


# FIVE REASONS WHY A LAWYER IS VITAL FOR COMMERCIAL PROPERTY ASSESSMENT LITIGATION

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## Five Reasons Why A Lawyer is Vital for Commercial Property Assessment Litigation

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Following an unsuccessful Board of Equalization hearing, commercial real estate owners often call upon me to assist them in litigating their real estate assessment appeals before the [State Tax Commission](#). Before hiring me, however, some owners, fooled by the informalities of their Board of Equalization hearing, ask me whether an attorney is necessary for their appeal to the State Tax Commission.

After *nicely* reminding them that they would not be meeting with me if the Board of Equalization hearing that they chose to handle on their own was successful, I answer their question by listing the reasons why experienced counsel is **vital for commercial property tax appeals** to the State Tax Commission.

### 1. It's Mandatory:

If the commercial property is owned by a business entity or a trust (e., not an individual), representation by an attorney is required under Missouri law. The State Tax Commission will dismiss the appeal, unless an attorney enters his or her appearance on behalf of the taxpayer. Because most commercial real estate is not owned in one's individual capacity, an attorney is almost always

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required for commercial real estate assessment litigation.

## **2. It's Formal:**

The State Tax Commission strictly adheres to the Missouri Rules of Civil Procedure and the rules of evidence. Unlike a Board of Equalization hearing, in which both the taxpayer and assessor informally present their positions to a board of, often, non-lawyer County residents, State Tax Commission matters are strictly governed by rules that experienced litigators, unlike non-lawyers, are paid to know by heart.

*Indeed, State Tax Commission proceedings are nearly identical to traditional litigation. Witnesses (including experts) are examined, discovery (including depositions) is conducted and documents are admitted according to strict rules of evidence.*

## **3. It's Strict:**

It is not uncommon to see commercial real estate owners attempting to offer evidence that is considered inadmissible by the State Tax Commission. Take, for example, evidence of comparable commercial property sales. While some Boards of Equalization will consider that as evidence, the State Tax Commission *will not*. Comparable sales are unauthenticated and inadmissible hearsay. They are only analyzed by the State Tax Commission, if they were considered by an expert appraiser in arriving at his or her opinion of value.

## **4. The Burden is Higher:**

At State Tax Commission hearings, it is the burden of the commercial property owner to provide substantial and persuasive evidence that the Board of Equalization's fair market valuation is erroneous. If the taxpayer was unsuccessful at the informal Board of Equalization hearing, the likelihood of prevailing in front of the State Tax Commission without an attorney and where the burden is even higher is slim to none.

## **5. It Just Makes Sense:**

At the Board of Equalization hearing, an employee of the Assessor's office often presents the County's position. In front of the State Tax Commission, the Assessor *will* be represented by an attorney, whether it be a county counselor, city attorney (if the City of St. Louis), prosecuting attorney or retained, outside counsel.

In short, unless you enjoy the story of David and Goliath, increase your chances and hire counsel.

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