



**SMALL CLAIMS ASSESSMENT REVIEW  
TRAINING FOR HEARING OFFICERS**

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Revised October, 2005**

NOTE:

Portions of this material are derived from Mr. Louis J Naftalson's Manual for hearing Officers in Administrative Adjudication in the State of New York, published by the New York State Civil Service Commission in 1972.

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## **I. THE SMALL CLAIMS ASSESSMENT REVIEW PROGRAM - BACKGROUND**

The SCAR Program was enacted in 1982, as RPTL 730, to provide owners of 1, 2 or 3 family owner occupied dwellings an opportunity to challenge the assessment on their home. It was designed to be an inexpensive alternative to a more formal Tax Certiorari proceeding. The program provides for review by a SCAR Hearing Officer for a filing fee of only **\$30.00** in a timely manner and in an informal setting. Since 1993, certain unbuildable vacant lots qualify. Condominiums do not qualify unless they are in the homestead class or are defined as class one properties (New York City and Nassau County only).

**Note: Freeze Provision** - If the petitioner gets a reduction at SCAR, he or she can't file again the next year and must wait until the following year. If no reduction is granted, then the petitioner may file again the next year.

**AUTHORITY:** Real Property Tax Law sections 729 Through 738,  
§202.58 of 22NYCRR-Uniform Rules, NYS Trial Courts  
§74 of the Public Officer's Law-Code of Ethics

**FORMS USED:**

1. SCAR Petition
2. SCAR Decision Form
3. SCAR Notice of Hearing
4. SCAR Notice of Assignment

## II. JURISDICTIONAL REQUIREMENTS

1. The property must be improved by a 1, 2 or 3 family owner occupied dwelling used **exclusively** for residential purposes. According to Town Of New Castle v. Kaufman, exclusively really means **primarily**. Property does **NOT** have to be the petitioner's primary residence.
2. Since 1993, certain unbuildable lots also qualify. Condominiums don't qualify unless they are designated as homestead class, or as class one properties (NYC and Nassau only).
3. Each SCAR Petition is limited to only one parcel of land, as per Klein v. City of Rye.
4. The petitioner must have previously asked the Board of Assessment Review for a reduction in their assessment.
5. The petitioner must file, or mail, three (3) copies of the SCAR Petition with the County Clerk of the county in which the property is located within thirty (30) days of the filing of the final assessment roll.

The date of the filing of the final assessment roll is the date defined by the statute or the date the roll is actually filed, whichever is later.

The thirty (30) day clock begins the day after the filing of the final assessment roll and runs for thirty (30) consecutive days, including weekends and holidays. However, if the thirtieth (30th) day falls on a weekend or holiday then the petition must be postmarked or filed by the next business day.
6. The petitioner must also file or mail, a copy of the SCAR Petition, within ten (10) days of having filed with the County Clerk, with:
  - A. Assessing Jurisdiction. (by **certified mail, return receipt requested**) Failure to file in a timely manner is fatal to the petition, as per Dolan v. The City of New Rochelle, but only if the issue is raised at the hearing.
  - B. School District. Failure to file in a timely manner may be fatal, it is within the discretion of the Hearing Officer, but only if the issue is raised at the hearing.
  - C. County Treasurer. School District. Failure to file in a timely manner may be fatal, it is within the discretion of the Hearing Officer, but only if the issue is raised at the hearing.
7. **The requested reduction in assessment is limited by two (2) factors.**
  - A. The **amount of a reduction requested** in the SCAR Petition may not be more than that which was requested **before the Board of Assessment Review**. If a partial reduction was granted before the board, then the balance may be requested in the SCAR Petition.
  - B. The second limiting factor is the **Equalized Value** determination, as follows: **Divide the final assessed value by the equalization rate** (use the class one ratio in NYC and Nassau). **The result is the equalized value**. If the result is **\$450,000.00 or less**, then the **only restriction** on the petitioner is **the amount requested before the Board**. If the result is **\$450,001.00 or more**, then there is a further calculation which must be performed. **Calculate 25% of the final assessed value and compare it to the amount** requested before the Board.

Whichever figure is **less of a reduction** is the limit.

**Example # 1**

\$10,000 (final assessed value)

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10% (equalization rate) = \$100,000.00 (equalized value)

The equalized value is less than \$450,000.00, so the only limit on the requested reduction in assessment is the amount requested before the Board of Assessment Review.

**Example # 2**

\$10,000 (final assessed value)

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2% (equalization rate) = \$500,000.00 (equalized value)

The equalized value is more than \$450,000.00, so a further calculation is required.

