appraisal role.

Yes [ ] No [ ]

2. Please indicate specific part of the Constitution that grants the jurisdiction of the ARB to place the Homestead on the appraisal role.

Three horizontal lines for handwritten response to question 2.

Most individuals can complete this FORM in five minutes. You are required by law (UCC 3-115 & 3-118) to complete this FORM

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct that the foregoing is true and correct. Executed this \_\_\_ day of \_\_\_, 20\_\_.

SIGNATURE \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

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**THE CONSTITUTION OF  
THE STATE OF TEXAS:**

**An Annotated and  
Comparative Analysis**

# THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS

By

George D. Braden  
Legal Consultant  
(Editor and Author)

And By

David A. Anderson  
Professor of Law  
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R. Stephen Bickerstaff  
Chief, State and County  
Affairs Division, Office of the  
Attorney General of Texas

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Assistant Director  
Legal Division  
Texas Legislative Council

Seth S. Searcy III  
Attorney-at-Law

Thornton C. Sinclair  
Professor Emeritus  
University of Houston

Richard A. Yahr  
Legal Counsel  
Texas Legislative Council

## Participating Agencies:

**Texas Constitutional Revision Commission of 1973**

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**Constitutional Convention of 1974**

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**University of Houston, Institute for Urban Studies**

---

**Texas Advisory Commission on Intergovernmental Relations**

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**Texas Legislative Council**



*Our constitution is the basic contract between the people of Texas and their government; it is essential that we all understand the terms of that contract.*

W. Page Keeton  
Former Dean  
The University of Texas School of Law  
Austin, Texas

understanding due process, therefore, it is necessary to review briefly what the Fourteenth Amendment's Due Process Clause requires of Texas. To this will be added whatever the Texas courts appear to require beyond the Fourteenth Amendment.

The Due Process Clause of the Fourteenth Amendment is many things. First, as discussed earlier in the *Introductory Comment*, it is a vehicle used by the United States Supreme Court to impose on the states some of the specific restrictions imposed on the United States by the Bill of Rights of the United States Constitution. But there is a Texas equivalent for each of these specific restrictions. Thus, whatever the Fourteenth Amendment requires in a specific area—free speech, freedom of religion, double jeopardy, for example—overrides the Texas equivalent but leaves the Texas courts free to go beyond what the Fourteenth Amendment requires. If the United States Supreme Court had said that the Fourteenth Amendment incorporates the Bill of Rights as such, one could dismiss the Due Process Clause from further consideration, for it would have served its limited purpose as a vehicle for incorporation. (Since "due process of law" is covered in the Fifth Amendment, that amendment, if incorporated, would have governed true due process issues.) But the court has not gone that route. Technically, therefore, most traditional Bill of Rights protections are matters of due process of law. (Or equal protection. See the *Explanation* of Sec. 3.) Nevertheless, the Fourteenth Amendment requirements of free speech, freedom of religion, and the like are discussed as part of the applicable Texas section. Obviously, those are the sections controlling Texas government; Section 19 is limited to traditional issues of due process.

In American constitutional law two kinds of due process evolved: procedural and substantive. Procedural due process is the direct descendant of the Magna Carta provision quoted earlier. Originally, this meant only that individuals could not exercise the power of government arbitrarily; there had to be a basis in law for the action taken. Procedural due process originally concerned only how the government exercised its power: due process did not concern what power the government had. For example, the Bill of Rights provisions concerning fair criminal trials are specific definitions of elements of procedural due process. In this procedural sense, a due process clause is a catch-all to secure fair procedure in situations not otherwise specified.

There is an important distinction between the traditional procedural due process flowing from Magna Carta and procedural due process as it developed in American constitutional law. Since our written constitutions impose limitations on the power of government, courts do not hesitate to invalidate statutes which the courts find to be procedurally unfair. (In England an Act of Parliament is "the law of the land" in the words of the Magna Carta.)

The principal procedural requirement of due process is that a person have recourse to the courts for the protection of his life, liberty, or property. (Sec. 13 in effect duplicates this aspect of procedural due process.) This is a logical imperative, for if the purpose of procedural due process is to require the agents of government to follow the law of the land, only the courts can enforce the requirement. (For a recent statement of this requirement, see *Board of Firemen's Relief and Retirement Fund Trustees of Texarkana v. Hamilton*, 386 S.W.2d 754, 755 (Tex. 1965).)

Closely allied to the right to recourse to the courts are the right to a full day in court and the right to due notice. A "full day in court" simply means that once inside, a party to a lawsuit must be given the opportunity to present his case. (See *Turcotte v. Trevino*, 499 S.W.2d 705, 723 (Tex. Civ. App.—Corpus Christi 1973, writ *ref'd n.r.e.*.) "Due notice" means that one must receive adequate

notice that he has been sued or otherwise has an interest in the litigation. Normally the law requires personal service: constitutional issues arise when something is substituted for personal service. The rules are technical and can only be summarized. Generally, substituted service is permissible only when personal service is not possible. Common examples are unclaimed bank deposits and actions to clear up a title to land. (For a recent example see *City of Houston v. Fore*, 401 S.W.2d 921 (Tex. Civ. App.—Waco 1966), *aff'd*, 412 S.W.2d 35 (Tex. 1967).)

In recent years the United States Supreme Court has broadened procedural due process in a substantive sense, so to speak. This has taken the form of rulings that it is a denial of procedural due process to permit a creditor in effect to collect his money before he wins his suit. In *Sniadach v. Family Finance Corp.* (395 U.S. 337 (1969)), the court struck down a statute that permitted garnishment of wages without notice or hearing and prior to judgment. This was soon followed by *Fuentes v. Shevin* (407 U.S. 67 (1972)), in which the court struck down statutes that allow the seller to repossess goods sold under an installment contract, again without notice or hearing and prior to judgment. Although these new rules are not limited to poor people (see *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975)), there is no doubt that the court has been influenced by the normal inequality in bargaining power between the seller and buyer. This is especially the case when the contract of sale itself requires the buyer to agree to summary repossession. See, for example, *Gonzales v. County of Hidalgo* (489 F.2d 1043 (5th Cir. 1973)), which involved seizure of household goods for nonpayment of rent, again without notice or hearing. The lease provided that the landlord could do this, but the court was not satisfied that the tenant understood that he was signing away a constitutional right.

There is another area in which the distinction between procedural and substantive due process is blurred. This concerns statutory presumptions. For many years the courts have held that due process is denied if a statute creates an unreasonable presumption or a presumption that unreasonably shifts the burden of proof in litigation. The leading case is *Western & Atlantic R.R. v. Henderson* (279 U.S. 639 (1929)), which struck down a statute creating a presumption of railroad negligence in a fatal grade-crossing accident. The crucial vice in the presumption was that a jury could weigh the presumed fact against evidence of due care by the railroad employees. Generally, there is no objection to a presumption that operates only in the absence of evidence because the presumption disappears as soon as the party against whom the presumption runs introduces evidence contrary to the presumption. The Texas courts have construed Section 19 to provide the same protection against unreasonable presumptions. (See *Prideaux v. Roark*, 291 S.W. 868 (Tex. Comm'n App. 1927, *judgmt adopted*) and *Rawdon v. Garvie*, 227 S.W.2d 261 (Tex. Civ. App.—Dallas 1950, *no writ*).)

A recent United States Supreme Court case demonstrates how easy it is to rely on the procedural rule of presumptions to reach what is a matter of substantive due process. Connecticut, like Texas, charges nonresidents higher tuition at state universities than is charged residents. Connecticut defined a nonresident as one who was not a resident when he applied for admission. Thus, once a nonresident always a nonresident until education was completed. This, the court held, was an unconstitutional presumption under the Fourteenth Amendment because a student was not permitted to show that after admission he became a bona fide resident (*Vlandis v. Kline*, 412 U.S. 441 (1973)). A dissenting opinion convincingly demonstrated that the court was simply making a substantive decision that a state could not exercise control over the ease with which young out-of-state college students could turn themselves into "residents" in order to save money. A

concurring opinion objected to this characterization but really confirmed it by analogizing the situation to the equal protection cases that forbade discrimination between residents and nonresidents. It has already been noted that the Supreme Court began sometime ago to use the Equal Protection Clause in a manner reminiscent of substantive due process. (See the *Explanation* of Sec. 3.)

There is good reason for the Supreme Court's hemming and hawing about whether it has revived substantive due process under other guises. For the first third of this century the court was roundly and consistently criticized for acting as a superlegislature in striking down legislation in the name of the Due Process Clause. (There is a story, possibly apocryphal, that Chief Justice Taft once returned from conference, tossed the record and briefs in a case on his law clerk's desk, and said: "We just decided this is a denial of due process. Figure out why.") In almost all instances the invalidated legislation represented efforts by legislatures to regulate economic behavior, normally for the benefit of the small businessman, the employee, or the consumer. In the middle of the 1930s the court began to retreat from this substantive use of due process. By 1963 Justice Black could assert for the court that substantive due process was dead. (See *Ferguson v. Skrupa*, 372 U.S. 726, 730-31. Justice Harlan carefully concurred in the result on the grounds that the legislation in question bore "a rational relation to a constitutionally permissible objective" (p. 733). This is "due process" language.)

It has already been noted that the justices were able to find substitutes for substantive due process by relying upon specific rights in the Bill of Rights, by expanding the concept of equal protection, and by stretching procedural due process. Yet two years after *Ferguson*, the court found itself unable to rely upon substitutes and had to revive substantive due process. This was the case of *Griswold v. Connecticut* (381 U.S. 479 (1965)), in which the court struck down a law prohibiting the use of contraceptives. Although there were only two dissenting justices, the court erupted with six opinions, all arguing over whether the right to be protected was a matter of substantive due process. The landmark abortion decision (*Roe v. Wade*, 410 U.S. 113 (1973)), fairly well settled the issue. Today, the Due Process Clause of the Fourteenth Amendment forbids some substantive state action that is not covered by any of the specific protections elsewhere enumerated in a Bill of Rights.

Part of this judicial thrashing around is a matter of semantics. "Substantive" due process, as noted above, is the term used to describe the judicial gloss that many people argued was designed to impose a laissez-faire economic system. In that sense, substantive due process is still dead. What the court appears to be doing now is to abandon efforts to invalidate legislation by stretching other concepts such as equal protection, freedom of speech, and the like. Instead, the court accepts some rights as "fundamental" and requires the state to justify interfering with them. What these rights are is no easier to describe than it was to describe what a state could do in the days of substantive due process. Now, as then, there is a general philosophical base upon which the court relies. In some respects the fundamental right protected by the court is that of privacy, but this is an oversimplification. A more sophisticated guess is that the court tries to preserve the essence of a free society against the encroachments that seem to flow from an increasingly complex society.

There is no indication that the Texas courts are engaged in such complicated philosophical considerations of the constitutional limitations imposed by the Texas Bill of Rights. This is probably a result of the relative scarcity of significant constitutional issues compared with the volume reaching the United States Supreme Court. In any event, Section 19 appears to be construed in the traditional manner discussed earlier in the *Explanation* of Section 3.

## Art. VIII, Introduction

article where it did not belong either. (The “tax” was transferred; the old words remained in Sec. 51 until 1968.)

Things really began getting complicated in 1954 when Section 51-b was added to Article III. It created another special fund and moved the 2¢ tax thus:

(d) The State ad valorem tax on property of Two (2¢) Cents on the One Hundred (\$100.00) Dollars valuation now levied under Section 51 of Article III of the Constitution as amended by Section 17, of Article VII (adopted in 1947) is hereby specifically levied for the purposes of continuing the payment of Confederate pensions as provided under Article III, Section 51, and for the establishment and continued maintenance of the State Building Fund hereby created.

Although the foregoing provision carefully but inaccurately describes the peregrinations of the 2¢ levy, people soon forgot that they had moved the tax back to Article III. In 1958, Section 66 was added to Article XVI. It provided for payment of pensions to certain Texas Rangers or their widows but “only from the special fund created by Section 17, Article VII.”

With the adoption of Section 1-e in 1968, the peripatetic confederate pension tax finally found a resting place in the article on taxation. Even so, people still forgot where the tax provision actually was. Section 1-e of Article VIII states:

The State ad valorem tax of Two Cents (\$.02) on the One Hundred Dollars valuation levied by Article VII, Section 17, of this Constitution shall not be levied after December 31, 1976.

Even in 1875, the convention delegates were not watching each other’s left and right hands carefully. Section 1 states that the legislature may impose a poll tax; the original Section 3 of Article VII directly levied a poll tax of one dollar. The original Section 2 of Article VIII granted the legislature power to exempt from taxation “public property used for public purpose”; Section 9 of Article XI directly exempts from taxation such public property of counties, cities, and towns.

*Basic constitutional principles of taxation.* In a state constitution there is no need to mention any power to tax; the legislature has all the taxing power anybody can dream up. It follows that any affirmative statements about the power to tax are redundant. This is so even if the purpose is to introduce a limitation. It is not necessary, for example, to say that occupation taxes may be imposed as a hook upon which to hang a prohibition against taxing agricultural and mechanical pursuits; it is sufficient to provide that no occupation tax may be imposed on mechanical and agricultural pursuits. (“Mechanics and farmers” would be less ambiguous, of course, but that is another matter.)

Keeping power and limitations on power straight can get complicated. For example, the straightforward proposition “All property shall be taxed in proportion to its value” is not a grant of power to tax. (If it is a command to tax property, it is no more effective than any other affirmative command to the legislature.) The proposition is both a limitation on the power of the legislature to exempt property from any taxation and on either the power to set different rates for different kinds of property or to tax property by any method other than ad valorem. (See *Explanation of Sec. 1* concerning this ambiguity.) It follows that a grant of power to exempt property from taxation is an exception to the limitation rather than a true grant of power.

*Thrust of the Texas limitations.* A glance at the table at the end of this *Introductory Comment* reveals that most of the restrictions, limitations, exemptions, and exceptions involve ad valorem property taxes. The state is free to levy and

Great Depression. Although raising revenue was a prime purpose of the tax, it was also a regulatory measure designed to decrease the competitive advantage enjoyed by large corporations. The Texas tax was an annual occupation tax graduated according to the number of stores in the state, the graduation running from \$1 for a single store to \$750 for each store over 50. (Louisiana went further and graduated the tax according to the number of stores both in and out of the state. That tax was upheld in *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412 (1936).) The Supreme Court of Texas disposed of the classification argument by using the *Stephens* case quotations set out above and several United States Supreme Court cases that had upheld chain store taxes.

The State charges no ad valorem tax - under this principal how can a political subdivision?

\*\*\*\*\*

Section 1 limits local occupation taxes to one-half of any occupation tax levied by the state. This means: "no state tax, no local tax." It does not mean: "state tax, local tax." This second proposition is not obvious from the proviso itself. The effect comes from the rule that no local government, except a home-rule city, has any taxing power except that granted directly by the constitution or by statute. Home-rule cities may levy a piggy-back occupation tax unless the legislature has withdrawn the power. As noted above, the legislature has done just that in a manner that puts home-rule cities in the same position as other local governments. (Nobody appears to have strained to read the proviso of Sec. 1 as a direct grant of taxing power.)

Local governments, particularly home-rule cities, frequently exercise their police power to regulate a business by requiring a license. Since this is a license to engage in an occupation, a question arises if there is a license fee high enough to generate revenue, thus arguably turning the fee into an "occupation" tax. An early case is *Brown v. City of Galveston* (97 Tex. 1, 75 S.W. 488 (1903)). Galveston enacted an ordinance requiring a license and a fee for all vehicles kept for public use or hire. It was argued that the size of the fee demonstrated that it was in part a revenue measure and therefore unconstitutional under Section 1 since there was no equivalent state occupation tax. The court conceded "that the police power cannot be used for the purpose alone of raising revenue, and, where exercised by a city for the purpose of raising revenue, it will be held to be by virtue of taxing power, and not of the police. But the fact that the assessment under the police power results in producing revenue . . . does not deprive the assessment of the character of a police regulation." (97 Tex., at 75; S.W., at 496.) The court concluded that the fees were levied in the exercise of the police power and that the incidental revenue did not invalidate the ordinance.

Prop tax is clearly to raise revenue and by using police power to evict someone for being unable to pay is the equivalent of a license fee.

The rule—a license fee is not an occupation tax if any revenue above the cost of regulation is incidental—seems clear enough; but as frequently happens when the judiciary applies a clear rule, the results seem a little strange. Consider *Mims v. City of Fort Worth* (61 S.W.2d 539 (Tex. Civ. App.—Fort Worth 1933, *no writ*)) and *Ex parte Dreibelbis* (109 S.W.2d 476 (Tex. Crim. App. 1937)). In the *Mims* case, an annual license fee of \$100 for selling fruits and vegetables at wholesale was held a valid police power regulation and not an occupation tax; in the *Dreibelbis* case, a license fee of \$10 on a "temporary merchant" was held to be an occupation tax because the fee was "not levied for the purpose of regulating the enumerated businesses, but to raise revenue." (p. 477.)

There is no "revenue" above the cost of the fee to live.

Since the "fee" is solely to raise revenue then the fee must be an occupation tax.

In all fairness, it should be noted that the supreme court said in the *Hurt* case discussed earlier that it "is sometimes difficult to determine whether a given statute should be classed as a regulatory measure or as a tax measure." (130 Tex., at 438; 110 S.W.2d, at 899.) The court continued by stating that if the primary purpose of the fee appears to be to raise revenue, the fee is an occupation tax; if the primary purpose appears to be to regulation, the fee is a license. Difficult to apply or not, the rule remains clear.

There is no occupation here. Should the "fee" be considered a license, I don't recall applying for one.

If a license fee is a license fee and not an occupation tax, it makes no difference

## Art. XVI, § 51

constitutionally for some kind of homestead exemption. Most of these states specify the same exceptions—purchase money, improvements, and taxes—as Texas does. A few specify additional exceptions. For example, Arkansas and Virginia permit forced sale of the homestead to pay judgments against persons such as guardians, attorneys, and public officers for moneys collected by them. (See Ark. Const. art. IX, sec. 3; Va. Const. art. XIV, sec. 90.)

About half of the states that have homestead exemptions also have a constitutional provision prohibiting the husband from selling or encumbering the homestead without the wife's consent. A few states—Kansas, Nevada, Tennessee, and Wyoming, for example—apply this prohibition to both spouses. The scope of the homestead protection in other states is discussed in the *Comparative Analysis* of Section 51.

## Author's Comment

Inclusion of homestead provisions in the Texas Constitution has been under attack for over 50 years. (See Cole, "The Homestead Provisions in the Texas Constitution," 3 *Texas L. Rev.* 217 (1925).) Critics of the present constitutional provision point out that about half of the states apparently have found it possible to protect the family home without benefit of any constitutional provision on the subject, while half a dozen others include only a directive to the legislature to provide for such an exemption.

These critics assert that in addition to being unnecessary, the present homestead provisions are undesirable from the standpoint of both debtors and creditors. As pointed out earlier, the section inhibits a homeowner's financing options and makes it difficult for him to be his own home improvement contractor. The provision creates uncertainty for lenders, who risk losing their security if they err in determining whether the property is homestead, whether it is within one of the three exceptions, or whether both spouses have effectively consented to the encumbrance. Defining the type and extent of the homestead exemption creates additional difficulties and inequities.

It has been suggested that homestead claimants in some circumstances might be better protected without any homestead exemption at all. For example, the present provision effectively prevents mortgaging the homestead to meet a financial emergency; the only source of funds thus may be outright sale of the homestead—a result that certainly does not accomplish the goal of preserving the family home. The section's efficacy in protecting the wife from her husband's improvidence also has been questioned. (Comment, "The Wife's Illusory Homestead Rights," 22 *Baylor L. Rev.* 178 (1970).)

As noted above, some state constitutions treat the matter of homesteads by simply directing the legislature to provide for them. It has been pointed out that Texas could accomplish this merely by amending present Section 49 of Article XVI. That section gives the legislature the power and duty "to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female." This section could be amended to speak to "personal and real property." The efficacy of such a provision may be doubted, however, since there is no sure way to enforce such a command if the legislature chooses not to comply with it.

**Sec. 51. AMOUNT AND VALUE OF HOMESTEAD; USES.** The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value Ten Thousand Dollars, at the time of their designation as the homestead, without reference to the value of any

Today the city lot is 10 acres.



## Art. XVI, § 51

improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

### History

The nature of the homestead was defined in the section creating the exemption until 1875, when the definition was moved to its own separate section, this Section 51. (See the *History* of Sec. 50.) The rural homestead acreage limit was increased from 50 to 200 acres, the present figure, by the Constitution of 1845.

