

**BINDING ARBITRATION**  
**2009 SENATE BILL 240**

The Governor signed Senate Bill 240 on April 29, 2009, and it is 2009 Act Number 61. Senate Bill 240 adds binding arbitration as the third option for a taxpayer which appeals a tax assessment notice setting the value of real property for property tax purposes. Now taxpayers can appeal and (1) go to a hearing before the county board of equalization, (2) go to non-binding arbitration or (3) go to binding arbitration.

Senate Bill 240 provides for binding arbitration much like baseball player arbitration. The taxpayer presents a professional appraisal to the county board of tax assessors. If it is accepted, then the appeal is over and that valuation is final. If the tax assessors do not accept the taxpayer's appraisal, then the appeal goes before a single arbitrator. The taxpayer presents a valuation and the tax assessors present a valuation. The single arbitrator must select either the taxpayer's valuation or the tax assessors' valuation. The valuation selected is the final valuation and neither the taxpayer nor the tax assessors can appeal to the local superior court except this has been questioned recently as to taxpayers.

Following is a summary of the provisions for binding arbitration under Senate Bill 240:

1. O.C.G.A. § 48-5-311(f)(4) contains the provisions for binding arbitration.
2. Only the taxpayer can elect to use binding arbitration and binding arbitration is limited to real property.
3. The taxpayer must elect binding arbitration at the time the taxpayer files an appeal of a tax assessment notice.

4. The taxpayer must file a written notice of arbitration in order to select binding arbitration.
5. The written notice of arbitration must specifically state the grounds for arbitration.
6. Prior to the appointment of an arbitrator and within 30 days of filing the appeal, the taxpayer must provide the county board of tax assessors with a copy of the taxpayer's value which must be certified by a professional real estate appraiser as classified by the Georgia Real Estate Appraisers Board.
7. If the taxpayer's value is accepted by the county board of tax assessors within 30 days, then the taxpayer's value becomes final and the appeal process is concluded.
8. If the taxpayer's value is rejected by the county board of tax assessors, the board of tax assessors must, within 30 days of the rejection, certify the taxpayer's appeal to the clerk of the local superior court along with any other papers specified by the taxpayer including, but not limited to, the staff information from the file used by the county board of tax assessors.
9. All papers and information certified to the clerk become a part of the record.
10. The appeal is docketed in the clerk's office and given a civil action case number.
11. The Judge assigned to the case must within 15 days of the case being docketed issue an Order authorizing the arbitration.

The above-listed provisions numbered 1 through 11 are contained in O.C.G.A. § 48-5-311(f)(4)(A).

12. The arbitration can be submitted to a single arbitrator chosen by the parties.
13. If the parties cannot agree on the single arbitrator, the arbitrator is chosen by the Chief Judge of the circuit in which the property is located.

14. The arbitrator must be classified as a state certified General Property Appraiser pursuant to the Rules and Regulations of the Georgia Real Estate Appraisers Board.
15. The arbitrator must have experience or expertise in appraising the type of property that is subject to the arbitration.
16. Within 30 days of the arbitrator's appointment, the arbitrator must set a time and place to hear evidence and testimony from the taxpayer and the county board of tax assessors.
17. The arbitrator must provide written notice of the hearing personally or by registered or certified mail or statutory overnight delivery not less than 10 days before the hearing.
18. The arbitrator may adjourn or postpone the hearing.
19. The Chief Judge may direct the arbitrator to proceed promptly with the hearing and the determination of the appeal upon application of any party.
20. At the hearing, the parties are entitled to be heard, to present documents, testimony and other matters and to cross examine witnesses.
21. If a party fails to appear for the hearing, the arbitrator may hear and determine the matter upon the documents, testimony and other matters produced at the hearing.
22. The arbitrator must maintain a record of all the pleadings, documents, testimony and other matters introduced at the hearing.
23. The arbitrator or any party may have the proceedings transcribed by a court reporter.
24. The provisions of paragraph 4 may be waived at any time by written consent of the taxpayer and county board of tax assessors. Paragraph 4 sets forth the procedures for binding arbitration.

25. Within 30 days of the hearing, the arbitrator must render a decision regarding the value of the property subject to the arbitration.
26. The arbitrator must consider a single value by the taxpayer and a single value by the county board of tax assessors and the arbitrator must determine which value is the value of the property.
27. If the taxpayer's value is selected by the arbitrator, the county is responsible for the fees and costs of the arbitrator. If the county board of tax assessors' value is selected by the arbitrator, the taxpayer is responsible for the fees and costs of the arbitrator.
28. The county board of tax assessors has the burden of proving its opinion of value and the validity of the proposed assessment by a preponderance of the evidence.

The above-listed provisions numbered 12 through 28 are contained in O.C.G.A. § 48-5-311(f)(4)(B).

An appeal is not allowed from binding arbitration to the local superior court although this has been questioned recently as far as a taxpayer's appeal is concerned.

O.C.G.A. § 48-5-311(g)(1).

Senate Bill 240 also provides in O.C.G.A. § 48-5-311(f)(5) that the provisions of O.C.G.A. § 48-5-299(c) apply to the valuation established or rendered by any arbitrator or board of arbitration. Section 299(c) provides that, under certain circumstances, the value established in an appeal is "frozen" for the appeal tax year and the following two (2) tax years. Also, it should be noted that this provision of Senate Bill 240 applies to non-binding arbitration under O.C.G.A. § 48-5-311(f)(2) and (3) and binding arbitration under O.C.G.A. § 48-5-311(f)(4).

As to appeals from a county board of equalization decision or arbitration, Senate Bill 240 also provides in O.C.G.A. § 48-5-311(g)(2) that in an appeal to the local superior court, the county board of tax assessors must serve the taxpayer and his or her attorney

of record, if any, with the notice of appeal and the civil action file number. Also, if such appeals present only questions of law, the appeal is to be heard by the court sitting without a jury within 30 days of the date the appeal is filed with the clerk of the local superior court. Previously, such hearings were to be held within 40 days. See: O.C.G.A. § 48-5-311(g)(4)(A).

Finally, Senate Bill 240 provides in Section 3 that it shall be applicable to all appeals submitted to arbitration or appealed to the local superior court on or after the date it becomes law upon the approval of the Governor or it becoming law without the Governor's approval.