Multiply the final assessed value by 25% and compare the result to the amount requested before the Board.

\$10,000 (final assessed value) X 25% = \$2,500.00

25% of the final assessed value is \$2,500.00. Compare this to the amount of the reduction requested before the Board of Assessment Review. **Whichever figure is lower becomes the limit.** So if the amount requested before the Board was a reduction from \$10,000 to \$7,000, or a reduction of \$3,000, and the 25% of the final assessed value is \$2,500, then the requested reduction is limited to \$2,500 since that is less of a reduction than \$3,000.

### III. FLOW OF PROCEDURES

1. Publication of the tentative assessment roll by the assessing unit.
2. Grievance day is held before the Board of Assessment Review, and must have been attended by the SCAR petitioner.
3. Publication of final assessment roll.
4. Home owner files, or mails, three (3) copies of SCAR Petition with the County Clerk of the county in which the property is located. This is done within thirty (30) days of the filing of the final assessment roll. The thirty (30) days begins the day after the final roll is filed and runs for thirty (30) consecutive days, including weekends and holidays. If the 30th day falls on a weekend or holiday, then, the deadline is extended to the next business day.
5. The home owner files, or mails, a copy of the SCAR Petition to each of the following entities within ten (10) days of filing with the County Clerk.
  1. The Assessing Jurisdiction ( by **certified mail**)
  2. The School District
  3. The County TreasurerFailure to file with the Assessing Jurisdiction in a timely manner is fatal to the petition but only if the issue is raised at the hearing. Failure to file with the School District or the County Treasurer may be fatal to the petition. Again, the issue must be raised at the hearing. In either of these cases, it is up to the jurisdiction of the Hearing Officer.
6. The County Clerk retains one (1) copy of the SCAR Petition and forwards two (2) copies to the Supreme Court Assessment Review Clerk.
7. The Supreme Court Assessment Review Clerk retains one (1) copy of the SCAR Petition and forwards one (1) copy of the petition along with three (3) copies of the SCAR Decision Form, a voucher, a Notice of Hearing Form, a Notice of Appointment to Serve, and a batch of at least six (6) cases to the SCAR Hearing Officer.
8. The SCAR Hearing Officer reviews the cases for any conflict of interest, such as:
  1. Family relationships,
  2. Business relationships,If there is a problem, contact the Supreme Court Assessment Review Clerk, and the case will be reassigned.
9. The SCAR Hearing Officer then schedules and hears the cases within forty five (45) days after the last day for the filing of SCAR Petitions. If either party requests an evening hearing this **must** be granted unless there is some unusual circumstance. The Hearing Officer must contact both parties and give at least 10 days notice when scheduling the hearing.
10. The SCAR Hearing Officer renders a decision within thirty (30) days of the hearing. The Hearing Officer completes three (3) copies of the Decision Form and mails one (1) signed copy each to:
  - a. The petitioner, or , the designated representative,
  - b. The Assessing unit,

- c. The Supreme Court Assessment Review Clerk.
11. The pay is \$75.00 per case but not more than **\$300.00** dollars may be earned in any one day.
  12. No further filing is required. The signed decision is a judicial order and is the only legal notice the Assessing jurisdiction requires to modify assessments. It is also the only legal notice that the taxing jurisdiction needs to process any tax refunds which may be required.

#### IV. THE SCAR PETITION

1. The SCAR Petition is both a legal filing and a worksheet. Incomplete or inconsistent forms are not reasons for dismissal. The petition may be amended at the hearing.
2. The SCAR Petition consists of five parts, as follows:
  - a. Part 1- General information - This section contains information about the property and the property owner.
  - b. Part 2 - Grounds for the Petition - This part is divided into four sections. Section A reviews the assessment requested before the Board, Section B is a worksheet which helps the petitioner calculate the equalized value, sections C and D help the petitioner determine if the assessment is unequal or excessive. This is followed by six questions designed to help support the full market value claimed.
  - c. Part 3 is a listing of Taxing Jurisdictions.
  - d. Part 4 is the designation of the petitioner's representative. If a representative is to appear, this section must be filled out and must be signed by the petitioner. The representative need not be an attorney.
  - e. Part 5 - Eligibility and Certification - This reviews the jurisdictional requirements of the program and requires the signature of the petitioner or the designated representative.