The limit on urban homesteads has undergone qualitative as well as quantitative change. The 1839 statute placed no limit on the overall value of the urban homestead but protected improvements on the homestead only up to \$500. The 1845 Constitution eliminated this limitation on the value of improvements and instead imposed a \$2,000 limit on the value of the lot or lots claimed as the urban homestead. This figure was increased to \$5,000 in the 1869 Constitution and was raised to \$10,000 by an amendment adopted in 1970.

The requirement that city lots be valued “at the time of their designation as the homestead, without reference to the value of any improvements thereon” was added in 1869. This was a response to a decision holding that urban homesteads were to be measured at current value, including value of improvements, and that any excess over the constitutional limit could be subjected to forced sale. (*Wood v. Wheeler*, 7 Tex. 13 (1851).)

There was an attempt in the 1875 Constitutional Convention to limit the exemption in any event to \$10,000, but it was defeated. (*Journal*, pp. 711-12.)

The 1973 amendment described in the annotation of Section 50 also amended this section to make a business homestead available to single adults as well as heads of families.

### Explanation

What is or is not homestead property under this section is a rather intricate question. **The basic rule is that the debtor's property is subject to forced sale to the extent that it exceeds the stated acreage or value limits.** In the case of a rural homestead, the excess acreage over 200 is severed from the rest and sold. The homestead claimant, however, has the right to decide which 200 acres to retain as his homestead. He is permitted to carve out a 200-acre tract of any shape, or even several separate tracts, and thus may select only the most valuable portions of his land as the homestead. (See *Cotten v. Friedman*, 158 S.W. 780 (Tex. Civ. App.—Galveston 1913, *no writ*.) And there is no limit on the value of the rural homestead.

What part of this lot is over 10 acres?

When the property claimed as the homestead is located in a town or city, the limitations are entirely different. There is no limit on the size of an urban homestead, but to the extent that its value exceeds \$10,000 (at the time of designation), it is not exempt. The value of improvements is excluded from this calculation of value. If the value exceeds \$10,000, the excess can be reached in one of two ways. If the property is subject to partition (for example, if it consists of two lots, one of which is within the value limit), it will be divided and only part of it will be sold, just as in the case of a rural homestead. But if it is incapable of partition (for example, a single lot occupied by a residence), the entire property will be sold. A portion of the proceeds goes to the debtor as a sort of allowance in lieu of his homestead. That portion is a fraction whose numerator is the maximum exemption



and whose denominator is the value of the lot (less improvements) at the time of designation. For example, if the value of the lot without improvements was \$15,000 at the time of designation, and if the maximum exemption at that time was \$10,000, the exempt portion is two-thirds. (*Hoffman v. Love*, 494 S.W.2d 591 (Tex. Civ. App.—Dallas), writ ref'd n.r.e. per curiam, 499 S.W.2d 295 (Tex. 1973).) The nonexempt portion of the proceeds is applied to the debt, and if there are still proceeds left after that, they go to the debtor. If the property does not bring at least \$10,000 plus the present value of the improvements, the sale is nullified and the debtor retains title. The reasoning is that in such a case there is no excess over the constitutional limit—i.e., \$10,000 excluding the value of improvements. (*Whiteman v. Burkey*, 115 Tex. 400, 282 S.W. 788 (1926).)

The value of urban lots is determined “at the time of their designation as the homestead.” Although there is no authoritative decision on the point, the general rule seems to be that this means the time at which the property first takes on the character of a homestead. This in turn means the time at which the claimant begins to occupy it as a homestead, or take some action indicating his intent to do so. (See *Boerner v. Cicero Smith Lumber Co.*, 298 S.W. 545 (Tex. Comm’n App. 1927, jdgmt adopted).)

The statutes provide a procedure for formally designating the homestead. By this means, a claimant may choose whether to select as his homestead his rural property or his city lots and may decide which 200 acres of his rural property he wants to make exempt. (Tex. Rev. Civ. Stat. Ann. arts. 3841-3843.) No formal designation of the homestead is required, however. Property is exempt if it is in fact a homestead, and if the claimant owns more than 200 acres of rural land, or both rural and urban land, he is free at any time to select the land he wants to protect or change a designation already made. (*Green v. West Texas Coal Mining & Development Co.*, 225 S.W. 548 (Tex. Civ. App.—Austin 1920, writ ref’d).)

A debtor may be entitled to homestead protection even if he owns no realty in fee simple. The exemption applies not only to ownership in fee simple, but to any possessory interest in land. A tenant, therefore, can claim a homestead in his leasehold interest. (*Cullers & Henry v. James*, 66 Tex. 494, 1 S.W. 314 (1886).) This is significant primarily in the case of business and agricultural leases, since a residential leasehold rarely has enough value to interest a creditor in seizing it.

Texas is unique in permitting a “homestead” exemption for business property. A single adult or head of a family who owns a lot or lots in a city or town, upon which he operates a business, may claim a homestead exemption for those lots. If the combined value of his business lots and residential lots does not exceed \$10,000 (again, calculated at time of designation and without regard to value of improvements), he may also claim an exemption for his residential property. (*Rock Island Plow Co. v. Allen*, 102 Tex. 366, 116 S.W. 1144 (1909).) The owner of a rural homestead, however, cannot also claim a business homestead. (*Rockett v. Williams*, 78 S.W.2d 1077 (Tex. Civ. App.—Dallas 1935, writ dismissed).) The business homestead is a form of urban homestead, and the courts have held that the homestead may consist of either rural property or lots in a city or town, but not both. (See *Keith v. Hyndman*, 57 Tex. 425 (1882).)

The owner of an urban homestead may rent a portion of it temporarily without losing his exemption, but if the property takes on a permanent rental character, inconsistent with its use as a homestead, it loses its exempt status. (*Scottish American Mortgage Co. Ltd. v. Milner*, 30 S.W.2d 582 (Tex. Civ. App.—Texarkana 1930, writ ref’d); *Blair v. Park Bank & Trust Co.*, 130 S.W. 718 (Tex. Civ. App. 1910, writ ref’d).) The owner of a rural homestead or an urban business homestead apparently also may lease it for a term of years without losing the homestead exemption, provided he intends to reoccupy it as a homestead. (E.g., *Alexander v.*

<---  
NOTE  
and  
this  
is a  
home-  
stead

## Art. XVI, § 51

*Lovitt*, 56 S.W. 685 (Tex. Civ. App. 1900, *no writ*); *In re Buie*, 287 F. 896 (N.D. Tex. 1923).

### Comparative Analysis

The constitutions of California, Washington, Nevada, Wyoming, North Dakota, and South Dakota permit the legislature to determine how much property is eligible for homestead protection. Most of the states that provide constitutionally for a homestead exemption, however, also prescribe a maximum homestead size or value. The constitutional homestead limits in Texas are more generous than those of any other state. Eight states have monetary limits of \$2,500 or less, and six have acreage limits of 160 acres or less. No other state prescribes an urban homestead maximum as great as \$10,000 or a rural homestead as large as 200 acres.

Oklahoma is the only other state whose constitutional homestead provision mentions business, but it does not create a business homestead in the sense that the Texas Constitution does; it refers rather to property used as a combination business and residence. (See Okla. Const. art. XII, secs. 1, 3).

### Author's Comment

The present constitutional definition of the homestead creates a number of difficulties and inequities. These are elaborated in Cole, "The Homestead Provisions in the Texas Constitution," 3 *Texas L. Rev.* 217 (1925), and Woodward, "The Homestead Exemption: A Continuing Need for Constitutional Revision," 35 *Texas L. Rev.* 1047 (1957).) One inequity arises from the absence of any limit on the value of the 200-acre rural homestead. As a result, the exemption of rural property bears no relation to the claimant's needs. The owner of a rural homestead may be judgment-proof even though he occupies an elaborate country estate worth hundreds of thousands of dollars. To a lesser extent, the same problem arises in the case of an urban homestead because its value is fixed at the time the homestead is designated and does not include the value of improvements. Thus a \$100,000 home on a city lot now worth \$30,000 may be totally exempt from forced sale if the lot was worth less than \$10,000 at the time of designation as a homestead.

The definitions of business and rural homesteads go far beyond the original intent of preserving the family home. The rural homestead may include not only the home site and surrounding land, but also separate parcels of land many miles away, so long as the total does not exceed 200 acres. The business exemption bears little relation to the goal of preserving the home. Rather, it seems more nearly akin to such provisions as the prohibition against garnishment of wages. (Sec. 28, Art. XVI.) Like the garnishment prohibition, its goal is protection of one's means of livelihood rather than protection of the family home. No other state exempts a "business homestead," and exempting a business in addition to a residence is hard to justify. As interpreted, the provision discriminates against a person who lives in the country but operates a business in the city: He cannot have both a rural and an urban homestead even though a city dweller can.

These difficulties could be alleviated, if not eliminated, by removing from the constitution all language describing and limiting the homestead, leaving its nature and the extent of the exemption to be defined by the legislature. At least six state constitutions now do so. The major objection to this approach is that it permits the legislature to effectively abolish the homestead exemption by narrowing its definition or creating additional exceptions. Distrust of the legislature may be more understandable here than in other contexts. The economic interests that would benefit from restriction of the homestead exemption are a fairly well-defined and influential group and might be in a better position to secure passage of legislation

## Art. XVI, § 52

than the more diffuse and disparate interests that benefit from the exemption.

The 1963 Michigan Constitution illustrates a compromise that insures some homestead protection without preventing the legislature from adjusting the extent of protection. Instead of fixing a maximum homestead amount, as Texas and most other states do, the Michigan Constitution fixes a minimum (“of not less than \$3,500”) and permits the legislature to define the kinds of liens excepted from homestead protection. (See Mich. Const. art. X, sec. 3.)

Sec. 52. DESCENT AND DISTRIBUTION OF HOMESTEAD; RESTRICTIONS ON PARTITION. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

## History

The 1845 Constitution contained a general provision exempting the homestead of a family from forced sale to pay debts (see also the *History* of Sec. 50 of Art. XVI), but it did not mention the fate of the homestead after the claimant's death. The supreme court held that the homestead exemption created by the 1845 Constitution expired on the death of the person claiming it and did not apply to his heirs. (*Tadlock v. Eccles*, 20 Tex. 782 (1858).) The legislature, however, created a statutory exemption for widows and minor children. (Tex. Laws 1848, Ch. 157, 3 *Gammel's Laws*, p. 249.) The supreme court held that under this statute, the homestead property of an insolvent husband passed to his widow and children rather than to other heirs to whom the property otherwise would have passed. (*Green v. Crow*, 17 Tex. 180 (1856).)

A tax  
is a  
debt!

Section 52 was added by the 1875 Convention, apparently in an attempt to abrogate this statute and ensure that homestead property would pass to the heirs in the same manner as other property. (See *Ford v. Sims*, 93 Tex. 586, 57 S.W. 20 (1900).) The second clause apparently was added to give the surviving spouse and minor children some protection in lieu of that previously available to them by statute. After adoption of the 1876 Constitution, the statute giving the widow and minor children the homestead to the exclusion of other heirs was held unconstitutional on grounds that it violated Section 52. (*Zwernemann v. von Rosenburg*, 76 Tex. 522, 13 S.W. 485 (1890).)

## Explanation

Section 52 does three things. First, it prevents the legislature from prescribing rules of inheritance for homestead property different from those that govern other property. This means that title to homestead property ultimately passes by will or by the rules of descent and distribution to whomever would have taken it had it not been a homestead. For example, if a man dies leaving a will that gives his home to a church, the church eventually will get the property, even though it is homestead property. Although this section prevents the legislature from treating homestead property differently from other property for purposes of inheritance, it does not prevent the legislature from treating homestead property differently with respect to creditors. The legislature has done so; it has provided that if the owner of a homestead dies survived by a widow, minor children, or an unmarried daughter who lives with the decedent's family, the homestead property passes free of the decedent's debts. (Probate Code secs. 271, 179.) This is true even if the heir who

## Open Records

**From:** Open Records  
**Sent:** Friday, January 20, 2017 9:45 AM  
**To:** mpalma1@sbcglobal.net  
**Subject:** RE: HCAD Open Records Request (wo#17-1013 COMPLETE)  
**Attachments:** AGProcedureManualcomplete.doc

Mr. Palma,

I am providing you with some resources we have (see attached and below) from which there is a definition of Commercial, Real and Agricultural. However, there is no documentation of a definition for Residential responsive to your request.

Please note that with all definitions you've requested, there is no "Official" HCAD definition responsive as HCAD uses various sources such as HCAD manuals and various appraisal courses, IAAO, Appraisal Institute, PTEC, USPAP, Tax Code, and others.

"Commercial" is defined in our Commercial Lister's Manual, see below.

"Agricultural" is defined in Section 23.51 of the Texas Property Tax Code, as cited in our Ag Procedures Manual, see attached.

"Real" is defined in Section 1.04 of the Texas Property Tax Code, see below.

### HCAD Commercial Lister's Manual:

#### 1.4.4. **Commercial**

Commercial property is used primarily for the purpose of generating income. Examples of commercial real estate include malls, warehouses, office parks, restaurants, gas stations, apartment complexes, and office towers. In some cases, a business owner may own the land it uses. Banks are a good example. They usually own the land on which they have constructed branch offices. In other cases, a business may rent property from an investor who derives income from the collection of rent.

### Texas Property Tax Code:

Sec. 1.04. DEFINITIONS. In this title:

(1) "Property" means any matter or thing capable of private ownership.

(2) "Real property" means:

- (A) land;
- (B) an improvement;
- (C) a mine or quarry;
- (D) a mineral in place;
- (E) standing timber; or



STATE OF TEXAS §  
COUNTY OF HARRIS §

This is to certify that this is a true and correct copy of an official public record of the Harris county Appraisal District in my lawful custody.

4/12/17  
Date

*Lindsay Ke*  
Deputy Custodian of Records



HARRIS COUNTY APPRAISAL DISTRICT  
 REAL PROPERTY ACCOUNT INFORMATION  
**0283010000016**

Tax Year: 2016



Owner and Property Information									
Owner Name & Mailing Address: <b>APARTMENTS AT 4114 BROADWAY LLC</b> <b>2260 W HOLCOMBE BLVD STE 281</b> <b>HOUSTON TX 77030-2008</b>					Legal Description: <b>LTS 16 &amp; 17 BLK 31</b> <b>PARK PLACE</b> Property Address: <b>4114 BROADWAY ST # 29</b> <b>HOUSTON TX 77087</b>				
State Class Code	Land Use Code	Building Class	Total Units	Land Area	Building Area	Net Rentable Area	Neighborhood	Map Facet	Key Map®
B1 -- Real, Residential, Multi-Family	8000 -- Land Neighborhood General Assignment	D	29	25,800 SF	24,313	23,520	5946	5654C	535T

Value Status Information		
Value Status	Notice Date	Shared CAD
Noticed	04/08/2016	No

Exemptions and Jurisdictions							
Exemption Type	Districts	Jurisdictions	Exemption Value	ARB Status	2015 Rate	2016 Rate	
None Date: 4/12/17 Deputy Custodian of Records	001	HOUSTON ISD		Certified: 08/12/2016	1.196700	1.206700	
	040	HARRIS COUNTY		Certified: 08/12/2016	0.419230	0.416560	
	041	HARRIS CO FLOOD CNTRL		Certified: 08/12/2016	0.027330	0.028290	
	042	PORT OF HOUSTON AUTHY		Certified: 08/12/2016	0.013420	0.013340	
	043	HARRIS CO HOSP DIST		Certified: 08/12/2016	0.170000	0.171790	
	044	HARRIS CO EDUC DEPT		Certified: 08/12/2016	0.005422	0.005200	
	048	HOU COMMUNITY COLLEGE		Certified: 08/12/2016	0.101942	0.100263	
	061	CITY OF HOUSTON		Certified: 08/12/2016	0.601120	0.586420	
	943	HC ID 9		Certified: 08/12/2016	0.150000	0.150000	

Texas law prohibits us from displaying residential photographs, sketches, floor plans, or information indicating the age of a property owner on our website. You can inspect this information or get a copy at **HCAD's information center at 13013 NW Freeway.**

**Valuations**

Value as of January 1, 2015			Value as of January 1, 2016		
	Market	Appraised		Market	Appraised
Land	77,400		Land	77,400	
Improvement	591,405		Improvement	509,857	
<b>Total</b>	<b>668,805</b>	<b>668,805</b>	<b>Total</b>	<b>587,257</b>	<b>587,257</b>

**Land**

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	8000 -- Land Neighborhood General Assignment	4211	SF	25,800	1.00	1.00	1.00	--	1.00	3.00	3.00	77,400.00

**Building**

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	1962	Apartment Garden (1 to 3 Stories)	Multiple Res (Low Rise)	Low	3,040	Displayed
2	1962	Apartment Garden (1 to 3 Stories)	Multiple Res (Low Rise)	Low	11,778	<b>View</b>
3	1962	Apartment Garden (1 to 3 Stories)	Multiple Res (Low Rise)	Low	3,236	<b>View</b>

STATE OF TEXAS  
 COUNTY OF HARRIS  
 This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my official custody.  
 Date: 4/12/17  
 Deputy Custodian of Records





DEED

20120490631  
10/22/2012 RP2 \$32.00

EFFECTIVE DATE JULY 8, 2010

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER LICENSE NUMBER.

THE STATE OF TEXAS                    §  
  §           KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF HARRIS                   §

THAT THE UNDERSIGNED Donald Sorrells, in the capacity of Trustee for Unknown-Holding, a Trust herein after called "Grantor" (and referred to in the singular, whether one or more), for and in consideration of the sum of TEN GOLD DOLLARS (10.00) and other valuable consideration in hand paid by the beneficiary of 6205 Trust, a foreign, non-business Trust (acting under the Texas Bus. Org. Code Title 1 Chapter 9 specifically §9.251(15)), the 6205 Trust herein after being the "Grantee" (and referred to in the singular, whether one or more), the receipt of which is hereby acknowledged; has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto "Grantee" all that certain lot tract or parcel of land together with all improvements thereon, lying and being situated in Harris County, Texas, described as follows, to-wit:

**PRIVATE NON-BUSINESS PROPERTY** KNOWN AS: LOT 20, BLOCK 4, RESERVE "D" OF CANDLELIGHT OAKS VILLAGE, A SUBDIVISION IN HARRIS COUNTY TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 226, PAGE 1 OF THE MAP RECORD OF HARRIS COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ON EXHIBIT "A" ATTACHED HERETO, ORIGINALLY PART OF THE M'CLELLAND LAND GRANT DATED AUGUST 2 1848 HEREIN ATTACHED CERTIFIED BY THE TEXAS GENERAL LAND OFFICE

Also Know As: 5026 Autumn Forest Dr. Houston, Texas 77091

This conveyance is made subject to all validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; if any, relating to the herein above described property as the same are filed via public notice in Harris County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, Grantee's heirs and assigns forever, and Grantor does hereby bind Grantor, Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

1. Grantee through Grantor is lawfully seized in FEE SIMPLE the above property, and has good right to convey the same:
2. The above property is free from all encumbrances, except as set forth above:
3. Beneficiary through Grantee shall quietly enjoy the above property.

EXECUTED: this 10-21-12

*Donald Sorrells*  
Donald Sorrells in the capacity of Trustee for Unknown-Holding, a Trust

Any provision herein which restrict the sale, rental or use of the described Real Property because of color or race is invalid and unenforceable under the Federal Law. Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 10/23/2012  
Stan Stanart, County Clerk  
Harris County, Texas

*Song Thi Ngan Tran*  
SONG THI NGAN TRAN Deputy





Mailing Address:  
Information & Assistance Division  
P.O. BOX 922004  
Houston, TX 77292-2004



# HARRIS COUNTY APPRAISAL DISTRICT

## NOTICE OF APPRAISED VALUE FOR PROPERTY TAX PURPOSES

This is **NOT** a tax bill. Do **NOT** pay from this notice.

Tax Year: 2018

iFile Number: 87255960

[www.hcad.org/iFile](http://www.hcad.org/iFile)

Please use this ACCOUNT NUMBER → **1086470010020**  
when inquiring about your property.

PROPERTY DESCRIPTION: 04/13/2018  
LT 20 BLK 4  
CANDLELIGHT OAKS VILLAGE



89-1

2018 1086470010020 04/13/2018 0000054272

6205 TRUST  
MICHAEL PALMA  
5026 AUTUMN FOREST DR  
HOUSTON TX 77091-5002

0392

PROPERTY LOCATION:  
5026 AUTUMN FOREST DR  
HOUSTON, TX 77091

Dear Property Owner:

This letter is your official notice of the 2018 property tax appraisal for the account listed above. Harris County Appraisal District (HCAD) appraises all of the property in Harris County for property tax purposes. Please review it carefully. **We noted you do not have a homestead exemption on this account; please see the information on back and the enclosed form.** If you qualify, the exemption provides significant tax savings.