## **V. THE SCAR HEARING OFFICER**

The Scar Hearing Officer Presides over the SCAR hearing and must meet one of the following qualifications:

1. An attorney admitted to the bar and practicing in New York State, and registered with the New York State Office of Court Administration
2. A trained, certified appraiser
3. A trained former assessor
4. A licensed real estate broker
5. Have possession of a residential appraisal license from the New York state Department of State.

**Current assessors and members of the Board of Assessment Review are ineligible to serve as SCAR Hearing Officers.**

### **Process of Approval as a SCAR Hearing Officer**

1. Upon submission of an application, potential SCAR Hearing Officers must attend a three hour training class conducted jointly by the Office of Court Administration and the New York State Office of Real Property Tax Services.
2. After attendance at the seminar, applications are forwarded to the local Administrative Judge who reviews and approves the applicants. The approved list of candidates is forwarded to the Deputy Chief Administrative Judge for review and approval.
3. Upon approval by the Deputy Chief Administrative Judge, the approved list is forwarded to the SCAR Coordinator of the Office of Court Administration who prepares Administrative Orders appointing the new Hearing Officers.
4. The orders are forwarded to Counsel's office for review and then are sent to the Chief Administrative Judge for signature.
5. Upon being signed by the Chief Administrative Judge, copies of the orders are sent to the appropriate jurisdictions as well as to the newly appointed Hearing Officers.
6. Batches of at least six (6) cases are randomly assigned to Hearing Officers at the appropriate time of the year. The rate of pay is \$75.00 per case up to a total of **\$300.00** which may be earned in any one day.
7. SCAR Hearing Officers must be re-certified every **four (4)** years.

### **Skills To Be Possessed By SCAR Hearing Officers**

1. Judicial temperament and poise
2. Patience and tact
3. Ability to exercise sound judgment and discretion
4. Ability to be objective and free from influence
5. Ability to approach the hearing with an open mind, without bias or prejudgment of the issues.
6. Knowledge of the appropriate laws, rule and regulations and the ability to interpret them fairly.
7. Ability to preside over and control hearings with dignity and decorum.
8. Articulatens in making yourself understood in simple language by all persons at hearings, through pertinent, fair and comprehensive interrogation and comment.
9. Ability to analyze and evaluate testimony and other evidence.
10. Ability to determine the credibility of witnesses.
11. Ability to write clearly and concisely.
12. Absolute impartiality and the aura of impartiality.
13. Good common sense in dealing with all persons and issues.
14. A constant realization that you are acting and speaking for the State of New York.
15. As a Hearing Officer, you will act as both judge and jury. You must guide parties who may be unrepresented by counsel. It is your responsibility to get al the facts and to apply the appropriate rules of law with sound reasoning, faith and impartiality. You will be required to keep your hearings simple and flexible; you will have to adapt to such problems as parties who don't understand the applicable substantive law, parties who are inadequately prepared, and parties who don't understand what is and is not relevant to the case.

**As a SCAR Hearing Officer you will be bound by a code of ethics as set forth in section 74 of the Public Officer's Law. You should become familiar with this code.**

## **VI. THE SCAR HEARING**

1. The SCAR Hearing is a public hearing which is to be conducted in such a way as to guarantee substantial justice in an informal manner, where the rules of evidence and pleading do not apply.
2. Scheduling the Hearing:
  - a. The SCAR hearing must be held within thirty (30) days after assignment, if practicable.
  - b. Contact each party at least ten (10) days in advance by telephone and try to follow this up with a written Notice of Hearing.
  - c. If either party requests an evening hearing it must be granted unless there is an unusual circumstance.
3. The location of the hearing should be within the county in which the property is located. The setting should be neutral, free of interference and interruptions. At all times the setting should be dignified. If a location cannot be found, contact the Supreme Court Assessment Review Clerk and space will be found for you.
4. The length of the hearing may vary, but allow each party sufficient time.
5. Adjournments are allowed but are discouraged except for good cause.
6. Appearance at the hearing is required. Failure to appear is not an automatic dismissal nor is it a reason to grant an automatic adjournment. The Hearing Officer may proceed with the hearing based only upon the petition.
7. The parties may be represented at the hearing but this representative need not be an attorney (Board. Of Assessors v. Hammer).
8. Settlements - Parties may settle before or during the hearing. At all times ask that the parties stipulate in writing so that there is no disagreement later. Attach the settlement to your signed decision. Under no circumstances should the Hearing Officer try to coerce a settlement. If costs should be awarded, please indicate this on the decision unless the costs were waived as part of the settlement.