By law, we must appraise property at market value. Market value is the price for which it would have sold on January 1 in the open market. You can find additional information about the reappraisal on our website at [www.hcad.org](http://www.hcad.org) and selecting Resources and then Reappraisal from the menu. If you have a homestead exemption and your 2018 market value increased by more than 10%, your 2018 appraised value may be less than the market value.

As of January 1, 2018, we appraised your property as shown below:

**2018 Market Value:** \$164,900

**2018 Appraised Value:** \$164,900

If you believe our market value appraisal is not accurate, you should file a protest with the Appraisal Review Board of Harris County. I have enclosed more information about the protest process with this letter. You can file until **May 15, 2018**, or 30 days after the date this letter was mailed, whichever is later.

I have also included a protest form, but the easiest way to protest is to file online at [www.hcad.org/iFile](http://www.hcad.org/iFile), using the iFile number in the upper right corner of the page. You will need to create a user name and password if you have not already done so. After filing you may also wish to take advantage of our online settlement process, called iSettle™. You can find more information about iFile and iSettle™ at [www.hcad.org](http://www.hcad.org).

Sincerely,

Roland Altinger, CAE, RPA, CTA  
Chief Appraiser  
Harris County Appraisal District

# **TAB E**

Public Information act requested: 2018.07.26 and  
answered on 2018.08.06

**E**



19  
**COMPLETE**

# 18-3833

From: Michael-Francis: Palma, Beneficiary  
c/o 5026 Autumn Forest Dr.  
Houston, Texas 77091

MAILED 8/6/18 UK

To: Harris County Appraisal District / Appraisal Review Board

**COPY**

PICKED UP \_\_\_\_\_

RE: General Information for tax year 2018 - Request for evidence pursuant to hearing by ARB for the 1086470010020 Trust

THIS IS A PUBLIC INFORMATION ACT REQUEST

UNDER T.G.C. 552.

The Texas Government Code, Section 552.001 states, "(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principal that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy. (b) This chapter shall be liberally construed in favor of granting a request for information. Added by Acts 1993, 73rd Leg., Sect. 1, eff. Sept. 1, 1993 (Emphasis mine.) For each year requested.

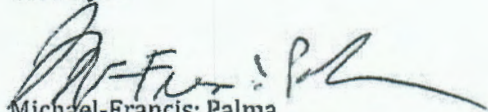
1. On July 18, 2018 a formal ARB hearing was held concerning the inclusion of property on the appraisal rolls for the tax year indicated above.
2. Please supply all evidence presented by the appraisal district at the hearing.
3. Please identify the members of the appraisal review board and the appraisal district person, and anyone else who was at or participated in, the hearing.

Please send said responses to the above address.

If you cannot produce this public information for inspection or duplication within 10 calendar days after the date of receiving this request, you shall so certify to me in writing and set a date and hour within a reasonable time when the information will be available for inspection, duplication, or be mailed to me per § 552.221 and § 552.308. Notify requester if an amount is due for the duplication of any documents.

You shall treat this request for information uniformly without regard to the position of the person who signs this request per §552.223.

Thank you



Michael-Francis: Palma  
Beneficiary

RECEIVED

JUL 26 2018

HCAD  
INFORMATION & ASSISTANCE



Summary Detail

Account #: 108-647-001-0020

Hearing 1 of 1

Affidavit:

Tax Year: 2018

Hearing Type: Informal

Type: Residential

Center: 11 - Residential Cost & Design

Informal Schedule: Thursday, May 24, 2018 02:00 PM

Formal Schedule: Wednesday, July 18, 2018 01:00 PM

Informal Status: Hard Scheduled

Formal Status: Hard Scheduled

Case Type:

Case Class:

Agent (FID):

Petitioner:

Est. Informal Duration: 6205 TRUST

Est. Formal Duration: 15 Minutes

Value Protest

Value

ARB Release Date:

Conclusion Code:  NO-SHOW VALUE NOT CHANGED

Hearing State: SETTLED

Settled Date: Wednesday, July 18, 2018

Informal Appraiser:  None Selected >

Formal Appraiser:  None Selected >



WorkFlow Data	Account	Owner	Site Address
108-647-001-0020	6205 TRUST		5026 AUTUMN FOREST DR, HOUSTON 77091

Initial Values for Account: 108-647-001-0020

Property Type	Initial Market	Initial Appraised
Real Land:	36,050	
Improvement:	128,850	
<b>Total:</b>	164,900	164,900
Ag/Restricted Value:	0	
Burden of Proof:	< None Selected >	

COURTESY OF

THE HARRIS COUNTY APPRAISAL DISTRICT  
 INFORMATION AND ASSISTANCE  
 PO BOX 922004  
 HOUSTON, TX 77292-2004  
 TELEPHONE NO. (713) 812-5800

Informal Values Formal Values

Hearing Reason:  No Reason Selected >

MARKET

Ag Market

Land: 0

Building: 0

Extra Features: 0

Total Market: 0

Cap Deduction: 0

Appraised Value: 0

Reviewed By:

EQUITY

Ag Market

Land: 0

Building: 0

Extra Features: 0

Total Market: 0

Cap Deduction: 0

Appraised Value: 0

Was Hearing Evidence Presented?  Yes  No

Value Based On  Market Value  Unequal Appraisal  Both

Case Presented Based On  Market Value  Unequal Appraisal  Both



**TAB F**

Affidavit filed on 2018.08.28  
(Complete)

**F**

SEP 18 2018

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

Account #1086470010020

TAX YEAR: 2018

Property owner: 6205 Trust, A private non-commercial unregistered Trust  
Mailing Address: 5026 Autumn Forest Dr., Houston Texas 77091

Legal Description: Private home having government imposed lot and block of LT20 BLK 4 of  
Candlelight Oaks Village

Type of Property subject to protest: Private home – Constitutional HOMESTEAD, hereinafter  
“homestead”, in accordance with Article 7 Section 22 of the  
1845 Texas Constitution

Action being protested: Constitutional ability of the ARB/HCAD to place a Constitutional homestead on  
the appraisal roll for taxation purposes (Tax Code Ann. §41.41(a)(3))

Evidence: In part: the Texas Constitutions from 1845 through today backed up by HCAD  
documents, Texas Tax code and the *Constitution of the State of Texas: an Annotated and  
Comparative Analysis* by George D. Braden published in 1977. Also see the document  
list below.

NOTICE 1: This hearing is requested pursuant to tax code §41.41(a)(3), in conjunction with the 1845  
Texas Constitution Article 7 Section 22 and Article 16 Section 51 of today’s Texas  
Constitution . It is not nor should it be considered a situs or a value hearing. That is to  
say, is this Constitutional Homestead subject to “inclusion” on the appraisal roll under  
Tax code §41.41(a)(3). With a subsequent hearing under §25.25(c)(3).

NOTICE 2: Each of you, as members of the ARB, have an oath of office and must abide by that oath.  
Hence, should you find that the HOMESTEAD must be included on the appraisal roles  
you must state the exact clause in the 1845 Texas Constitution and the 1848 Land  
Grant/Patent which creates the ANNUAL taxation of a HOMESTEAD or contract and  
explain why you believe it to be true or in effect, failure to do so may result in a federal  
civil charges being brought against you. You may state your case by completing Form  
1024a for tax year 2018.

NOTICE 3: The HCAD person has NO oath and will most likely only mention situs as he has no  
authority to discuss the Constitution. Without the Constitutional jurisdiction to place the  
HOMESTEAD on the appraisal role situs is irrelevant. Reference to an exhibit is by  
exhibit number and highlighted in yellow.

**EXHIBIT LIST**

- |  |          |
|--|----------|
| 1) Form 1024a  | Pages 1  |
| 2) Constitution of the State of Texas: an Annotated and Comparative Analysis | Pages 14 |
| - Also can be found online   |          |
| 3) HCAD Lister’s Manual  | Pages 1  |
| - certified copy   |          |
| 4) HCAD real property acct. information for Apartments at 4114 Broadway LLC  | Pages 1  |
| 5) Deed for 6205 Trust with Land Grant/Patent – certified copy               | Pages 5  |
| 6) Texas Administrative Code   | Pages 1  |
| - Also can be found online   |          |

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

- 7) Harris County Tax Collector Documents for Indigence – stamped from HCTAC Pages 7
  - a. Items containing private information are excluded
- 8) Tax year 2016 NOP - from HCAD records Pages 1
- 9) Tax year 2017 NOP - from HCAD records Pages 1
- 10) Texas Constitution of 1845 - Also can be found online Pages 3

Comments: Having judicial immunity you are to review each of the documents and this affidavit as a judge would. Judicial immunity is waived when Constitutional Rights are violated.

Statement of intent: I do not intend to appear at the hearings. It is the intent that this affidavit and the attached documentation show that the current classification of “*residential*” on the HCAD records is incorrect and that the correct classification is Private Property (non-commercial) or Constitutional Homestead based on the 1845 Texas Constitution.

Summary: According to your administrative rules (the tax code) I am to show that the HOMESTEAD is not to be included on the appraisal/tax roll, this done via the attached documents and this Affidavit.

The Great State of Texas convenes in 1875 its Constitutional Convention after the War Between the States. Said Constitution having been signed by the Conventioneers in the City of Austin on the 24<sup>th</sup> day of November, 1875 and approved by Texans in 1876. Although amended over 450 times, the 1876 Constitution remains the current charter for the State. This is the primary contract between the people and the State. The articles and sections stated below are also in the 1845 Constitution, although section numbers may have changed.

1) Article 1

- a. Sec 2: *All political power is inherent in the people* and all free governments are founded on their authority, *and instituted for their benefit*. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient. (self-explanatory and not included as an exhibit)
- b. Sec 19: *No citizen of this State shall be deprived of life, liberty, property, privileges, immunities, or in any manner disfranchised, except by the due course of the law of the land.* (Ex. 2 p.69)

2) Art 3

- a. Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing: *The creation, extension or impairing of liens*; (self-explanatory and not included as an exhibit)

3) Art. 8

- a. Sec. 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; *provided*, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State, shall be exempt from taxation, and provided further that the occupation tax levied by any county, city or town, for any year, on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business. (Ex. 2 page 562, 567, 577)

4) Art 16

- a. Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town, or village, ***shall consist of lot, or lots, not to exceed in value five thousand dollars***, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired. (Ex. 2 page 790,792, 793)
- b. Sec 52. On the death of the husband or wife, or both, the homestead shall descend and vest in *like* manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband and wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same. (Ex. 2 page 794)

The above are the pertinent sections of the Constitution of 1875 with the explanation written in 1977, and each correlate back to the 1845 Texas Constitution; hence using analytical thought processes the following intent of the Conventioneer's may be ascertained until shown otherwise.

- 1) The State (be aware the "State" means you as ARB members, the ARB and the HCAD and its employees) must only do things, pass laws, etc. that benefit the people, that are in compliance with the common law and do nothing repugnant to it.
- 2) The State must only do things, pass laws, etc that *protect* the life, liberty and *property*, etc of the people.(Tex. Cons. Art 1 Sec 2 and 19)
- 3) In Art. 3 Sec. 56 states that the State cannot create a local or special law authorizing a lien, this includes a "tax lien."
  - a. This clause thereby prohibits a tax lien being filed by the state/county on non-taxable property.
  - b. In Art. 16 Sec. 51 a HOMESTEAD is what cannot be liened as explained herein.

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

- 4) Looking at Art. 8 Sec. 1 it *appears* to state that ALL property in this state is taxable, however when one analyses this section it becomes apparent that the intent of the Conventioneers is to tax property and natural persons that produce income...to wit:
- a. "All property..." but it does not specify the definition of "property" or when it shall be taxed.
  - b. However it does state that:
    - i. the property may be owned by corporations - doing business/producing *income*
    - ii. That the legislature may impose an occupation tax - doing business/producing *income*
    - iii. That the legislature may impose an *income* tax
  - c. The above, i-iii, surely makes it apparent that all taxes should be based on if the property or person makes or creates an income, hence if "all property" is taxable the only logical conclusion is that if a natural person holds property that is in business and being used for the production of income then it would be taxable. This is proven later on as correct.
  - d. There was no provision in the 1845 or 1875 Constitution that authorizes the legislature to exempt property or income from taxation unless specifically listed in the Constitution itself.
    - i. NOTE: Be aware that a voluntary contract, such as the voluntary statutory homestead exemption described in Article 8 of today's Texas Constitution, is to terminate the land Grant/Patent contract still in force as stated herein.
- 5) Although not listed above the Tex. Cons. 1875 Art. 8 Sec 2 states that places of burial may be made exempt from taxation by the legislature *IF* not held for private or corporate profit. This section is still in today's version of the Texas Constitution.
- a. Thereby showing once again that the only property that can be taxed is income producing properties.
- 6) Art. 16 Sec. 51 states that a homestead:
- a. *shall consist of lot, or lots, not to exceed in value five thousand dollars...without reference to any improvements thereon,*
  - b. But in the country a free ride was given to two hundred acres of land with improvements.
  - c. Hence if one was "wealthy" and owned more than \$5000 in city lots (today the homestead can be up to 10 acres) or more than 200 acres in the country you could be taxed. Indicating that one could run a business that produces income on the other lots worth over the \$5000 cap or run a ranch on the acreage over the 200 acres the state allowed you to live on, making the overage taxable due to the income it makes thereby funding the state and counties.
  - d. There was no Homestead "Exemption" or any other type of exemption on the lot or acreage as it was not needed. The 1875 homestead in today's Constitutional vernacular is "exempt as required".
  - e. There is no reference in 1875 to property being "exempt as required", "residential," or even "commercial." It appears clear that the intent of the 1875 Constitution was to tax property that produces "income" and not a homestead that was protected under Art. 1 Sections 2 and 19 of the Texas Constitution and in the Federal Constitution, specifically the 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> amendments all of which are still in force today.
- 7) Art. 16 Sec. 52 makes it clear as to the apparent intent of the Conventioneers:
- a. That a "homestead shall descend and vest in *like* manner as other real property" indicating that a homestead even though it may "vest like" "real property" it is still not to

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

be considered “real property” that produces income given the parameters of Art. 16 Sec. 51. This is because there is no provision in Art. 16 Sec. 51 that refers to, or infers, that the amount of land or value of lots that is considered a homestead is, or shall be even considered, property that is taxable unless over said value or acreage. (Ex. 2 page 794)

In summary it appears the general presumption of the Conventioneers – until shown otherwise - was this:

- a) People had a right to property as part of life, liberty and property. Anything over the amount of 200 acres or what amounted to your *LOT(s)* having exceeded \$5000 was then taxable by the state because the presumption is that income is being made on it.
  - 1) In 1848 the homestead was considered \$2,000 or less, today the homestead is described to be 10 acres or less if in a city or town.
- b) The Federal documents allow for a person to be secure in his life, liberty and the protection of property. The Texas Constitution could not negate this so they made the value of the LOT and the acreage high enough so a man could live or farm to provide a home or a home and sustenance for his family without fear of it being taken by the tax man.
- c) What is noteworthy is that the Conventioneer’s talk about a *LOT* without reference to improvements. So what makes it taxable back in 1875 if I use it as a home or for shelter? Answer – if the lot(s) is/are worth over \$5000. Hence a HOMESTEAD of yesteryear, no matter what you call it today is still your HOMESTEAD not being taxable unless the *LOT* is in excess of \$5,000 or 10 acres today and even then only those lots over those amounts are subject to sale!

How can this be proven?

- 1) The 1875 Conventioneers in Art. 16 Sec 51. talks about renting property as well. The Constitution states that you may temporarily rent your home without changing its characteristic. It then follows that if you use a home as a rental to generate *income* and have an additional lot as a homestead then the rental property alone is taxable. (Ex. 2 page 792), this demonstrates beyond any doubt that a Constitutional Homestead not losing the characteristic of the Homestead is not appraisable for taxation.
- 2) A review Braden’s Annotated Constitution indicates that these statements and presumptions are true:
  - i. That the “All property” being talked about in Art. 8 Sec. 1 is property that generates income. And this can be proven using todays code:
    - 1) In today’s code the legislature allows for a property tax on inventory of homes for *sale* as stated in Tex. Tax Code Ann. Sec. 23.12.
      1. INVENTORY. (a) Except as provided by Sections 23.121, 23.1241, 23.124, and 23.127, the market value of an inventory is the price for



**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

which it would sell as a unit to a purchaser who would continue the business. An inventory shall include residential real property which has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income.

2. Hence “real property” and “residential” from 1875 to today is a commercial term, but may still be used as a reference to a homestead by one untrained in the nuances of legal terms.
- ii. The term “residential” used today can be proven to be commercial in nature:
1. Simply look at the HCAD’s Lister’s Manual when it calls “apartment complexes” commercial. (Ex. 3)
  2. Now look at the HCAD information for the Apartments at 4114 Broadway LLC (Ex. 4). It clearly states that the apartment is “residential,” thereby leading anyone to believe “residential” must be commercial.
    - a. Hence once sold property can become either a homestead-not producing income or income producing it cannot be both.

From the Texas Constitution of 1875 allowing a man to have a lot(s) worth \$5,000 or 200 acres to live on without taxation and not mentioning any tax and exempting improvements; to today’s code showing when “residential real property” is taxable, thereby indicating that “real property” must, using common sense, be considered as commercial property from 1875 to today and the term “residential” is without fail commercial in nature when speaking of it in a legal capacity.

The reasoning and thought process behind the 1875 Constitution makes clear why the current State Constitution is written in such a way that property may be “exempt as required” (based on Federal Rights) and the Tex. Tax Code Ann §11.01 states that property may be “exempt by law” (Based on Texas Constitution). All Texas and Federal Constitutions are the law.

Until proven otherwise, affiant believes that it was never the 1875 Conventioneer’s intent that a “homestead” would be taxable, if below the constitutional limits, nor can it be implied today that this has changed. This home is NOT residential, not in business as stated on the Deed (Ex. 5), hence the records of the HCAD are clearly incorrect and is, in fact, a fraudulent government document.

For edification of the term “homestead exemption:” this was a creation by the legislature so that the unknowing home owner may *voluntarily* contract his Constitutional homestead into the taxation system thereby substituting Tex. Constitution Art. 51 Sec. 16 or any preceding Constitutional section mentioning the Constitutional Homestead requirements with today’s Art 8 Sec 1, which now claims that a “personal property homestead” is now taxable.

How do we understand that the homestead *exemption is a contract:*

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

- 1) First I point you to page iv of Braden's where W. Page Keeton writes: "*Our constitution is the basic contract between the people of Texas and their government; it is essential that we all understand the terms of that contract*"(Ex. 2 page 3)
- 2) To void one contract one must sign a new contract that changes the conditions of the first – to do this it must be done 1) voluntarily, 2) without fraud, and 3) with full knowledge of what one is signing away. For the "homestead exemption contract":
  - i. The first parameter is satisfied because no one forces you to sign the new contract, however
  - ii. The second and third are an issue because no one ever tells you that your Constitutional Homestead is unalienable by the State/County under the Constitution thereby creating a new contract based on deceit and fraud.
  - iii. This is the reason why there is no "homestead exemption" contract in effect on this property and the HCAD records do not have the statutory or Article 8 term "homestead exemption" on its forms.
  - iv. Proof of this lies in the apparent definition of "residential" as stated above to be commercial in nature with a new sub-meaning to include anyone who voluntarily entered into the new contract. In other words "residential" means in business and when someone enters into a new contract with the state/county you are now technically "in business" with the government. Being "in business" is being "in commerce."
  - v. The Texas Supreme Court put it this way in *ETC Marketing, LTD, v. Harris County Appraisal District* case #15-0687 when the justices opined the following: "*First, all taxes burden commerce—that much is inescapable.*"
- 3) Now, take a look at the 1845 Constitution (Ex. 10) which was the Contract in force when the 1848 Land Grant/Patent was issued which is discussed below. In this Constitution there is one section that discusses the Homestead – Article. 7 Sec. 22; one section which discusses contracts – Art. 1 Sec. 14; and one which states what you cannot do Art. 1 Sec. 16. These sections are provided in the documentation as Exhibit 10.
  - a. Art. 1 Sec. 14 – there shall be NO impairing of contracts nor shall a person's property be taken or applied to public use without compensation OR consent!!
    - i. Therefore the grant/patent is a contract which cannot be impaired – unless voluntarily done –
    - ii. In today's vernacular the "voluntary" thing is the statutory "homestead exemption"

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

- iii. In today's Constitution this section is Art. 1 Sec. 17.
  - b. And not to be out done Art. 1 Sec. 16 states that you, officers of the State, cannot deprive me of property except by due course of the law of the land.
    - i. In today's Constitution this section is Art. 1 Sec. 19.
  - c. Art. 7 Sec. 22 is almost word for word of the 1875 Constitution with the exception that the Constitutional Homestead was limited to \$2,000 dollars, in today's dollars the exemption would be \$63,834.
    - i. The HCAD has the land value at \$36,050, over \$27,000 below the limit upon which the State can tax it.
    - ii. Again, even if you applied today's Constitutional acreage on the lot this Constitutional Homestead is well below the 10 acres.
    - iii. In today's Constitution this section is Art. 16 Sec. 51.
  - d. If this all looks familiar it is because property rights are one of the highest held rights in both Texas and the Federal Republic from yesteryear to today.
- 4) Now please review the Land Grant/Patent granted by the Governor to the Heirs and Assigns of Samuel McClelland from 1848. (Ex. 5 page 4) This is the Contract in full force today between the State and his Heirs and Assigns. This Grant/Patent was done:
- a. voluntarily between the State and McClelland and his heirs, it granted
  - b. the full RIGHTS of and to the land to his heirs and assigns forever without
  - c. reservation or preservation of any State rights except those available to the State when the value of the land exceeded the Constitutional limit, and
  - d. is the only contract in force today *under* the 1845 Texas Constitution and has been this way since the Trust has owned the Home.
  - e. In this Constitution there were NO ad valorem taxes on property not in business.
  - f. Additionally: there has been no voluntary waiver granted by myself or the Trustee of the rights, and immunities granted under the McClelland land patent or any of the Texas Constitutional sections talking about the Homestead.

As more proof I am providing the Texas Administrative Code from the Secretary of State's website. Under title 34, Public Finance, the Comptroller details the items which can be appraised or valued (Ex. 6), a Homestead however is not represented on the list.

§9.4001 Valuation of Open-Space and Agricultural Lands  
§9.4005 Formulas for Interstate Allocation of the Tax Value of Railroad Rolling Stock  
§9.4009 Appraisal of Recreational, Park, and Scenic Land  
§9.4010 Appraisal of Public Access Airport Property  
§9.4011 Appraisal of Timberlands  
§9.4013 Residential Real Property Inventory Appraisal

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

What does all this mean? In order to PROVE that this HOMESTEAD should be included on the appraisal role the HCAD must rebut the preceding by showing all of the following:

- 1) By stating any part of the 1845 or today's Texas Constitution that mandates a Constitutional Homestead appraisable for taxation every single year not in violation of the Federal Constitution and Rights when not voluntarily rendered. And
- 2) That the homestead is valued at more than \$63,834 in today's "dollars" under the 1845 Constitution or greater than 10 acres under today's Constitution. And
- 3) Provide any contract currently in effect that terminated the Land Grant/Patent. And
- 4) Indicate where in the Texas Administrative Code and any Constitution where a Constitutional Homestead may be valued each year for taxation. Or
- 5) That the homestead is in business? (proof that it is not is recorded on the Deed and in HCAD's own records as it has no statutory "homestead" designation (Ex. 6 page 1))

The HCAD representative must rebut each of the foregoing presumptions in order to preserve the inclusion of the property on the rolls pursuant to Tax Code §41.41(a)(3).

Should HCAD fail to rebut the above, then pursuant to Chapter 41 the property shall be removed from the appraisal role as it is not in the form as described in the appraisal roll. Then pursuant to Chapter 25 the property must be changed for the prior five years to reflect this. As such, without proper jurisdictional authority to place the property on the rolls then §25.25(e) of Chapter 25 is applicable.

Since the hearings being requested are under §25.25(c)(3) and §41.41(a)(3) the entire property is subject to the motion making §25.26(b) the authoritative subsection, relegating §25.26(d) superfluous. Attached are the notice of protests for tax years 2016 and 2017 indicating that each year protest was against §41.41(a)(3) (Ex. 8,9) of the tax code and never for value (I inadvertently thought in 2017 that a situs hearing was covered under §41.41(a)(3), but I now know that it is not). All other tax years were paid under protest. However, in an abundance of caution, you will find attached the affidavits and permissions to move through the State and federal judicial systems under indigence status for tax years 2015, 2016, 2017 and 2018 which were turned over to the tax assessor collector as required under Local Government Code §112.033 (Ex. 7). This fulfills not only the requirements under §25.26 and §41.4115 of the tax code but also the local government code §112.033 if any amount of the property were taxable.

Should the ARB members, having read this document in its entirety AND the attachments, believes that a private non-commercial home – a HOMESTEAD is still taxable without proof from the HACD, I would strongly advise you to re-read pages 69 through 71 (highlighted portions again) of Braden's *Annotated and Comparative Analysis*.

**AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS**

Some final thoughts...as an offer of proof of the above:

US Supreme Court stated in *Smith v. Texas*, 233 US 630, 636, 58 L.Ed. 1129 (1913):

a. "Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

And in *Bustamante v. Sena*, 92 N.M. 72, 582 P.2d 1285 (1978)

After the issuance of a land patent, the government has no more authority than an individual grantor of real property to limit or diminish the rights of the grantee.

And in CORPUS JURIS SECUNDUM, 73 CJS Property §1

Property is considered to be the highest right which a man can have to anything, real or personal, being a complex bundle of rights, duties, powers, and immunities, comprising a vast variety of rights, with certain rights such as the right of use, the right of enjoyment, and the right of disposal considered to be the constituent elements or essential attributes of property. It is generally recognized that property includes the right of acquisition, the right of dominion, the right of possession, the right of use and enjoyment, *the right of exclusion* (exclusion includes the HCAD), and the right of disposition. *There are frequent statements to the effect that these rights may be exercised to the exclusion of all others, freely, and without restriction, and without control or diminution save only by the laws of the land, and that anything which destroys one or more of the elements of property to that extent destroys the property itself, although title and possession remain undisturbed.*

And finally in: *Van Brocklin v. Anderson*, 117 U.S. 151 (1977)

The sovereignty of a state extends to everything which exists by its own authority, or is introduced *by its permission* (in this case a voluntary/statutory rendering); but does not extend to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States. The attempt to use the taxing power of a state on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state cannot give. The power to tax involves the power to destroy.

As "judges" each of you are now aware of the seriousness upon which property rights must be protected and the consequences of not doing so. Being bound by Oath and judicial canon you must be certain that the evidenced produced by the HCAD warrants the invalidation of the presumptions and facts stated herein.

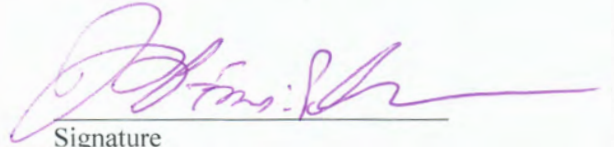
AFFIDAVIT IN THE FORM OF A  
BRIEF TO ARB MEMBERS

RECEIVED  
HCAD HEARING SUPPORT  
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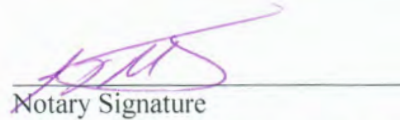
State of Texas  
County of Harris

I, Michael-Francis: Palma being first duly placed under oath by the undersigned official authorized to administer oaths under the laws of this state, do solemnly swear that the information herein and attached is true and correct to the best of my knowledge.

Subscribed an sworn before me this 18 day of September 2018

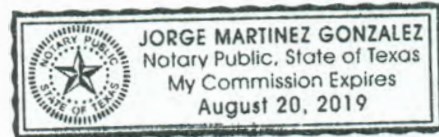


Signature  
Michael – Francis: Palma  
Printed name



Notary Signature

August 20, 2019  
Commission expires



**1**

**1**

Property owner: 6205 Trust, A private non-commercial unregistered Trust

Mailing Address: 5026 Autumn Forest Dr., Houston Texas 77091

Legal Description: Private home, a Constitutional Homestead, having government imposed lot and block of LT20 BLK 4 of Candlelight Oaks Village

Type of Property: Constitutional Homestead

Action being protested: Inclusion of the property on the appraisal role

Complete form 1024a: Each ARB member on the panel is to complete this Form and return it to the property address if you find that the property is appraisable for taxation.

Statement of intent: As the requestor is not an attorney it is my intent to find out how the ARB members, each having an oath of office, justify placing a Constitutional homestead on the appraisal role for tax purposes.

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Form 1024a  
Notice to ARB members

It is the obligation of the ARB members to ensure that laws are correctly applied and you adhere to your Oath of Office.  
As the requestor is not an attorney, to ensure that the tax laws are correctly applied, requestor requests the following information from the ARB members sitting on the panel.

Complete this Form to enable requestor to understand and lawfully comply with the law.

When completed requestor shall be able to more fully understand how situs was attained by the County and how to challenge it.

---

1. Does the ARB have the jurisdiction to place this Constitutional homestead on the appraisal roll?

Yes  No

2. Please indicate the specific part of the 1845 or current Constitution or contract that grants the jurisdiction of the ARB to place a Constitutional Homestead on the appraisal role.

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Most individuals can complete this FORM in five minutes. You are required by law (UCC 3-115 & 3-118) to complete this FORM

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE \_\_\_\_\_

PRINTED NAME \_\_\_\_\_



2

2

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**THE CONSTITUTION OF  
THE STATE OF TEXAS:  
An Annotated and  
Comparative Analysis**

# THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS

By

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(Editor and Author)

And By

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Affairs Division, Office of the  
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Texas Legislative Council

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Attorney-at-Law

Thornton C. Sinclair  
Professor Emeritus  
University of Houston

Richard A. Yahr  
Legal Counsel  
Texas Legislative Council

## Participating Agencies:

**Texas Constitutional Revision Commission of 1973**

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**Constitutional Convention of 1974**

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**University of Houston, Institute for Urban Studies**

---

**Texas Advisory Commission on Intergovernmental Relations**

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**Texas Legislative Council**

*Our constitution is the basic contract between the people of Texas and their government; it is essential that we all understand the terms of that contract.*

W. Page Keeton  
Former Dean  
The University of Texas School of Law  
Austin, Texas

understanding due process, therefore, it is necessary to review briefly what the Fourteenth Amendment's Due Process Clause requires of Texas. To this will be added whatever the Texas courts appear to require beyond the Fourteenth Amendment.

The Due Process Clause of the Fourteenth Amendment is many things. First, as discussed earlier in the *Introductory Comment*, it is a vehicle used by the United States Supreme Court to impose on the states some of the specific restrictions imposed on the United States by the Bill of Rights of the United States Constitution. But there is a Texas equivalent for each of these specific restrictions. Thus, whatever the Fourteenth Amendment requires in a specific area—free speech, freedom of religion, double jeopardy, for example—overrides the Texas equivalent but leaves the Texas courts free to go beyond what the Fourteenth Amendment requires. If the United States Supreme Court had said that the Fourteenth Amendment incorporates the Bill of Rights as such, one could dismiss the Due Process Clause from further consideration, for it would have served its limited purpose as a vehicle for incorporation. (Since "due process of law" is covered in the Fifth Amendment, that amendment, if incorporated, would have governed true due process issues.) But the court has not gone that route. Technically, therefore, most traditional Bill of Rights protections are matters of due process of law. (Or equal protection. See the *Explanation* of Sec. 3.) Nevertheless, the Fourteenth Amendment requirements of free speech, freedom of religion, and the like are discussed as part of the applicable Texas section. Obviously, those are the sections controlling Texas government; Section 19 is limited to traditional issues of due process.

In American constitutional law two kinds of due process evolved: procedural and substantive. Procedural due process is the direct descendant of the Magna Carta provision quoted earlier. Originally, this meant only that individuals could not exercise the power of government arbitrarily; there had to be a basis in law for the action taken. Procedural due process originally concerned only how the government exercised its power: due process did not concern what power the government had. For example, the Bill of Rights provisions concerning fair criminal trials are specific definitions of elements of procedural due process. In this procedural sense, a due process clause is a catch-all to secure fair procedure in situations not otherwise specified.

There is an important distinction between the traditional procedural due process flowing from Magna Carta and procedural due process as it developed in American constitutional law. Since our written constitutions impose limitations on the power of government, courts do not hesitate to invalidate statutes which the courts find to be procedurally unfair. (In England an Act of Parliament is "the law of the land" in the words of the Magna Carta.)

The principal procedural requirement of due process is that a person have recourse to the courts for the protection of his life, liberty, or property. (Sec. 13 in effect duplicates this aspect of procedural due process.) This is a logical imperative, for if the purpose of procedural due process is to require the agents of government to follow the law of the land, only the courts can enforce the requirement. (For a recent statement of this requirement, see *Board of Firemen's Relief and Retirement Fund Trustees of Texarkana v. Hamilton*, 386 S.W.2d 754, 755 (Tex. 1965).)

Due  
process

Closely allied to the right to recourse to the courts are the right to a full day in court and the right to due notice. A "full day in court" simply means that once inside, a party to a lawsuit must be given the opportunity to present his case. (See *Turcotte v. Trevino*, 499 S.W.2d 705, 723 (Tex. Civ. App.—Corpus Christi 1973, writ *ref'd n.r.e.*.) "Due notice" means that one must receive adequate

notice that he has been sued or otherwise has an interest in the litigation. Normally the law requires personal service: constitutional issues arise when something is substituted for personal service. The rules are technical and can only be summarized. Generally, substituted service is permissible only when personal service is not possible. Common examples are unclaimed bank deposits and actions to clear up a title to land. (For a recent example see *City of Houston v. Fore*, 401 S.W.2d 921 (Tex. Civ. App.—Waco 1966), *aff'd*, 412 S.W.2d 35 (Tex. 1967).)

In recent years the United States Supreme Court has broadened procedural due process in a substantive sense, so to speak. This has taken the form of rulings that it is a denial of procedural due process to permit a creditor in effect to collect his money before he wins his suit. In *Sniadach v. Family Finance Corp.* (395 U.S. 337 (1969)), the court struck down a statute that permitted garnishment of wages without notice or hearing and prior to judgment. This was soon followed by *Fuentes v. Shevin* (407 U.S. 67 (1972)), in which the court struck down statutes that allow the seller to repossess goods sold under an installment contract, again without notice or hearing and prior to judgment. Although these new rules are not limited to poor people (see *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975)), there is no doubt that the court has been influenced by the normal inequality in bargaining power between the seller and buyer. This is especially the case when the contract of sale itself requires the buyer to agree to summary repossession. See, for example, *Gonzales v. County of Hidalgo* (489 F.2d 1043 (5th Cir. 1973)), which involved seizure of household goods for nonpayment of rent, again without notice or hearing. The lease provided that the landlord could do this, but the court was not satisfied that the tenant understood that he was signing away a constitutional right.

Contract  
issue

There is another area in which the distinction between procedural and substantive due process is blurred. This concerns statutory presumptions. For many years the courts have held that due process is denied if a statute creates an unreasonable presumption or a presumption that unreasonably shifts the burden of proof in litigation. The leading case is *Western & Atlantic R.R. v. Henderson* (279 U.S. 639 (1929)), which struck down a statute creating a presumption of railroad negligence in a fatal grade-crossing accident. The crucial vice in the presumption was that a jury could weigh the presumed fact against evidence of due care by the railroad employees. Generally, there is no objection to a presumption that operates only in the absence of evidence because the presumption disappears as soon as the party against whom the presumption runs introduces evidence contrary to the presumption. The Texas courts have construed Section 19 to provide the same protection against unreasonable presumptions. (See *Prideaux v. Roark*, 291 S.W. 868 (Tex. Comm'n App. 1927, *judgmt adopted*) and *Rawdon v. Garvie*, 227 S.W.2d 261 (Tex. Civ. App.—Dallas 1950, *no writ*).)

Presumption

A recent United States Supreme Court case demonstrates how easy it is to rely on the procedural rule of presumptions to reach what is a matter of substantive due process. Connecticut, like Texas, charges nonresidents higher tuition at state universities than is charged residents. Connecticut defined a nonresident as one who was not a resident when he applied for admission. Thus, once a nonresident always a nonresident until education was completed. This, the court held, was an unconstitutional presumption under the Fourteenth Amendment because a student was not permitted to show that after admission he became a bona fide resident (*Vlandis v. Kline*, 412 U.S. 441 (1973)). A dissenting opinion convincingly demonstrated that the court was simply making a substantive decision that a state could not exercise control over the ease with which young out-of-state college students could turn themselves into "residents" in order to save money. A

concurring opinion objected to this characterization but really confirmed it by analogizing the situation to the equal protection cases that forbade discrimination between residents and nonresidents. It has already been noted that the Supreme Court began sometime ago to use the Equal Protection Clause in a manner reminiscent of substantive due process. (See the *Explanation* of Sec. 3.)

There is good reason for the Supreme Court's hemming and hawing about whether it has revived substantive due process under other guises. For the first third of this century the court was roundly and consistently criticized for acting as a superlegislature in striking down legislation in the name of the Due Process Clause. (There is a story, possibly apocryphal, that Chief Justice Taft once returned from conference, tossed the record and briefs in a case on his law clerk's desk, and said: "We just decided this is a denial of due process. Figure out why.") In almost all instances the invalidated legislation represented efforts by legislatures to regulate economic behavior, normally for the benefit of the small businessman, the employee, or the consumer. In the middle of the 1930s the court began to retreat from this substantive use of due process. By 1963 Justice Black could assert for the court that substantive due process was dead. (See *Ferguson v. Skrupa*, 372 U.S. 726, 730-31. Justice Harlan carefully concurred in the result on the grounds that the legislation in question bore "a rational relation to a constitutionally permissible objective" (p. 733). This is "due process" language.)

It has already been noted that the justices were able to find substitutes for substantive due process by relying upon specific rights in the Bill of Rights, by expanding the concept of equal protection, and by stretching procedural due process. Yet two years after *Ferguson*, the court found itself unable to rely upon substitutes and had to revive substantive due process. This was the case of *Griswold v. Connecticut* (381 U.S. 479 (1965)), in which the court struck down a law prohibiting the use of contraceptives. Although there were only two dissenting justices, the court erupted with six opinions, all arguing over whether the right to be protected was a matter of substantive due process. The landmark abortion decision (*Roe v. Wade*, 410 U.S. 113 (1973)), fairly well settled the issue. Today, the Due Process Clause of the Fourteenth Amendment forbids some substantive state action that is not covered by any of the specific protections elsewhere enumerated in a Bill of Rights.

Part of this judicial thrashing around is a matter of semantics. "Substantive" due process, as noted above, is the term used to describe the judicial gloss that many people argued was designed to impose a laissez-faire economic system. In that sense, substantive due process is still dead. **What the court appears to be doing now is to abandon efforts to invalidate legislation by stretching other concepts such as equal protection, freedom of speech, and the like. Instead, the court accepts some rights as "fundamental" and requires the state to justify interfering with them.** What these rights are is no easier to describe than it was to describe what a state could do in the days of substantive due process. Now, as then, there is a general philosophical base upon which the court relies. In some respects the fundamental right protected by the court is that of privacy, but this is an oversimplification. A more sophisticated guess is that the court tries to preserve the essence of a *free* society against the encroachments that seem to flow from an increasingly complex society.

Rights as  
funda-  
mental

There is no indication that the Texas courts are engaged in such complicated philosophical considerations of the constitutional limitations imposed by the Texas Bill of Rights. This is probably a result of the relative scarcity of significant constitutional issues compared with the volume reaching the United States Supreme Court. In any event, Section 19 appears to be construed in the traditional manner discussed earlier in the *Explanation* of Section 3.

## Art. VIII, Introduction

article where it did not belong either. (The “tax” was transferred; the old words remained in Sec. 51 until 1968.)

Things really began getting complicated in 1954 when Section 51-b was added to Article III. It created another special fund and moved the 2¢ tax thus:

(d) The State ad valorem tax on property of Two (2¢) Cents on the One Hundred (\$100.00) Dollars valuation now levied under Section 51 of Article III of the Constitution as amended by Section 17, of Article VII (adopted in 1947) is hereby specifically levied for the purposes of continuing the payment of Confederate pensions as provided under Article III, Section 51, and for the establishment and continued maintenance of the State Building Fund hereby created.

Although the foregoing provision carefully but inaccurately describes the peregrinations of the 2¢ levy, people soon forgot that they had moved the tax back to Article III. In 1958, Section 66 was added to Article XVI. It provided for payment of pensions to certain Texas Rangers or their widows but “only from the special fund created by Section 17, Article VII.”