## **CONDUCT OF THE HEARING**

1. Introduce yourself and ask each party to do the same.
2. Since this is an informal proceeding, the rules of evidence and pleading do not apply. Hence, there is no discovery.

3. Witnesses may be sworn in, if you so choose. This is not necessary.
4. Allow the petitioner to go first and finish his or her presentation.
5. Cross-examination of witnesses is permitted but do not let it get out of hand.
6. You may carefully ask questions yourself if you feel it is necessary to ascertain the facts.
7. You may take notes but no recording devices of any kind are allowed.
8. You may retain possession of any exhibits until you render a decision. At that time they should be returned.
9. At the conclusion of the hearing ask all parties to leave the room. This gives you time to summarize your notes and it avoids the appearance of impropriety.
10. Do not accept any further evidence unless both parties agreed to this during the hearing.
11. At no time should there be ex-parte contact with either party, unless it is to schedule a hearing.
12. In every instance you must do justice and give the appearance of doing justice.

## **VII. THE DECISION FORM**

This is the form upon which the SCAR Hearing Officer records the disposition of the case. It is the equivalent of a judicial order and is the only legal filing required as a result of a decision being rendered. It is the only notification that the assessing jurisdiction will get that there has been a change in the assessment and the only notification which the taxing jurisdiction will get that a tax refund may be required.

### **Rendering a Decision**

1. When rendering a decision in a SCAR case the Hearing Officer may do one of four things:
  - a. Grant the petition in part
  - b. Grant the petition in full
  - c. Deny the petition
  - d. Dismiss the petition on jurisdictional grounds
2. The decision may not reduce the assessment to a figure which is lower than that requested by the petitioner.
3. The decision must be filed within thirty (30) days of the date that the hearing was held.
4. The decision must be completed and signed in triplicate. An original and two photostats are acceptable. However, all three copies should have an original signature by the Hearing Officer.
5. A copy of the signed decision must be sent to each of the following:
  - a. The Supreme Court Assessment Review Clerk
  - b. The petitioner, or, designated representative
  - c. The assessing jurisdiction
6. The decision form should be filled out completely. The form is broken down as follows:
  - a. The first box records the date of the hearing and the date the decision is submitted to the Supreme Court Clerk
  - b. Part 1 - Case Identification, identifies the county, the owner and the property.
  - c. Part 2 - Decision, is where the disposition is indicated. The following five dispositions may occur.
    1. Disqualification
    2. Unequal assessment
    3. Excessive assessment
    4. No change in assessment
    5. Settlement
  - d. If the petition is disqualified for reasons 1a-1f, then check off the box labeled

**Notice of Disqualification and Right to Judicial Review.** This tells the petitioner that he or she has thirty (30) days from the receipt of the decision to pursue a Tax Certiorari proceeding in Supreme Court.

- e. In the case of a settlement, check off disposition #5 and enter the agreed upon amount on the DECISION BY HEARING OFFICER line. Also fill out the FINAL ASSESSMENT ROLL and CLAIMED ASSESSMENT lines. Attach a copy of the signed settlement to the signed decision.
  - f. The next box is the award of costs. If the assessment is reduced by 50% or more, you **must** award costs. If the assessment is reduced by less than 50% then you **may** award costs if you feel it is warranted. If costs are to be awarded you **must** check the box in this section or else the assessing jurisdiction will refuse to pay.
  - g. If the petition is granted in full or in part, check the box labeled Notice of Required Action By Assessing And Taxing Jurisdiction. This informs the assessing jurisdiction that there has been a change in the assessment and it informs the taxing jurisdiction that a tax refund may be required if taxes have already been collected on the old assessment.
  - h. In the next box the Hearing officer must affix his or her signature.
  - i. The opposite side of the form is where the Hearing Officer must briefly indicate the findings of fact which were the basis for the decision.
7. There are a number of important points to remember when rendering a decision:
- a. Never render a decision from the bench except to confirm a settlement.
  - b. Never assume that a petition is valid or invalid on its face. Acceptance by the County Clerk does not constitute a decision on jurisdiction.
  - c. Weigh all the evidence in each case separately. What is valid in one case may not be valid in another.
  - d. Do not interject your personal knowledge into the facts of the case.
  - e. Remember that **the assessment is always presumed to be correct**. The burden of proof is on the petitioner. The petitioner is held to a level of substantial evidence, that is evidence which is enough to convince a reasonable person.
8. If you conduct yourself in a way as to give the impression of impartiality, as well as consider the evidence in an impartial manner, then you will have met the objectives of the program.