With the adoption of Section 1-e in 1968, the peripatetic confederate pension tax finally found a resting place in the article on taxation. Even so, people still forgot where the tax provision actually was. Section 1-e of Article VIII states:

The State ad valorem tax of Two Cents (\$.02) on the One Hundred Dollars valuation levied by Article VII, Section 17, of this Constitution shall not be levied after December 31, 1976.

Even in 1875, the convention delegates were not watching each other’s left and right hands carefully. Section 1 states that the legislature may impose a poll tax; the original Section 3 of Article VII directly levied a poll tax of one dollar. The original Section 2 of Article VIII granted the legislature power to exempt from taxation “public property used for public purpose”; Section 9 of Article XI directly exempts from taxation such public property of counties, cities, and towns.

*Basic constitutional principles of taxation.* In a state constitution there is no need to mention any power to tax; the legislature has all the taxing power anybody can dream up. It follows that any affirmative statements about the power to tax are redundant. This is so even if the purpose is to introduce a limitation. It is not necessary, for example, to say that occupation taxes may be imposed as a hook upon which to hang a prohibition against taxing agricultural and mechanical pursuits; it is sufficient to provide that no occupation tax may be imposed on mechanical and agricultural pursuits. (“Mechanics and farmers” would be less ambiguous, of course, but that is another matter.)

Keeping power and limitations on power straight can get complicated. For example, the straightforward proposition “All property shall be taxed in proportion to its value” is not a grant of power to tax. (If it is a command to tax property, it is no more effective than any other affirmative command to the legislature.) The proposition is both a limitation on the power of the legislature to exempt property from any taxation and on either the power to set different rates for different kinds of property or to tax property by any method other than ad valorem. (See *Explanation of Sec. 1* concerning this ambiguity.) It follows that a grant of power to exempt property from taxation is an exception to the limitation rather than a true grant of power.

Power  
to  
tax

*Thrust of the Texas limitations.* A glance at the table at the end of this *Introductory Comment* reveals that most of the restrictions, limitations, exemptions, and exceptions involve ad valorem property taxes. The state is free to levy and



## Art. VIII, § 1

For [Against] the Amendment to the Constitution of the State of Texas providing that taxation of real property shall be equal and uniform; and that all property in this State, other than that owned by municipal corporations, shall be taxed in proportion to its value as ascertained as may be provided by law; and providing that the Legislature may make reasonable classifications of all property, other than real property, for the purpose of taxation; and that the taxation of all property in any class shall be equal and uniform; and providing further that the Legislature may impose poll tax and occupation tax and income tax and exempting from occupation tax persons engaged in mechanical and agricultural pursuits; and exempting from taxation Two Hundred and Fifty (\$250.00) Dollars worth of household and kitchen furniture belonging to each family; and providing that the occupation tax levied by any county, city or town shall not exceed one-half that levied by the State for the same period. (S.J.R. 16, Laws, 43rd Legislature, 1933, p. 991.)

The vote, this time at the regular election, was 106,034 in favor, 245,031 against. (Seven other amendments were voted on at the same time. All were defeated, four by wider margins than the Sec. 1 proposal. (See Marburger, pp. 29-30.) The amendment most decisively defeated is discussed under the *History* of Sec. 3 of this article.)

There have been several indirect amendments of Section 1. The first was Section 19, added in 1879. Section 1-d, added in 1966, is another. Section 2 is an exception to the requirement that all property must be taxed. It follows that all direct and indirect amendments of that section are indirect amendments of Section 1. There was also an unsuccessful attempt at an indirect amendment of Section 1. In 1968 the voters rejected a proposal to add a Section 1-j. It would have permitted the legislature to authorize a refund of the excise tax paid on “cigars and tobacco products” if they ended up being sold at retail in Texarkana or contiguous incorporated cities and towns. (One wonders whether the drafter of this amendment was a cigar smoker who thought cigars deserved special mention. It is hard to believe that he thought that cigars are not tobacco products.)

### Explanation

***In general. Section 1 should be viewed only as a limitation on the power to tax.***

Thus, there is no need to discuss any affirmative grant of taxing power unless the grant contains within it words of limitation. For example, Section 1 states that the legislature may impose a tax on incomes. This is an unnecessary grant of power. But a question can be raised whether the words “of both natural persons and corporations” are words of limitation in the sense that if an income tax is imposed it must be imposed on both individuals and corporations. Since Texas has not enacted an income tax, there is no judicial interpretation of the grant.

In the light of the generally sloppy drafting by the 1875 delegates it seems fair to conclude that no limitation was intended. A reading of the *Journal* of the convention reveals that there were two ideas floating around. **One was to continue the power to tax incomes and occupations.** (Beginning with the 1845 Constitution income taxes and occupation taxes have always gone together.) The other was to tax the incomes and franchises of corporations. Mr. Stockdale, who offered the floor amendment that became all of Section 1 (except for the final piggy-back proviso), would appear to have been trying to bring together the two ideas. (See *Journal*, pp. 380, 465, 489, 525.) It is also worth noting that his floor amendment created two sentences, the first limited to occupation taxes, the second covering income taxes but ending with the traditional “mechanical and agricultural pursuits” exception from an occupation tax. (The 1845 section was one sentence, but the order was: income, occupation, exception.) In both sentences natural persons and corporations are stated to be

Limitation  
to tax

Tax only  
on incomes  
and  
occupations

Great Depression. Although raising revenue was a prime purpose of the tax, it was also a regulatory measure designed to decrease the competitive advantage enjoyed by large corporations. The Texas tax was an annual occupation tax graduated according to the number of stores in the state, the graduation running from \$1 for a single store to \$750 for each store over 50. (Louisiana went further and graduated the tax according to the number of stores both in and out of the state. That tax was upheld in *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412 (1936).) The Supreme Court of Texas disposed of the classification argument by using the *Stephens* case quotations set out above and several United States Supreme Court cases that had upheld chain store taxes.

The State charges no ad valorem tax - under this principal how can a political subdivision?

\*\*\*\*\*

Section 1 limits local occupation taxes to one-half of any occupation tax levied by the state. This means: "no state tax, no local tax." It does not mean: "state tax, local tax." This second proposition is not obvious from the proviso itself. The effect comes from the rule that no local government, except a home-rule city, has any taxing power except that granted directly by the constitution or by statute. Home-rule cities may levy a piggy-back occupation tax unless the legislature has withdrawn the power. As noted above, the legislature has done just that in a manner that puts home-rule cities in the same position as other local governments. (Nobody appears to have strained to read the proviso of Sec. 1 as a direct grant of taxing power.)

Prop tax is clearly to raise revenue and by using police power to evict someone for being unable to pay is the equivalent of a license fee.

Local governments, particularly home-rule cities, frequently exercise their police power to regulate a business by requiring a license. Since this is a license to engage in an occupation, a question arises if there is a license fee high enough to generate revenue, thus arguably turning the fee into an "occupation" tax. An early case is *Brown v. City of Galveston* (97 Tex. 1, 75 S.W. 488 (1903)). Galveston enacted an ordinance requiring a license and a fee for all vehicles kept for public use or hire. It was argued that the size of the fee demonstrated that it was in part a revenue measure and therefore unconstitutional under Section 1 since there was no equivalent state occupation tax. The court conceded "that the police power cannot be used for the purpose alone of raising revenue, and, where exercised by a city for the purpose of raising revenue, it will be held to be by virtue of taxing power, and not of the police. But the fact that the assessment under the police power results in producing revenue . . . does not deprive the assessment of the character of a police regulation." (97 Tex., at 75; S.W., at 496.) The court concluded that the fees were levied in the exercise of the police power and that the incidental revenue did not invalidate the ordinance.

The rule—a license fee is not an occupation tax if any revenue above the cost of regulation is incidental—seems clear enough; but as frequently happens when the judiciary applies a clear rule, the results seem a little strange. Consider *Mims v. City of Fort Worth* (61 S.W.2d 539 (Tex. Civ. App.—Fort Worth 1933, *no writ*)) and *Ex parte Dreibelbis* (109 S.W.2d 476 (Tex. Crim. App. 1937)). In the *Mims* case, an annual license fee of \$100 for selling fruits and vegetables at wholesale was held a valid police power regulation and not an occupation tax; in the *Dreibelbis* case, a license fee of \$10 on a "temporary merchant" was held to be an occupation tax because the fee was "not levied for the purpose of regulating the enumerated businesses, but to raise revenue." (p. 477.)

There is no "revenue" above the cost of the fee to live.

Since the "fee" is solely to raise revenue then the fee must be an occupation tax. There is no occupation here. Should the "fee" be considered a license, I don't recall applying for one.

In all fairness, it should be noted that the supreme court said in the *Hurt* case discussed earlier that it "is sometimes difficult to determine whether a given statute should be classed as a regulatory measure or as a tax measure." (130 Tex., at 438; 110 S.W.2d, at 899.) The court continued by stating that if the primary purpose of the fee appears to be to raise revenue, the fee is an occupation tax; if the primary purpose appears to be to regulation, the fee is a license. Difficult to apply or not, the rule remains clear.

If a license fee is a license fee and not an occupation tax, it makes no difference

## Art. XVI, § 51

constitutionally for some kind of homestead exemption. Most of these states specify the same exceptions—purchase money, improvements, and taxes—as Texas does. A few specify additional exceptions. For example, Arkansas and Virginia permit forced sale of the homestead to pay judgments against persons such as guardians, attorneys, and public officers for moneys collected by them. (See Ark. Const. art. IX, sec. 3; Va. Const. art. XIV, sec. 90.)

About half of the states that have homestead exemptions also have a constitutional provision prohibiting the husband from selling or encumbering the homestead without the wife's consent. A few states—Kansas, Nevada, Tennessee, and Wyoming, for example—apply this prohibition to both spouses. The scope of the homestead protection in other states is discussed in the *Comparative Analysis* of Section 51.

## Author's Comment

Inclusion of homestead provisions in the Texas Constitution has been under attack for over 50 years. (See Cole, "The Homestead Provisions in the Texas Constitution," 3 *Texas L. Rev.* 217 (1925).) Critics of the present constitutional provision point out that about half of the states apparently have found it possible to protect the family home without benefit of any constitutional provision on the subject, while half a dozen others include only a directive to the legislature to provide for such an exemption.

These critics assert that in addition to being unnecessary, the present homestead provisions are undesirable from the standpoint of both debtors and creditors. As pointed out earlier, the section inhibits a homeowner's financing options and makes it difficult for him to be his own home improvement contractor. The provision creates uncertainty for lenders, who risk losing their security if they err in determining whether the property is homestead, whether it is within one of the three exceptions, or whether both spouses have effectively consented to the encumbrance. Defining the type and extent of the homestead exemption creates additional difficulties and inequities.

It has been suggested that homestead claimants in some circumstances might be better protected without any homestead exemption at all. For example, the present provision effectively prevents mortgaging the homestead to meet a financial emergency; the only source of funds thus may be outright sale of the homestead—a result that certainly does not accomplish the goal of preserving the family home. The section's efficacy in protecting the wife from her husband's improvidence also has been questioned. (Comment, "The Wife's Illusory Homestead Rights," 22 *Baylor L. Rev.* 178 (1970).)

As noted above, some state constitutions treat the matter of homesteads by simply directing the legislature to provide for them. It has been pointed out that Texas could accomplish this merely by amending present Section 49 of Article XVI. That section gives the legislature the power and duty "to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female." This section could be amended to speak to "personal and real property." The efficacy of such a provision may be doubted, however, since there is no sure way to enforce such a command if the legislature chooses not to comply with it.

**Sec. 51. AMOUNT AND VALUE OF HOMESTEAD; USES.** The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value Ten Thousand Dollars, at the time of their designation as the homestead, without reference to the value of any

Today the city lot is 10 acres.

## Art. XVI, § 51

improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

### History

The nature of the homestead was defined in the section creating the exemption until 1875, when the definition was moved to its own separate section, this Section 51. (See the *History* of Sec. 50.) The rural homestead acreage limit was increased from 50 to 200 acres, the present figure, by the Constitution of 1845.

The limit on urban homesteads has undergone qualitative as well as quantitative change. The 1839 statute placed no limit on the overall value of the urban homestead but protected improvements on the homestead only up to \$500. The 1845 Constitution eliminated this limitation on the value of improvements and instead imposed a \$2,000 limit on the value of the lot or lots claimed as the urban homestead. This figure was increased to \$5,000 in the 1869 Constitution and was raised to \$10,000 by an amendment adopted in 1970.

The requirement that city lots be valued "at the time of their designation as the homestead, without reference to the value of any improvements thereon" was added in 1869. This was a response to a decision holding that urban homesteads were to be measured at current value, including value of improvements, and that any excess over the constitutional limit could be subjected to forced sale. (*Wood v. Wheeler*, 7 Tex. 13 (1851).)

There was an attempt in the 1875 Constitutional Convention to limit the exemption in any event to \$10,000, but it was defeated. (*Journal*, pp. 711-12.)

The 1973 amendment described in the annotation of Section 50 also amended this section to make a business homestead available to single adults as well as heads of families.

### Explanation

What is or is not homestead property under this section is a rather intricate question. **The basic rule is that the debtor's property is subject to forced sale to the extent that it exceeds the stated acreage or value limits.** In the case of a rural homestead, the excess acreage over 200 is severed from the rest and sold. The homestead claimant, however, has the right to decide which 200 acres to retain as his homestead. He is permitted to carve out a 200-acre tract of any shape, or even several separate tracts, and thus may select only the most valuable portions of his land as the homestead. (See *Cotten v. Friedman*, 158 S.W. 780 (Tex. Civ. App.—Galveston 1913, *no writ*.) And there is no limit on the value of the rural homestead.

What part of this lot is over 10 acres?

When the property claimed as the homestead is located in a town or city, the limitations are entirely different. There is no limit on the size of an urban homestead, but to the extent that its value exceeds \$10,000 (at the time of designation), it is not exempt. The value of improvements is excluded from this calculation of value. If the value exceeds \$10,000, the excess can be reached in one of two ways. If the property is subject to partition (for example, if it consists of two lots, one of which is within the value limit), it will be divided and only part of it will be sold, just as in the case of a rural homestead. But if it is incapable of partition (for example, a single lot occupied by a residence), the entire property will be sold. A portion of the proceeds goes to the debtor as a sort of allowance in lieu of his homestead. That portion is a fraction whose numerator is the maximum exemption

and whose denominator is the value of the lot (less improvements) at the time of designation. For example, if the value of the lot without improvements was \$15,000 at the time of designation, and if the maximum exemption at that time was \$10,000, the exempt portion is two-thirds. (*Hoffman v. Love*, 494 S.W.2d 591 (Tex. Civ. App.—Dallas), writ ref'd n.r.e. per curiam, 499 S.W.2d 295 (Tex. 1973).) The nonexempt portion of the proceeds is applied to the debt, and if there are still proceeds left after that, they go to the debtor. If the property does not bring at least \$10,000 plus the present value of the improvements, the sale is nullified and the debtor retains title. The reasoning is that in such a case there is no excess over the constitutional limit—i.e., \$10,000 excluding the value of improvements. (*Whiteman v. Burkey*, 115 Tex. 400, 282 S.W. 788 (1926).)

The value of urban lots is determined “at the time of their designation as the homestead.” Although there is no authoritative decision on the point, the general rule seems to be that this means the time at which the property first takes on the character of a homestead. This in turn means the time at which the claimant begins to occupy it as a homestead, or take some action indicating his intent to do so. (See *Boerner v. Cicero Smith Lumber Co.*, 298 S.W. 545 (Tex. Comm’n App. 1927, jdgmt adopted).)

The statutes provide a procedure for formally designating the homestead. By this means, a claimant may choose whether to select as his homestead his rural property or his city lots and may decide which 200 acres of his rural property he wants to make exempt. (Tex. Rev. Civ. Stat. Ann. arts. 3841-3843.) No formal designation of the homestead is required, however. Property is exempt if it is in fact a homestead, and if the claimant owns more than 200 acres of rural land, or both rural and urban land, he is free at any time to select the land he wants to protect or change a designation already made. (*Green v. West Texas Coal Mining & Development Co.*, 225 S.W. 548 (Tex. Civ. App.—Austin 1920, writ ref’d).)

A debtor may be entitled to homestead protection even if he owns no realty in fee simple. The exemption applies not only to ownership in fee simple, but to any possessory interest in land. A tenant, therefore, can claim a homestead in his leasehold interest. (*Cullers & Henry v. James*, 66 Tex. 494, 1 S.W. 314 (1886).) This is significant primarily in the case of business and agricultural leases, since a residential leasehold rarely has enough value to interest a creditor in seizing it.

Texas is unique in permitting a “homestead” exemption for business property. A single adult or head of a family who owns a lot or lots in a city or town, upon which he operates a business, may claim a homestead exemption for those lots. If the combined value of his business lots and residential lots does not exceed \$10,000 (again, calculated at time of designation and without regard to value of improvements), he may also claim an exemption for his residential property. (*Rock Island Plow Co. v. Allen*, 102 Tex. 366, 116 S.W. 1144 (1909).) The owner of a rural homestead, however, cannot also claim a business homestead. (*Rockett v. Williams*, 78 S.W.2d 1077 (Tex. Civ. App.—Dallas 1935, writ dismissed).) The business homestead is a form of urban homestead, and the courts have held that the homestead may consist of either rural property or lots in a city or town, but not both. (See *Keith v. Hyndman*, 57 Tex. 425 (1882).)

The owner of an urban homestead may rent a portion of it temporarily without losing his exemption, but if the property takes on a permanent rental character, inconsistent with its use as a homestead, it loses its exempt status. (*Scottish American Mortgage Co. Ltd. v. Milner*, 30 S.W.2d 582 (Tex. Civ. App.—Texarkana 1930, writ ref’d); *Blair v. Park Bank & Trust Co.*, 130 S.W. 718 (Tex. Civ. App. 1910, writ ref’d).) The owner of a rural homestead or an urban business homestead apparently also may lease it for a term of years without losing the homestead exemption, provided he intends to reoccupy it as a homestead. (E.g., *Alexander v.*

&lt;---

NOTE

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## Art. XVI, § 51

*Lovitt*, 56 S. W. 685 (Tex. Civ. App. 1900, *no writ*); *In re Buie*, 287 F. 896 (N.D. Tex. 1923).

## Comparative Analysis

The constitutions of California, Washington, Nevada, Wyoming, North Dakota, and South Dakota permit the legislature to determine how much property is eligible for homestead protection. Most of the states that provide constitutionally for a homestead exemption, however, also prescribe a maximum homestead size or value. The constitutional homestead limits in Texas are more generous than those of any other state. Eight states have monetary limits of \$2,500 or less, and six have acreage limits of 160 acres or less. No other state prescribes an urban homestead maximum as great as \$10,000 or a rural homestead as large as 200 acres.

Oklahoma is the only other state whose constitutional homestead provision mentions business, but it does not create a business homestead in the sense that the Texas Constitution does; it refers rather to property used as a combination business and residence. (See Okla. Const. art. XII, secs. 1, 3).

## Author's Comment

The present constitutional definition of the homestead creates a number of difficulties and inequities. These are elaborated in Cole, "The Homestead Provisions in the Texas Constitution," 3 *Texas L. Rev.* 217 (1925), and Woodward, "The Homestead Exemption: A Continuing Need for Constitutional Revision," 35 *Texas L. Rev.* 1047 (1957).) One inequity arises from the absence of any limit on the value of the 200-acre rural homestead. As a result, the exemption of rural property bears no relation to the claimant's needs. The owner of a rural homestead may be judgment-proof even though he occupies an elaborate country estate worth hundreds of thousands of dollars. To a lesser extent, the same problem arises in the case of an urban homestead because its value is fixed at the time the homestead is designated and does not include the value of improvements. Thus a \$100,000 home on a city lot now worth \$30,000 may be totally exempt from forced sale if the lot was worth less than \$10,000 at the time of designation as a homestead.

A tax sale  
is a forced  
sale

The definitions of business and rural homesteads go far beyond the original intent of preserving the family home. The rural homestead may include not only the home site and surrounding land, but also separate parcels of land many miles away, so long as the total does not exceed 200 acres. The business exemption bears little relation to the goal of preserving the home. Rather, it seems more nearly akin to such provisions as the prohibition against garnishment of wages. (Sec. 28, Art. XVI.) Like the garnishment prohibition, its goal is protection of one's means of livelihood rather than protection of the family home. No other state exempts a "business homestead," and exempting a business in addition to a residence is hard to justify. As interpreted, the provision discriminates against a person who lives in the country but operates a business in the city: He cannot have both a rural and an urban homestead even though a city dweller can.

These difficulties could be alleviated, if not eliminated, by removing from the constitution all language describing and limiting the homestead, leaving its nature and the extent of the exemption to be defined by the legislature. At least six state constitutions now do so. The major objection to this approach is that it permits the legislature to effectively abolish the homestead exemption by narrowing its definition or creating additional exceptions. Distrust of the legislature may be more understandable here than in other contexts. The economic interests that would benefit from restriction of the homestead exemption are a fairly well-defined and influential group and might be in a better position to secure passage of legislation



## Art. XVI, § 52

than the more diffuse and disparate interests that benefit from the exemption.

The 1963 Michigan Constitution illustrates a compromise that insures some homestead protection without preventing the legislature from adjusting the extent of protection. Instead of fixing a maximum homestead amount, as Texas and most other states do, the Michigan Constitution fixes a minimum (“of not less than \$3,500”) and permits the legislature to define the kinds of liens excepted from homestead protection. (See Mich. Const. art. X, sec. 3.)

Sec. 52. DESCENT AND DISTRIBUTION OF HOMESTEAD; RESTRICTIONS ON PARTITION. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

## History

The 1845 Constitution contained a general provision exempting the homestead of a family from forced sale to pay debts (see also the *History* of Sec. 50 of Art. XVI), but it did not mention the fate of the homestead after the claimant's death. The supreme court held that the homestead exemption created by the 1845 Constitution expired on the death of the person claiming it and did not apply to his heirs. (*Tadlock v. Eccles*, 20 Tex. 782 (1858).) The legislature, however, created a statutory exemption for widows and minor children. (Tex. Laws 1848, Ch. 157, 3 *Gammel's Laws*, p. 249.) The supreme court held that under this statute, the homestead property of an insolvent husband passed to his widow and children rather than to other heirs to whom the property otherwise would have passed. (*Green v. Crow*, 17 Tex. 180 (1856).)

A tax  
is a  
debt!

Section 52 was added by the 1875 Convention, apparently in an attempt to abrogate this statute and ensure that homestead property would pass to the heirs in the same manner as other property. (See *Ford v. Sims*, 93 Tex. 586, 57 S.W. 20 (1900).) The second clause apparently was added to give the surviving spouse and minor children some protection in lieu of that previously available to them by statute. After adoption of the 1876 Constitution, the statute giving the widow and minor children the homestead to the exclusion of other heirs was held unconstitutional on grounds that it violated Section 52. (*Zwernemann v. von Rosenburg*, 76 Tex. 522, 13 S.W. 485 (1890).)

## Explanation

Section 52 does three things. First, it prevents the legislature from prescribing rules of inheritance for homestead property different from those that govern other property. This means that title to homestead property ultimately passes by will or by the rules of descent and distribution to whomever would have taken it had it not been a homestead. For example, if a man dies leaving a will that gives his home to a church, the church eventually will get the property, even though it is homestead property. Although this section prevents the legislature from treating homestead property differently from other property for purposes of inheritance, it does not prevent the legislature from treating homestead property differently with respect to creditors. The legislature has done so; it has provided that if the owner of a homestead dies survived by a widow, minor children, or an unmarried daughter who lives with the decedent's family, the homestead property passes free of the decedent's debts. (Probate Code secs. 271, 179.) This is true even if the heir who



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HARRIS COUNTY APPRAISAL DISTRICT  
 REAL PROPERTY ACCOUNT INFORMATION  
**0283010000016**

Tax Year: 2016



Owner and Property Information									
Owner Name & Mailing Address: <b>APARTMENTS AT 4114 BROADWAY LLC</b> <b>2260 W HOLCOMBE BLVD STE 281</b> <b>HOUSTON TX 77030-2008</b>					Legal Description: <b>LTS 16 &amp; 17 BLK 31</b> <b>PARK PLACE</b> Property Address: <b>4114 BROADWAY ST # 29</b> <b>HOUSTON TX 77087</b>				
State Class Code	Land Use Code	Building Class	Total Units	Land Area	Building Area	Net Rentable Area	Neighborhood	Map Facet	Key Map®
B1 -- Real, Residential, Multi-Family	8000 -- Land Neighborhood General Assignment	D	29	25,800 SF	24,313	23,520	5946	5654C	535T

Value Status Information		
Value Status	Notice Date	Shared CAD
Noticed	04/08/2016	No

Exemptions and Jurisdictions							
Exemption Type	Districts	Jurisdictions	Exemption Value	ARB Status	2015 Rate	2016 Rate	
None Date: 4/12/17 Deputy Custodian of Records	001	HOUSTON ISD		Certified: 08/12/2016	1.196700	1.206700	
	040	HARRIS COUNTY		Certified: 08/12/2016	0.419230	0.416560	
	041	HARRIS CO FLOOD CNTRL		Certified: 08/12/2016	0.027330	0.028290	
	042	PORT OF HOUSTON AUTHY		Certified: 08/12/2016	0.013420	0.013340	
	043	HARRIS CO HOSP DIST		Certified: 08/12/2016	0.170000	0.171790	
	044	HARRIS CO EDUC DEPT		Certified: 08/12/2016	0.005422	0.005200	
	048	HOU COMMUNITY COLLEGE		Certified: 08/12/2016	0.101942	0.100263	
	061	CITY OF HOUSTON		Certified: 08/12/2016	0.601120	0.586420	
	943	HC ID 9		Certified: 08/12/2016	0.150000	0.150000	

Texas law prohibits us from displaying residential photographs, sketches, floor plans, or information indicating the age of a property owner on our website. You can inspect this information or get a copy at **HCAD's information center at 13013 NW Freeway.**

**Valuations**

Value as of January 1, 2015			Value as of January 1, 2016		
	Market	Appraised		Market	Appraised
Land	77,400		Land	77,400	
Improvement	591,405		Improvement	509,857	
<b>Total</b>	<b>668,805</b>	<b>668,805</b>	<b>Total</b>	<b>587,257</b>	<b>587,257</b>

**Land**

Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	8000 -- Land Neighborhood General Assignment	4211	SF	25,800	1.00	1.00	1.00	--	1.00	3.00	3.00	77,400.00

**Building**

Building	Year Built	Type	Style	Quality	Impr Sq Ft	Building Details
1	1962	Apartment Garden (1 to 3 Stories)	Multiple Res (Low Rise)	Low	3,040	Displayed
2	1962	Apartment Garden (1 to 3 Stories)	Multiple Res (Low Rise)	Low	11,778	<b>View</b>
3	1962	Apartment Garden (1 to 3 Stories)	Multiple Res (Low Rise)	Low	3,236	<b>View</b>

STATE OF TEXAS  
 COUNTY OF HARRIS  
 This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my official custody.  
 Date: 4/12/17  
 Deputy Custodian of Records



4

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## Open Records

**From:** Open Records  
**Sent:** Friday, January 20, 2017 9:45 AM  
**To:** mpalma1@sbcglobal.net  
**Subject:** RE: HCAD Open Records Request (wo#17-1013 COMPLETE)  
**Attachments:** AGProcedureManualcomplete.doc

Mr. Palma,

I am providing you with some resources we have (see attached and below) from which there is a definition of Commercial, Real and Agricultural. However, there is no documentation of a definition for Residential responsive to your request.

Please note that with all definitions you've requested, there is no "Official" HCAD definition responsive as HCAD uses various sources such as HCAD manuals and various appraisal courses, IAAO, Appraisal Institute, PTEC, USPAP, Tax Code, and others.

"Commercial" is defined in our Commercial Lister's Manual, see below.

"Agricultural" is defined in Section 23.51 of the Texas Property Tax Code, as cited in our Ag Procedures Manual, see attached.

"Real" is defined in Section 1.04 of the Texas Property Tax Code, see below.

### HCAD Commercial Lister's Manual:

#### 1.4.4. **Commercial**

Commercial property is used primarily for the purpose of generating income. Examples of commercial real estate include malls, warehouses, office parks, restaurants, gas stations, apartment complexes, and office towers. In some cases, a business owner may own the land it uses. Banks are a good example. They usually own the land on which they have constructed branch offices. In other cases, a business may rent property from an investor who derives income from the collection of rent.

### Texas Property Tax Code:

Sec. 1.04. DEFINITIONS. In this title:

(1) "Property" means any matter or thing capable of private ownership.

(2) "Real property" means:

- (A) land;
- (B) an improvement;
- (C) a mine or quarry;
- (D) a mineral in place;
- (E) standing timber; or



STATE OF TEXAS §  
COUNTY OF HARRIS §

This is to certify that this is a true and correct copy of an official public record of the Harris county Appraisal District in my lawful custody.

4/12/17  
Date

*Lindsay Ke*  
Deputy Custodian of Records

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DEED

20120490631  
10/22/2012 RP2 \$32.00

EFFECTIVE DATE JULY 8, 2010

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER LICENSE NUMBER.

THE STATE OF TEXAS                   §  
  §           KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF HARRIS                 §

THAT THE UNDERSIGNED Donald Sorrells, in the capacity of Trustee for Unknown-Holding, a Trust herein after called "Grantor" (and referred to in the singular, whether one or more), for and in consideration of the sum of TEN GOLD DOLLARS (10.00) and other valuable consideration in hand paid by the beneficiary of 6205 Trust, a foreign, non-business Trust (acting under the Texas Bus. Org. Code Title 1 Chapter 9 specifically §9.251(15)), the 6205 Trust herein after being the "Grantee" (and referred to in the singular, whether one or more), the receipt of which is hereby acknowledged; has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto "Grantee" all that certain lot tract or parcel of land together with all improvements thereon, lying and being situated in Harris County, Texas, described as follows, to-wit:

**PRIVATE NON-BUSINESS PROPERTY** KNOWN AS: LOT 20, BLOCK 4, RESERVE "D" OF CANDLELIGHT OAKS VILLAGE, A SUBDIVISION IN HARRIS COUNTY TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 226, PAGE 1 OF THE MAP RECORD OF HARRIS COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ON EXHIBIT "A" ATTACHED HERETO, ORIGINALLY PART OF THE M'CLELLAND LAND GRANT DATED AUGUST 2 1848 HEREIN ATTACHED CERTIFIED BY THE TEXAS GENERAL LAND OFFICE

Also Know As: 5026 Autumn Forest Dr. Houston, Texas 77091

This conveyance is made subject to all validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; if any, relating to the herein above described property as the same are filed via public notice in Harris County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, Grantee's heirs and assigns forever, and Grantor does hereby bind Grantor, Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

1. Grantee through Grantor is lawfully seized in FEE SIMPLE the above property, and has good right to convey the same:
2. The above property is free from all encumbrances, except as set forth above:
3. Beneficiary through Grantee shall quietly enjoy the above property.

EXECUTED: this 10-21-12

*Donald Sorrells*  
Donald Sorrells in the capacity of Trustee for Unknown-Holding, a Trust

Any provision herein which restrict the sale, rental or use of the described Real Property because of color or race is invalid and unenforceable under the Federal Law. Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 10/23/2012  
Stan Stanart, County Clerk  
Harris County, Texas

*Song Thi Ngan Tran*  
SONG THI NGAN TRAN Deputy

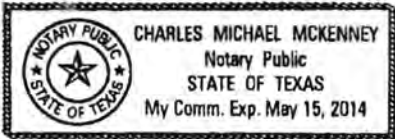




CERTIFICATE OF ACKNOWLEDGEMENT GRANTOR

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me, Mich Mckenney a notary in Texas, personally appeared Donald Sorrells, in the capacity of Trustee for Unknown-Holding, a Trust, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his on the instrument the person, or the entity upon behalf of which the person acted, executed the same as his freewill act and deed.



10-22-12 Mich Mckenney  
Notary Public, State of Texas

CERTIFICATE OF ACKNOWLEDGEMENT GRANTEE

I, Donald Sorrells the living man created in the image of God, in the capacity of Donald Sorrells Trustee for the 6205 Trust, am recorded as the grantee on the warranty deed for the real estate described on the attached deed.

It is my freewill act and deed, to acknowledge my acceptance of the deed as Trustee and lawful ownership of the property under the terms of the deed. I ask that the record on file in the office of register of deeds be updated to show my acceptance of the deed, and the lawful owner of the real estate in Trust.

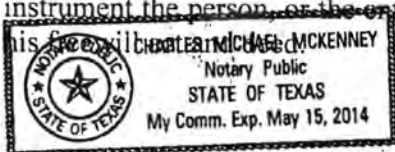
This my free will act and deed, under my hand and seal:

Donald Sorrells  
Donald Sorrells, in the capacity of Trustee for 6205 Trust

*DR*

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on Mich Mckenney personally appeared Donald Sorrells, in the capacity of Trustee for 6205 Trust who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his on the instrument the person, or the entity upon behalf of which the person acted, executed the same as



10-22-12 Mich Mckenney  
Notary Public, State of Texas

When recorded to return to the new Trustee being appointed after this filing  
Daniel Lee Swank  
PO Box 855  
Huffman Texas 77336

Any provision herein which restrict the sale, rental or use of the described Real Property because of color or race is invalid and unenforceable under the Federal Law. Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 10/23/2012  
**Stan Stanart, County Clerk**  
Harris County, Texas

Song Thi Ngan Tran Deputy  
SONG THI NGAN TRAN



RP 084-45-0604



EXHIBIT "A"

LOT 20, BLOCK 4, RESERVE "D", OF CANDLELIGHT OAKS VILLAGE, A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 226, PAGE 1 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS; SAID LOT 20 BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

D

COMMENCING AT THE INTERSECTION OF A 16.00 FOOT UTILITY EASEMENT CENTERLINE WITH THE EAST LINE OF SAID RESERVE "D" AND THE WEST R.O.W. LINE OF RANDON ROAD (60.00 FEET WIDE);

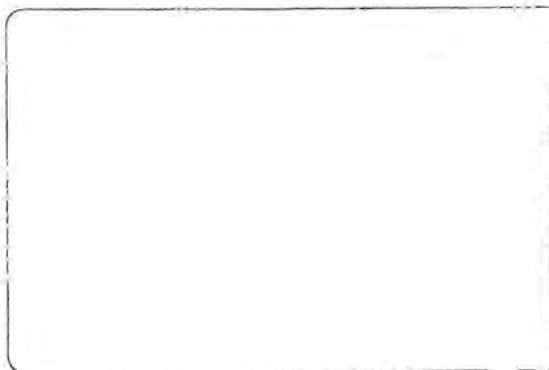
THENCE, SOUTH 88 DEGREES, 09 MINUTES, 37 SECONDS WEST, A DISTANCE OF 330.00 FEET ALONG THE CENTERLINE OF SAID 16.00 FOOT UTILITY EASEMENT TO A 1/4 INCH IRON ROD FOUND FOR THE NORTHEAST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 01 DEGREES, 50 MINUTES, 23 SECONDS EAST, A DISTANCE OF 70.00 FEET TO A 5/8 INCH IRON ROD FOUND IN THE NORTH R.O.W. LINE OF AUTUMN FOREST DRIVE (60.00 FEET WIDE) FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 88 DEGREES, 08 MINUTES, 37 SECONDS WEST, ALONG THE NORTH R.O.W. LINE OF SAID AUTUMN FOREST DRIVE, A DISTANCE OF 53.00 FEET TO A 5/8 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 01 DEGREES, 50 MINUTES, 23 SECONDS WEST, A DISTANCE OF 70.00 FEET TO A 1/4 INCH IRON ROD FOUND FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 88 DEGREES, 09 MINUTES, 37 SECONDS EAST, A DISTANCE OF 53.00 FEET ALONG THE CENTERLINE OF SAID 16.00 FOOT UTILITY EASEMENT TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT.



Stan Stanart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2012 OCT 22 PM 1:55

FILED

RP 084-45-0605

Any provision herein which restrict the sale, rental or use of the described Real Property because of color or race is invalid and unenforceable under the Federal Law. Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 10/23/2012  
Stan Stanart, County Clerk  
Harris County, Texas



Song Thi Ngan Tran Deputy  
SONG THI NGAN TRAN



In the name of the State of Texas.

To all to whom these presents shall come, know ye, I Geo. J. Wood, Governor of the State aforesaid by virtue of the power vested in me by law and in accordance with the laws of said State in such case made and provided do by these presents Saml. McClelland Grant to the heirs of Samuel McClelland deceased their heirs or assigns forever

1/3 League  
off the heirs of  
Saml. McClelland Grant

One third of a League of land situated and described as follows In Harris District on the West fork of White Oak Bayou a branch of Buffalo Bayou about six miles North West of the city of Austin- Beginning at a stake David Newson's North East corner, from which a pine bears S. 52. E. 35. 00 varas Thence North sixteen hundred sixty six and 2/3 varas to a stake in prairie 136. 00 varas North of a small pine, Thence West at 360. 00 varas White Oak Bayou, at five thousand varas a stake in prairie, Thence South at 400. 00 varas a fork of said Bayou, at station hundred sixty six and 2/3 varas a stake in prairie, Thence North West corner, Thence East with his line at 2000 varas White Oak Bayou, at five thousand varas the place of beginning. Next by relinquishing to them the said heirs of Samuel McClelland, and their heirs or assigns forever all

the right and title in and to said land heretofore held and possessed by the said State and I do hereby issue this letter patent for the same. In testimony whereof I have caused the seal of the General Land Office to be affixed as well to this state to be affixed as will the Seal of the General Land Office. Done at the City of Austin on the second day of August in the year of our Lord one thousand eight hundred and forty eight

Geo. J. Wood  
Governor

Commissioner of the U.S. Office.

Any provision herein which restrict the sale, rental or use of the described Real Property because of color or race is invalid and unenforceable under the Federal Law. Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 10/23/2012  
Stan Stanart, County Clerk  
Harris County, Texas

Song Thi Ngan Tran  
SONG THI NGAN TRAN  
Deputy





ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas.

OCT 22 2012



Stan Stanart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**RECORDER'S MEMORANDUM:**  
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Texas General Land Office, Austin, Texas

FEB 24 2010

I, Jerry Patterson, Commissioner of the Texas General Land Office of the State of Texas, do hereby certify that on the reverse hereof is a true and correct copy of this instrument now on file in this office together with all endorsements thereon.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said office the day and date first above written.

JERRY PATTERSON

Commissioner of the Texas General Land Office

2090-SR-1883 34

Any provision herein which restrict the sale, rental or use of the described Real Property because of color or race is invalid and unenforceable under the Federal Law. Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 10/23/2012  
Stan Stanart, County Clerk  
Harris County, Texas

Song Thi Ngan Tran  
SONG THI NGAN TRAN

Deputy



6

6



## Texas Administrative Code

<a href="#">TITLE 34</a>	PUBLIC FINANCE
<a href="#">PART 1</a>	COMPTROLLER OF PUBLIC ACCOUNTS
<a href="#">CHAPTER 9</a>	PROPERTY TAX ADMINISTRATION
<a href="#">SUBCHAPTER I</a>	VALUATION PROCEDURES

### Rules

<a href="#">§9.4001</a>	Valuation of Open-Space and Agricultural Lands
<a href="#">§9.4005</a>	Formulas for Interstate Allocation of the Tax Value of Railroad Rolling Stock
<a href="#">§9.4009</a>	Appraisal of Recreational, Park, and Scenic Land
<a href="#">§9.4010</a>	Appraisal of Public Access Airport Property
<a href="#">§9.4011</a>	Appraisal of Timberlands
<a href="#">§9.4013</a>	Residential Real Property Inventory Appraisal
<a href="#">§9.4031</a>	Manual for Discounting Oil and Gas Income
<a href="#">§9.4033</a>	Allocation of Value
<a href="#">§9.4035</a>	Special Types of Personal Property Inventory
<a href="#">§9.4037</a>	Use of Electronic Communications for Transmittal of Property Tax Information
<a href="#">§9.4201</a>	Definition of Petroleum Products

[HOME](#)[TEXAS REGISTER](#)[TEXAS ADMINISTRATIVE CODE](#)[OPEN MEETINGS](#)

7

7



To: Harris County Tax Assessor Collector

From: Michael-Francis: Palma  
5026 Autumn Forest Dr.  
Houston, Texas 77091  
713-263-9937

RE: Affidavits of indigence for tax years 2015, 2016, 2017 and 2018 for account #1086470010020

To whom it may concern,

Please find attached the affidavits provided to the Courts as indicated. My situation has not changed for many years and indigence goes back further than this. To save paper any ancillary document that is a duplicate with other affidavits is only provided a single time.

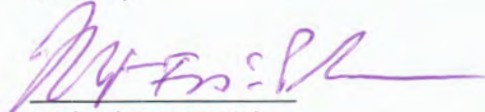
1. Jan 10 2017 District Court case #2017-01753 (7 pages)
2. Mar 16 2017 District Court case #2017-32712 (1 page)
3. Mar 16 2018 District Court case #2018-17668 as verified by the First Court of Appeals (2 pages)
4. Jun 22 2018 Texas Supreme Court case #18-0564 for case #District Court case #2017-01753 (1 page)
5. Feb 5 2018 United States District Court Order to proceed In Form Pauperis. (1 page)

An additional affidavit can be provided upon request.

HARRIS COUNTY  
TAX ASSESSOR-COLLECTOR

AUG 21 2018

Sincerely



Michael-Francis: Palma

AFFIDAVIT

State of Texas §  
County of Harris §

BEFORE ME, the undersigned Notary, ROSA L. PEREZ, on this 10 day of January, 2017, personally appeared Michael Francis: Palma, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I, Michael-Francis: Palma

1. have had no regular employment since approximately 2002 due to medical issues,
2. am not married,
3. receive no federal assistance,
4. receive only limited funds from my girlfriend,
5. have only \$6.00 in a checking account due to the IRS emptying the account a couple of years ago,
6. owns no real property, owns no automobile, owns limited household furnishings, clothes and personal effects,
7. have monthly debts that amount to approximately \$150 per month plus food which is partly paid by my girlfriend,
8. I have an outstanding judgment to Bank of America of over \$90,000 and IRS NFTL's of about \$95,000,
9. I have no other debts,
10. I have no dependants.

FURTHER, THIS AFFIANT SAYETH NOT.

*[Handwritten signature of Michael Francis Palma]*

Michael Francis Palma  
c/o 5026 Autumn Forest Dr.  
Houston, Texas 77091  
(713) 263-9937

**FILED**

Chris Daniel  
District Clerk

JAN 10 2017

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

Subscribed and sworn to before me, this 10 day of January, 2017.

Notary Seal:



*[Handwritten signature of Rosa L. Perez]*  
NOTARY PUBLIC  
My Commission Expires: February 12, 2019  
Notary number: 125999936  
~~\_\_\_\_\_~~

ENCL: Social Security form, Hospital District approval form, last 6 months bank statements

p-6

AFFIDAVIT OF INDIGENCE

State of Texas §  
County of Harris §

BEFORE ME, the undersigned Notary, Jorge M. Gonzalez, on this 16 day of May, 2017, personally appeared Michael Francis: Palma, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath. deposes and says:

I, Michael-Francis: Palma

1. have had no regular employment since approximately 2002 due to medical issues,
2. am not married.
3. receive no federal assistance.
4. receive only limited funds from my girlfriend,
5. have only \$6.00 in a checking account due to the IRS emptying the account a couple of years ago.
6. owns no real property, owns no automobile, owns limited household furnishings, clothes and personal effects,
7. have monthly debts that amount to approximately \$150 per month plus food which is partly paid by my girlfriend,
8. I have an outstanding judgment to Bank of America of over \$90,000 and IRS NFTL's of about \$195,000,
9. I have no other debts,
10. I have no dependants.

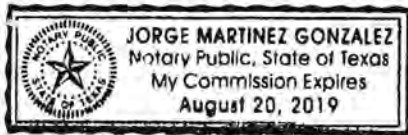
FURTHER, THIS AFFIANT SAYETH NOT.

[Signature]  
 Michael Francis Palma  
 c/o 5026 Autumn Forest Dr.  
 Houston, Texas 77091  
 (713) 263-9937

**FILED**  
 Chris Daniel  
 District Clerk  
 MAY 16 2017  
 Time: 9:50  
 Harris County, Texas  
 By: [Signature]  
 Deputy  
 Shanelle Taylor

Subscribed and sworn to before me, this 16 day of May, 2017.

Notary Seal:



[Signature]  
 NOTARY PUBLIC  
 My Commission Expires: August 20, 2019  
 Notary number: \_\_\_\_\_

ENCL: Social Security form, Hospital District approval form, last 6 months of downloadable bank statements



**COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER

Appellate case name: Michael Francis Palma v. Harris County Appraisal Review Board

Appellate case number: 01-18-00506-CV

Trial court case number: 2018-17668

Trial court: 157th District Court of Harris County

The Clerk of this Court's June 26, 2018 notice requested that the district clerk file the indigent clerk's record. Then, after the district clerk's July 23, 2018 original clerk's record on indigence contained several documents, but not the appellant's affidavit of indigence, the Clerk of this Court's July 26, 2018 notice requested that the district clerk file a supplemental indigent clerk's record to include that document. On August 8, 2018, the district clerk filed a supplemental clerk's record containing the pro se appellant Michael Francis Palma's affidavit of indigence, filed on March 16, 2018, but neither indigent clerk's record contained any objection or trial court's order overruling appellant's indigence claim. The court reporter's August 9, 2018 info sheet stated that there was no reporter's record and the original clerk's record was filed on August 13, 2018.

Rule of Appellate Procedure 20.1 provides that a party who files such a Statement in the trial court "is not required to pay costs in the appellate court unless the trial court overruled the party's claim of indigence in an order that complies with Texas Rule of Civil Procedure 145." TEX. R. APP. P. 20.1(b)(1). Because appellant's indigence claim was not overruled by an order with detailed findings of fact that complies with Rule 145, appellant is not required to pay costs. *See* TEX. R. APP. P. 20.1(b)(1); TEX. R. CIV. P. 145(a), (f)(1).

Accordingly, the Clerk of this Court is **directed** to mark appellant indigent in this Court's records and allowed to proceed without advance payment of the appellate filing and clerk's and reporter's record fees. Because appellant is proceeding pro se, the Court **ORDERS** the district clerk to mail the clerk's, indigent clerk's, and supplemental clerk's

records to the appellant, at no cost to appellant, **within 20 days** of the date of this order, and shall certify the delivery date **within 30 days** of the date of this order.

It is so ORDERED.

Judge's signature: /s/ Evelyn V. Keyes  
 Acting individually     Acting for the Court

Date: August 16, 2018



**NOTICE OF CONTINUED INDIGENCY  
TO THE  
TEXAS SUPREME COURT**

---

**PRIVATE HOME LOCATED AT 5026 AUTUMN FOREST DRIVE, HOUSTON TX  
77091, AKA 1086470010020 TRUST (Michael-Francis: Palma)**

***Petitioner***

**V.**

**HARRIS COUNTY APPRAISAL DISTRICT,**

***Respondent***

---

**On Appeal from the First Court of Appeals, First District of Texas  
Houston, Texas 01-17-00502-CV**

**and**

**From the 270th Judicial District Court of Harris County, Texas  
Trial Court Cause No. 2017-01753**

---

This notice is simply to inform the Court that petitioner has filed indigent status in the District Courts and that petitioner's status has not changed.

Thank you for your consideration in this matter.

Respectfully Submitted

/s/ Michael- Francis: Palma  
Michael-Francis: Palma, *Sui Juris*  
5026 Autumn Forest Dr.  
Houston, Texas 77091  
Mpalma1@gmail.com  
713-263-9937

**CERTIFICATE OF SERVICE**

I hereby certify that on June 22, 2018, a true and correct copy of the foregoing Motions, Notice, Memorandum, Exhibits or Amended Petition was served via Texas Efile/or regular email to all parties and counsel of record.

/s/ Michael- Francis: Palma  
Petitioner

**ENTERED**

February 05, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MICHAEL PALMA,

Plaintiff,

VS.

LAWRENCE W LUKER, *et al*,

Defendants.

§  
§  
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§  
§  
§  
§  
§

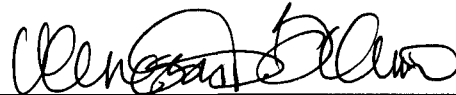
MISC. ACTION NO. 4:18-MC-391

ORDER

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Proceed *In Forma Pauperis*  
(Instrument No. 1) is **GRANTED**.

The Clerk shall enter this Order and provide a copy to all parties.



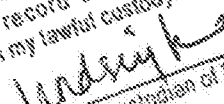
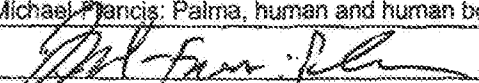
**SIGNED** on this the 5<sup>th</sup> day of February, 2018, at Houston, Texas.



**VANESSA D. GILMORE**  
**UNITED STATES DISTRICT JUDGE**

8

8

Harris County Appraisal District Information & Assistance Division P.O. Box 922004 Houston TX 77292-2004 FORM 41.44 (08/16)				<h2>PROPERTY APPRAISAL NOTICE OF PROTEST</h2>	
Save a Stamp! File Online at <a href="http://www.hcad.org/iFile">www.hcad.org/iFile</a>		HCAD Account Number: 1086470010020		Tax Year: 2016 2011-current	
If you want the appraisal review board (ARB) to hear and decide your case, you must file a written notice of protest with the ARB for the appraisal district that took the action you want to protest.		Step 1: Owner's or Lessee's Name and Address			
GENERAL INSTRUCTIONS: Pursuant to Tax Code Section 41.41, a property owner has the right to protest certain actions taken by the appraisal district. This form is for use by a property owner or designated agent who would like the ARB to hear and decide a protest. If you are leasing the property, you are subject to the limitations set forth in Tax Code Section 41.413.		Owner's or Lessee's First Name and Initial 6205 Trust		Last Name	
FILING DEADLINES: The usual deadline for filing your notice is midnight, May 31. A different deadline may apply in certain cases. For more information, see Page 2.		Owner's or Lessee's Current Mailing Address (number and street) c/o 5026 Autumn Forest Dr			
		City, State, ZIP Code Houston, Texas 77091		Phone (area code and number)	
		This space is reserved for HCAD use only			
Step 2: Describe Property Under Protest		Give Street Address and City if Different from Step 1, or Legal Description if No Street Address		<div style="text-align: center;">                   STATE OF TEXAS                  COUNTY OF HARRIS                  This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my lawful custody.                    Deputy Custodian of Records                  Date: 4/12/17                  No. 14             </div>	
		Mobile Homes (give make, model, and identification number)			
Step 3: Check Reason(s) for Your Protest RECEIVED 2016 NOV 29 PM 2:50		Failure to check a box may result in your inability to protest an issue. If you check "value is over market value," you are indicating that the market value is excessive and your property would not sell for the amount determined by the appraisal district. If you check "value is unequal as compared to other properties," you are indicating that your property is not appraised at the same level as a representative sample of comparable properties, appropriately adjusted for condition, size, location, and other factors. Your property may be appraised at its market value, but be unequally appraised. An appraisal review board may adjust your value to equalize it with other comparable properties. Please check all boxes that apply in order to preserve your rights so that the appraisal review board may consider your protest according to law.			
		<input type="checkbox"/> Value is over market value. <input type="checkbox"/> Value is unequal compared with other properties. <input type="checkbox"/> Property should not be taxed in _____ (name of taxing unit) <input type="checkbox"/> Failure to send required notice _____ (type) <input type="checkbox"/> Exemption denied, modified, or cancelled. <input type="checkbox"/> Property should not be taxed in this appraisal district.		<input type="checkbox"/> Change in use of land appraised as ag-use, open-space, or timber land. <input type="checkbox"/> Ag-use, open-space, timber, or other special valuation denied, modified, cancelled. <input type="checkbox"/> Owner's name incorrect. <input type="checkbox"/> Property description incorrect. <input type="checkbox"/> Improvement (structures, etc.) <input type="checkbox"/> Land (attach copy of deed) <input checked="" type="checkbox"/> Other Tax Code 41.41(a)(3) and 41.42	
Step 4: Give Facts That May Help Resolve Your Case		see supporting documentation More documentation to be presented at formal hearing Continue on additional pages as needed			
		What do you think your property's value is? (Optional)		\$	
Step 5: Check to Receive ARB Hearing Procedures		I want the ARB to send me a copy of its hearing procedures. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No * *If your protest goes to a hearing, you will automatically receive a copy of the ARB's hearing procedures.			
Step 6: Signature		<input type="checkbox"/> Signature of Owner <input type="checkbox"/> Signature of Lessee <input type="checkbox"/> Agent Agent Code # _____ Print Name: Michael Francis Palma, human and human beneficiary Sign Here: 		Date: 11/29/16	

ADDITIONAL INFORMATION ON BACK

9

9





# PROPERTY APPRAISAL NOTICE OF PROTEST

Save a Stamp!  
 File Online at [www.hcad.org/iFile](http://www.hcad.org/iFile)

If you want the appraisal review board (ARB) to hear and decide your case, you must file a written notice of protest with the ARB for the appraisal district that took the action you want to protest.

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**FILING DEADLINES:** The usual deadline for filing your notice is midnight, May 31. A different deadline may apply in certain cases. For more information, see Page 2.

HCAD Account Number: 1086470010020 Tax Year: 2017

Step 1: Owner's or Lessee's Name and Address

Owner's or Lessee's First Name and Initial: G205 Trust Last Name: \_\_\_\_\_

Owner's or Lessee's Current Mailing Address (number and street): 405026 Autumn Forest Dr  
 City, State, ZIP Code: Houston TX 77091

Phone (area code and number): \_\_\_\_\_

This space is reserved for HCAD use only



Step 2: Describe Property Under Protest

Give Street Address and City if Different from Step 1, or Legal Description if No Street Address

Mobile Homes (give make, model, and identification number)

Step 3: Check Reason(s) for Your Protest

Failure to check a box may result in your inability to protest an issue. If you check "value is over market value," you are indicating that the market value is excessive and your property would not sell for the amount determined by the appraisal district. If you check "value is unequal as compared to other properties," you are indicating that your property is not appraised at the same level as a representative sample of comparable properties, appropriately adjusted for condition, size, location, and other factors. Your property may be appraised at its market value, but be unequally appraised. An appraisal review board may adjust your value to equalize it with other comparable properties. Please check all boxes that apply in order to preserve your rights so that the appraisal review board may consider your protest according to law.

- Value is over market value.
- Value is unequal compared with other properties.
- Property should not be taxed in \_\_\_\_\_ (name of taxing unit)
- Failure to send required notice \_\_\_\_\_ (type)
- Exemption denied, modified, or cancelled.
- Property should not be taxed in this appraisal district.
- Change in use of land appraised as ag-use, open-space, or timber land.
- Ag-use, open-space, timber, or other special valuation denied, modified, cancelled.
- Owner's name incorrect.
- Property description incorrect.
  - Improvement (structures, etc.)
  - Land (attach copy of deed)
- Other: Taxcode 41.41(a)(3) + 41.42

Step 4: Give Facts That May Help Resolve Your Case

Tax situ hearing only - see attached documents  
I thought the was done under 41.41(a)(3) I found out it was not  
(Situ)

What do you think your property's value is? (Optional)

Continue on additional pages as needed

\$

Step 5: Check to Receive ARB Hearing Procedures

I want the ARB to send me a copy of its hearing procedures.  Yes  No\*

\*If your protest goes to a hearing, you will automatically receive a copy of the ARB's hearing procedures.

Step 6: Signature

Signature of Owner  Signature of Lessee  Agent Agent Code # \_\_\_\_\_

Print Name Michael-Francis Palma Gutierrez

Sign Here [Signature]

Date 4/4/17



10

10

CONSTITUTION  
OF  
THE STATE OF TEXAS

ADOPTED UNANIMOUSLY IN CONVENTION, AT THE  
CITY OF AUSTIN, 1845.

---

AN ORDINANCE  
IN RELATION TO COLONIZATION CONTRACTS.

---

AN ORDINANCE  
ASSENTING TO THE PROPOSALS OF THE UNITED STATES  
CONGRESS FOR THE ANNEXATION OF TEXAS.

---

HOUSTON.  
1845

Sec. 13. Every citizen shall have the right to keep and bear arms in the lawful defence of himself and the State.

Sec. 14. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligations of contracts, shall be made; and no person's property shall be taken or applied to public use, without adequate compensation being made, unless by the consent of such person.

Sec. 15. No person shall ever be imprisoned for debt.

Sec. 16. No citizen of this state shall be deprived of life, liberty, property or privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land.

Sec. 17. The military shall at all times be subordinate to the civil authority.

Sec. 18. Perpetuities and monopolies are contrary to the genius of a Free Government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

Sec. 19. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other purposes, by petition, address or remonstrance.

Sec. 20. No power of suspending laws in this State shall be exercised, except by the Legislature or its authority.

Sec. 21. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of Government, and shall forever remain inviolate; and all laws contrary thereto, or to the following Provisions, shall be void.

## ARTICLE SECOND.

Section 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are Legislative, to one; those which are Executive, to another; and those which are Judicial to another, and no person or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

---

## ARTICLE THIRD.

---

### LEGISLATIVE DEPARTMENT.

Section 1. Every free male person who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, or who is at the time of the adoption of this Constitution by

of the Republic of Texas, be reinvested, revived or reinstated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution.

Sec. 21. All claims, locations, surveys, grants, and titles to land, which are declared null and void by the Constitution of the Republic of Texas, are, and the same shall remain forever null and void.

Sec. 22. The Legislature shall have power to protect by law, from forced sale, a certain portion of the property of all heads of families. The homestead of a family not to exceed two hundred acres of land, (not included in a town or city) or any town or city lot or lots, in value not to exceed two thousand dollars, shall not be subject to forced sale for any debts hereafter contracted; nor shall the owner, if a married man, be at liberty to alienate the same, unless by the consent of the wife, in such manner as the Legislature may hereafter point out.

Sec. 23. The Legislature shall provide in what cases officers shall continue to perform the duties of their offices, until their successors shall be duly qualified.

Sec. 24. Every law enacted by the Legislature, shall embrace but one object, and that shall be expressed in the title.

Sec. 25. No law shall be revised or amended by reference to its title; but in such case, the act revised, or section amended, shall be re-enacted, and published at length.

Sec. 26. No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace.

Sec. 27. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; except such property as two-thirds of both Houses of the Legislature may think proper to exempt from taxation. The Legislature shall have power to lay an income tax; and to tax all persons pursuing any occupation, trade, or profession. Provided, that the term occupation, shall not be construed to apply to pursuits either agricultural or mechanical.

Sec. 28. The Legislature shall have power to provide by law for exempting from taxation two hundred and fifty dollars worth of the household furniture, or other property belonging to each family in this State.

Sec. 29. The Assessor and Collector of Taxes, shall be appointed in such manner, and under such regulations as the Legislature may direct.

Sec. 30. No corporate body shall hereafter be created, renewed or extended, with banking or discounting privileges.

Sec. 31. No private corporation shall be created, unless the bill creating it, shall be passed by two-thirds of both houses of the Legislature; and two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise. And the State shall not be part owner of the stock, or property, belonging to any corporation.



# **TAB G**

Affirmation filed on 2018.08.28

**G**

AFFIRMATION OF WHAT WILL OCCUR AT THE SEPTEMBER 11 2018 HEARINGS  
TO MEMBERS OF ARB AND HCAD

COPY

Account #1086470010020

TAX YEAR: 2018

Property owner: 6205 Trust, A private non-commercial unregistered Trust  
Mailing Address: 5026 Autumn Forest Dr., Houston Texas 77091

Legal Description: Private home having government imposed lot and block of LT20 BLK 4 of  
Candlelight Oaks Village

Type of Property subject to protest: Private home – HOMESTEAD in accordance with Article 16  
Section 51 Texas Constitution

Re: Notice

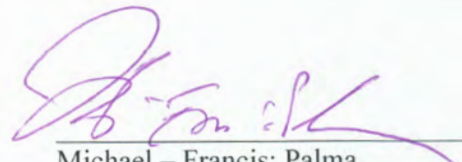
To the HCAD and Members of the ARB:

On September 11 2018 for tax year 2018 two hearings will occur:

- 1) A hearing based on §41.41(a)(3) of the tax code to determine the inclusion of this Constitutional Homestead as per Art. 16 Sec 51 of the Texas Constitution on the appraisal roll.
- 2) A second hearing or motion, under §25.25(c)(3) which is also based upon the inclusion of the property on the appraisal roles for the past 5 years.
  - a. For the past 5 years each ARB hearing was to consider inclusion of the property under §41.41(a)(3) of the tax code, however none have done so.

At no time shall the board consider either of these hearings a situs or value hearing. Nor should ARB members during these hearings consider “situs” or “value” evidence from the HCAD as the basis of the Constitutional Homestead being placed on the appraisal roll.

Two affidavits are to be presented to the ARB for both hearings, the second being an addendum to the first. These affidavits are in the form of a Brief. Each affidavit presents exhibits that shall be used during the hearings.



Michael - Francis: Palma  
Beneficiary

RECEIVED

AUG 28 2018

HCAD  
INFORMATION & ASSISTANCE

# **TAB H**

New hearings dated 2018.09.11  
§41.42 and 25.25(c)(3)

# H



**Mailing Address:**  
Appraisal Review Board  
P.O. BOX 920975  
Houston, TX 77292-0975



# Appraisal Review Board

of Harris County  
13013 Northwest Fwy., Houston, Texas  
Telephone: (713)957-7800

## Notice of Protest Hearing

**iFile™ Number: 87255960**

[www.hcad.org/iFile](http://www.hcad.org/iFile)

PROPERTY DESCRIPTION:  
**LT 20 BLK 4  
CANDLELIGHT OAKS VILLAGE**

### I NEVER ASKED FOR A SITUS HEARING

PROPERTY LOCATION:  
**5026 AUTUMN FOREST DR  
HOUSTON, TX 77091**

1-1  
2018 1086470010020 0000341302 0000002  
6205 TRUST  
% MICHAEL PALMA  
5026 AUTUMN FOREST DR  
HOUSTON TX 77091-5002



DATE: **09/11/2018**  
ACCOUNT #: **1086470010020**  
YEAR: **2018**



Dear Property Owner or Authorized Representative:

This is your official notice of the rescheduled time and date for the protest hearing.

#### ARB Hearing

Date: **09/25/2018** Time: **10:00 AM**

Place: **1st floor, 13013 Northwest Freeway, Houston, TX, 77040**

This particular hearing will consider the issues raised in the written protest: determination of the situs of the property.

**Please bring this notice with you to your hearing and be on time.** Your protest will be dismissed if you do not check in at the first floor Appraisal Review Board (ARB) check in counter at least 15 minutes before the ARB hearing time shown on this notice. Plan to spend about 2 hours during peak periods. On some days, access to the building is limited because of city fire marshal regulations. On those days, you will not be admitted to the building more than 30 minutes before your hearing. If you are a property owner appearing for your own protest hearing, and are not represented by an agent, and wait more than two hours after your scheduled hearing before the ARB, you may request to postpone your hearing to another day.

If evidence is presented in electronic format, at least one paper copy must still be provided for evidence. Audio visual equipment has been installed in all formal hearing rooms and is available for use by property owners or their agents through HDMI and VGA cable connections to connect a laptop or tablet to a projector.

If you do not want to or cannot personally appear at your protest hearing, you can designate a friend or family member to appear in your place. Space to make that designation is on the second page of the protest form. If you no longer have your protest form, you may print one from HCAD's website at [www.hcad.org](http://www.hcad.org), or simply send a signed letter with your representative naming that person to represent you at the protest hearing. If you filed your protest by *iFile™* and designated someone to represent you at that time, we will have the name on file. In order to have a paid property tax agent represent you, you must file an appointment of agent form with the appraisal district. This form is available on HCAD's website, from the district's Information & Assistance Center on the 3rd floor of our building, or from the Texas Comptroller's Property Tax Assistance Division [www.cpa.state.tx.us](http://www.cpa.state.tx.us).

You may also submit your evidence in writing (appearance by affidavit). If this is done, your written evidence must be in the form of an original sworn affidavit. The affidavit should include your opinion of value and must contain evidence or argument. It must contain a statement by you that you swear or affirm that all supporting documentation is true and correct, and it must be properly notarized. If you use an affidavit it is a good idea to hand-deliver it. Affidavits sent by fax will not be considered. In any case, be sure it is sent to and received by the Appraisal Review Board before your hearing date. Be sure it contains your name, your address, the property account number, the property description shown above, and the date and time of your hearing.

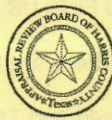
A hearing before the ARB is open to the public unless you ask for it to be closed. If you intend to disclose confidential or proprietary information at your hearing, you or your authorized representative may request the ARB to close the hearing. At the beginning of the hearing simply ask the chief appraiser or his representative to join you in requesting the hearing be closed. Then both parties sign a prepared joint motion document for the hearing record.

If you have any questions regarding the date and time of the hearing, please call the hearings support staff at (713) 812-5860. When contacting this office please have your account number handy. All other questions regarding this account or any other concern should be directed to the Information & Assistance Division at (713) 957-7800.

Set: 0000307873 - Hearing: 0000341302 SIT 20180911 - 0000002



**Mailing Address:**  
**Appraisal Review Board**  
P.O. BOX 920975  
Houston, TX 77292-0975



**Appraisal Review Board**  
of Harris County  
13013 Northwest Fwy., Houston, Texas  
Telephone: (713)957-7800

**Hearing Notice 25.25(c) Correction Motion**

**iFile™ Number: 87255960**

[www.hcad.org/iFile](http://www.hcad.org/iFile)

**PROPERTY DESCRIPTION:**  
**LT 20 BLK 4**  
**CANDLELIGHT OAKS VILLAGE**

**PROPERTY LOCATION:**  
**5026 AUTUMN FOREST DR**  
**HOUSTON, TX 77091**

**DATE: 09/11/2018**

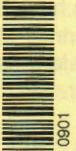
**ACCOUNT #: 1086470010020**

**YEAR: 2018**



1-1

2018 1086470010020 0000001  
6205 TRUST  
% MICHAEL PALMA  
5026 AUTUMN FOREST DR  
HOUSTON TX 77091-5002



**You must bring proof that payment of all undisputed taxes was made prior to delinquency or the ARB will dismiss your motion.**

Dear Property Owner or Authorized Representative:

The Appraisal Review Board (ARB) has set a hearing on a motion to correct the appraisal roll for the account described above under the provisions of Sec. 25.25(c), Texas Tax Code, for tax year:

**2018**

Owner Information:  
**6205 TRUST**  
**5026 AUTUMN FOREST DR**

**HOUSTON TX 77091-5002**

A hearing on the motion has been rescheduled for the date, time, and place noted below:

**DATE: 09/25/2018**

**TIME: 10:00 AM**

**PLACE: 1st floor, 13013 Northwest Freeway, Houston, TX, 77040**

You or your agent should appear at the hearing, even if the correction is agreed to by the district. If you are a property owner appearing for your own protest hearing, and are not represented by an agent, and wait more than two hours after your scheduled hearing before the ARB, you may request to postpone your hearing to another day. You must supply proof that you paid taxes before delinquency for each year to be corrected. See the information on the attached document.

If evidence is presented in electronic format, at least one paper copy must still be provided for evidence. Audio visual equipment has been installed in all formal hearing rooms and is available for use by property owners or their agents through HDMI and VGA cable connections to connect a laptop or tablet to a projector.

A hearing before the ARB is open to the public unless you ask for it to be closed. If you intend to disclose confidential or proprietary information at your hearing, you or your authorized representative may request the ARB to close the hearing. At the beginning of the hearing simply ask the chief appraiser or his authorized representative to join you in requesting the hearing be closed. Then both parties sign a prepared joint motion document for the hearing record.

Sincerely,

Dr. Ronnie Thomas  
Chairman  
Appraisal Review Board

25C 20180911 - 0000001  
Set: 0000307871 - Hearing: 0000341301



# **TAB I**

Panel recommendation regarding the hearing should be  
disapproved dated 2018.10.12

**I**



# Harris County Appraisal Review Board

13013 Northwest Freeway  
Houston TX 77040  
Telephone: (713) 812-5800

P.O. Box 920975  
Houston TX 77292-0975  
Information Center: (713) 957-7800

**October 12, 2018**

**Appraisal Review Board**  
Dr. Ronnie Thomas, *Chair*  
Kathy Williams, *Secretary*

**Via First Class Mail**

6205 Trust  
5026 Autumn Forest Dr  
Houston, TX 77091-5002

Re: Request for ARB Review of Hearing  
Account(s): 108-647-001-0020 (2018)

Dear Mr. Palma,

The Appraisal Review Board (ARB) has conducted a review of this hearing.

After a formal review of this hearing with our legal counsel regarding the hearing and the applicable laws and rules governing this matter, it is our determination that the hearing panel recommendation should be disapproved. You will be formally notified by the Harris County Appraisal District for instructions regarding a new hearing on this account.

Sincerely,

Dr. Ronnie Thomas  
Chair

Tax Year:

HARRIS COUNTY APPRAISAL DISTRICT  
 REAL PROPERTY ACCOUNT INFORMATION  
 1086470010020



<a href="#">Owner Services</a>	<a href="#">Similar Owner Name</a>	<a href="#">Nearby Addresses</a>	<a href="#">Same Street Name</a>	<a href="#">Related Map 5161D</a>
--------------------------------	------------------------------------	----------------------------------	----------------------------------	-----------------------------------

**Ownership History**

Owner and Property Information

Owner Name & Mailing Address:	<b>6205 TRUST % MICHAEL PALMA 5026 AUTUMN FOREST DR HOUSTON TX 77091-5002</b>	Legal Description:	<b>LT 20 BLK 4 CANDLELIGHT OAKS VILLAGE</b>
		Property Address:	<b>5026 AUTUMN FOREST DR HOUSTON TX 77091</b>

[State Class Code](#)

A1 -- Real, Residential, Single-Family

[Land Use Code](#)

1001 -- Residential Improved

Land Area	Total Living Area	<a href="#">Neighborhood</a>	<a href="#">Neighborhood Group</a>	Market Area	Map Fa
3,710 SF	2,012 SF	8032	1677	170 -- 1F Highland Heights, Acres Homes, Pinemont Area	51611

Value Status Information

Value Status	Notice Date	Shared CAD
Noticed	04/13/2018	No

Exemptions and Jurisdictions

Exemption Type	Districts	Jurisdictions	Exemption Value	ARB Status	2017 Rate	2018
None	001	HOUSTON ISD		Certified: 08/10/2018	1.206700	1.20
	040	HARRIS COUNTY		Certified: 08/10/2018	0.418010	
	041	HARRIS CO FLOOD CNTRL		Certified: 08/10/2018	0.028310	
	042	PORT OF HOUSTON AUTHY		Certified: 08/10/2018	0.012560	
	043	HARRIS CO HOSP DIST		Certified: 08/10/2018	0.171100	
	044	HARRIS CO EDUC DEPT		Certified: 08/10/2018	0.005195	
	048	HOU COMMUNITY COLLEGE		Certified: 08/10/2018	0.100263	
	061	CITY OF HOUSTON		Certified: 08/10/2018	0.584210	0.58
	942	NW MGMT DIST (RES)		Certified: 08/10/2018		

Texas law prohibits us from displaying residential photographs, sketches, floor plans, or information indicating the age of owner on our website. You can inspect this information or get a copy at [HCAD's information center at 13013 NW](#)

Valuations

	Value as of January 1, 2017		Value as of January 1, 2018
	Market	Appraised	Market
Land	36,050	Land	36,050
Improvement	128,850	Improvement	128,850
Total	164,900	164,900 Total	164,900

**5-Year Value History**

Land

Market Value Land

Line	Land Use	Unit Type	Units	Size Feet	Site Feet	Appr O/R Feet	Appr O/R Reason	Total Adj	Unit Price	Adj Uni Price
------	----------	-----------	-------	-----------	-----------	---------------	-----------------	-----------	------------	---------------

**TAB J**  
Order Denying Correction  
dated 2018.12.17

**J**



Mailing Address:  
Appraisal Review Board  
P.O. BOX 920975  
Houston, TX 77292-0975



7100 3296 9770 1238 9284



**Appraisal Review Board**  
Of Harris County Appraisal District  
13013 Northwest Fwy., Houston, Texas  
Information Center: (713)957-7800



PROPERTY DESCRIPTION:  
LT 20 BLK 4  
CANDLELIGHT OAKS VILLAGE

PROPERTY LOCATION:  
5026 AUTUMN FOREST DR  
HOUSTON, TX 77091

1086470010020 2018 20181207 00152  
6205 TRUST  
5026 AUTUMN FOREST DR  
HOUSTON TX 77091-5002

DATE: 12/17/2018  
ACCOUNT #: 1086470010020  
YEAR: 2018



**Order Denying Correction**

The above property owner submitted a motion to correct an error in the appraisal roll under the Tax Code, Sec. 25.25(c). The motion was timely filed and presented for a hearing.

The board timely delivered written notice electronically or by mail of the hearing date, time, and place to the property owner, Chief Appraiser, and all associated taxing units. The parties were further given the opportunity to present, evidence and argument. After reviewing the motion and the evidence submitted, the board has determined with a quorum present that the motion cannot be granted.

It is therefore ORDERED that the motion be denied and the appraisal roll not be changed.

	Market	Appraised/Homestead CAP
Previous Value:	164,900	164,900
Final Value:	164,900	164,900

**THE APPRAISAL REVIEW BOARD HAS MADE A FINAL DECISION ON YOUR PROTEST.**

A PROPERTY OWNER HAS THE RIGHT TO APPEAL TO DISTRICT COURT AN APPRAISAL REVIEW BOARD ORDER DETERMINING (1) A PROTEST AS PROVIDED BY SUBCHAPTER C OF CHAPTER 41, TEXAS TAX CODE, OR (2) A MOTION FILED UNDER SECTION 25.25, TEXAS TAX CODE. TO APPEAL TO DISTRICT COURT, A PARTY MUST FILE A PETITION FOR REVIEW WITH THE DISTRICT COURT WITHIN 60 DAYS AFTER THE PARTY RECEIVES NOTICE THAT A FINAL APPRAISAL REVIEW BOARD ORDER HAS BEEN ENTERED FROM WHICH AN APPEAL MAY BE HAD OR AT ANY TIME AFTER THE HEARING BUT BEFORE THE 60-DAY DEADLINE. FAILURE TO TIMELY FILE A PETITION BARS AN APPEAL TO DISTRICT COURT. A PARTY OTHER THAN A PROPERTY OWNER, IN ORDER TO EXERCISE THEIR RIGHT TO APPEAL AN ORDER OF THE APPRAISAL REVIEW BOARD, MUST FILE A WRITTEN NOTICE OF APPEAL WITHIN 15 DAYS AFTER THE DATE THE PARTY RECEIVES THIS NOTICE OR IN THE CASE OF A TAXING UNIT, WITHIN 15 DAYS AFTER THE DATE THE TAXING UNIT RECEIVES NOTICE PURSUANT TO SECTION 41.07, TEXAS TAX CODE.

For more information regarding appeal to district court, you should consult Texas Tax Code, Chapter 42 and the clerk of the court. If you need legal advice, you should consult an attorney.



It is important to note that the pendency of an appeal, whether to district court, through binding arbitration, or to the State Office of Administrative Hearings, does not affect the delinquency date for the taxes on the property subject to the appeal. For more specific information, consult the applicable statutes and rules.

Signed this 7th day of December, 2018

*Dr. Ronnie Thomas*

Dr. Ronnie Thomas  
Chairman  
Appraisal Review Board

PROPERTY LOCATION  
3056 AUTUMN FOREST DR  
HOUSTON, TX 77057

DATE 12/07/2018  
ACCOUNT# 1086478048250

YEAR 2018

Order Denying Correction



The above property owner submitted a motion to correct an error in the appraisal roll under the Tax Code, Sec. 28.25(c). The motion was timely filed and presented for a hearing. The board timely delivered written notice electronically or by mail of the hearing date, time, and place to the property owner, Chief Appraiser, and all interested taxing units. The parties were further given the opportunity to present evidence and argument. After reviewing the motion and the evidence submitted, the board has determined that a quorum present that the motion cannot be granted. It is therefore ORDERED that the motion be denied and the appraisal roll not be changed.

Previous Value	Market	Appraised/Homestead CAP
104,500	104,500	104,900
104,500	104,500	104,900

THE APPRAISAL REVIEW BOARD HAS MADE A FINAL DECISION ON YOUR PROTEST. A PROPERTY OWNER HAS THE RIGHT TO APPEAL TO DISTRICT COURT AN APPRAISAL REVIEW BOARD ORDER DETERMINING (1) A PROTEST AS PROVIDED BY SUBCHAPTER C OR CHAPTER 41, TEXAS TAX CODE, OR (2) A MOTION FILED UNDER SECTION 28.25, TEXAS TAX CODE, TO APPEAL TO DISTRICT COURT. A PARTY MUST FILE A PETITION FOR REVIEW WITH THE DISTRICT COURT WITHIN 60 DAYS AFTER THE DATE THE TAXING UNIT RECEIVES NOTICE OF THE ORDER OR MOTION. FROM WHICH AN APPEAL MAY BE MADE AT ANY TIME AFTER THE HEARING BUT BEFORE THE 60 DAY DEADLINE. FAILURE TO TIMELY FILE A PETITION BARS AN APPEAL TO DISTRICT COURT. A PARTY OTHER THAN A PROPERTY OWNER, IN ORDER TO EXERCISE THEIR RIGHT TO APPEAL OR AFTER THE APPRAISAL REVIEW BOARD MUST FILE A WRITTEN NOTICE OF APPEAL WITHIN 15 DAYS AFTER THE DATE THE PARTY RECEIVES THIS NOTICE OR IN THE CASE OF A TAXING UNIT, WITHIN 15 DAYS AFTER THE DATE THE TAXING UNIT RECEIVES NOTICE PURSUANT TO SECTION 41.07, TEXAS TAX CODE. For more information regarding appeal to district court, you should consult Texas Tax Code, Chapter 42 and the clerk of the court. If you need legal advice, you should consult an attorney.

THOMAS RONNIE

**TAB K**  
Tax Statement

**K**



**ANN HARRIS BENNETT**

Tax Assessor-Collector  
 P.O. Box 3547  
 Houston, Texas 77253-3547



**2018 Property Tax Statement**

e-Bill Code 7604173918



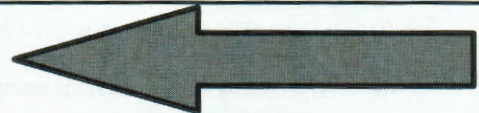
Statement Date	October 30, 2018
Account Number	108-647-001-0020

\*0416042 E  
 6205 TRUST  
 % MICHAEL PALMA  
 5026 AUTUMN FOREST DR  
 HOUSTON TX 77091-5002



Taxing Jurisdiction	Exemptions	Taxable Value	Rate per \$100	Taxes
Houston I.S.D.	0	164,900	1.206700	\$1,989.85
Harris County	0	164,900	.4185800	\$690.24
Harris County Flood Control Dist	0	164,900	.0287700	\$47.44
Port of Houston Authority	0	164,900	.0115500	\$19.05
Harris County Hospital District	0	164,900	.1710800	\$282.11
Harris County Dept. of Education	0	164,900	.0051900	\$8.56
Houston Community College System	0	164,900	.1002630	\$165.33
City of Houston	0	164,900	.5883100	\$970.12
<b>Total 2018 Taxes Due By January 31, 2019</b>				<b>\$4,172.70</b>
Payments Applied To 2018 Taxes				(\$0.00)
<b>Total Current Taxes Due (Including Penalties)</b>				<b>\$4,172.70</b>
Prior Year(s) Delinquent Taxes Due (If Any)		2016 - 2017		\$11,402.60
<b>Total Amount Due By January 31, 2019</b>				<b>\$15,575.30</b>

Property Description	
5026 AUTUMN FOREST DR 77091 LT 20 BLK 4 CANDLELIGHT OAKS VILLAGE .0851 AC	
Appraised Values	
Land - Market Value	36,050
Impr - Market Value	128,850
<b>Total Market Value</b>	<b>164,900</b>
Less Capped Mkt Value	0
<b>Appraised Value</b>	<b>164,900</b>
Exemptions/Deferrals	



Penalty and Interest for Paying Late	Rate	Current Taxes	Delinquent Taxes	Total
By February 28, 2019	7%	\$4,464.79	\$11,494.28	\$15,959.07
By March 31, 2019	9%	\$4,548.24	\$11,585.97	\$16,134.21
By April 30, 2019	11%	\$4,631.70	\$11,677.65	\$16,309.35
By May 31, 2019	13%	\$4,715.15	\$11,769.31	\$16,484.46
By June 30, 2019	15%	\$4,798.62	\$11,861.01	\$16,659.63

**Tax Bill Increase (Decrease) from 2013 to 2018: Appr Value 50% Taxable Value 50% Tax Rate -1% Tax Bill 48%**

Detach at the perforation and return this coupon with your payment. Keep top part for your records.

\*See reverse side for additional information.\*

**PAYMENT COUPON**



6205 TRUST  
 % MICHAEL PALMA  
 5026 AUTUMN FOREST DR  
 HOUSTON TX 77091-5002



Statement Date	October 30, 2018
Account Number	108-647-001-0020
Amount Enclosed	

*If you are paying multiple tax accounts with a single check, please enclose all of the coupons with your payment to ensure proper credit to each account.*

IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED AND THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES.

**Make check payable to:**  
**ANN HARRIS BENNETT**  
**Tax Assessor-Collector**  
**P.O. Box 4622**  
**Houston, Texas 77210-4622**

10864700100206 2018 001557530 001595907 001613421 001630935