

H. B. 3268

(BY DELEGATES WILLIAMS, MAHAN, MARSHALL, STOWERS,
IAQUINTA, D. POLING, PHILLIPS, MANCHIN, REYNOLDS, GUTHRIE
AND WALTERS)

(Originating in the Committee on Finance)
[February 23, 2011]

A BILL to amend and reenact §11-6B-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-6B-4 of said code, all relating to who may claim a homestead exemption for purposes of ad valorem property taxes and providing that surviving spouse of a claimant must refile to retain the homestead exemption after the death of a claimant.

Be it enacted by the Legislature of West Virginia:

That §11-6B-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-6B-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.

1 For purposes of this article, the term:

2 (1) “Assessed value” means the value of property as
3 determined under article three of this chapter.

4 (2) “Claimant” means a person who is age sixty-five or
5 older or who is certified as being permanently and totally
6 disabled, and who owns a homestead that is used and
7 occupied by the owner thereof exclusively for residential
8 purposes: *Provided, That:* (1) If the property was most
9 recently used and occupied by the owner or the owner’s
10 spouse thereof exclusively for residential purposes; (2) the
11 owner, as a result of illness, accident or infirmity, is residing
12 with a family member or is a resident of a nursing home,
13 personal care home, rehabilitation center or similar facility;
14 and (3) the property is retained by the owner for
15 noncommercial purposes, then the owner of that property
16 may continue to claim a homestead property tax exemption
17 on the property: *Provided, however, That if the property*
18 *was most recently used exclusively for residential purposes*

19 and occupied by the owner or the owner's spouse as joint
20 tenants with rights of survivorship, and the claimant dies,
21 leaving the surviving spouse who is not sixty-five years of
22 age or permanently and totally disabled with rightful
23 ownership, the surviving spouse may retain the homestead
24 exemption as the claimant so long as the spouse occupies the
25 property as his or her residence and the property is
26 exclusively used for residential purposes.

27 (3) "Family member" means a person who is related by
28 common ancestry, adoption or marriage including, but not
29 limited to, persons related by lineal and collateral
30 consanguinity.

31 (4) "Homestead" means a single family residential house,
32 including a mobile or manufactured or modular home, and
33 the land surrounding such structure; or a mobile or
34 manufactured or modular home regardless of whether the
35 land upon which such mobile or manufactured or modular
36 home is situated is owned or leased.

37 (5) "Owner" means the person who is possessed of the
38 homestead, whether in fee or for life. A person seized or
39 entitled in fee subject to a mortgage or deed of trust shall be
40 considered the owner. A person who has an equitable estate

41 of freehold, or is a purchaser of a freehold estate who is in
42 possession before transfer of legal title shall also be
43 considered the owner. Personal property mortgaged or
44 pledged shall, for the purpose of taxation, be considered the
45 property of the party in possession.

46 (6) “Permanently and totally disabled” means a person
47 who is unable to engage in any substantial gainful activity by
48 reason of any medically determinable physical or mental
49 condition which can be expected to result in death or which
50 has lasted or can be expected to last for a continuous period
51 of not less than twelve months.

52 (7) “Sixty-five years of age or older” includes a person
53 who attains the age of sixty-five on or before June 30
54 following the July first assessment day.

55 (8) “Used and occupied exclusively for residential
56 purposes” means that the property is used as an abode,
57 dwelling or habitat for more than six consecutive months of
58 the calendar year prior to the date of application by the owner
59 thereof; and that the property is used only as an abode,
60 dwelling or habitat to the exclusion of any commercial use:
61 *Provided*, That failure to satisfy this six-month period shall

62 not prevent allowance of a homestead exemption to a former
63 resident in accordance with section three of this article.

64 (9) "Tax year" means the calendar year following the
65 July first assessment day.

66 (10) "Resident of this state" means an individual who is
67 domiciled in this state for more than six months of the
68 calendar year.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

1 (a) *General.* -- No exemption shall be allowed under this
2 article unless a claim of exemption is filed with the assessor
3 of the county in which the homestead is located, on or before
4 December 1, following the July ~~first~~ 1 assessment day. In the
5 case of sickness, absence or other disability of the claimant,
6 the claim may be filed by the claimant or his or her duly
7 authorized agent.

8 (b) *Claims for disability exemption.* -- Each claim for
9 exemption based on the owner being permanently and totally
10 disabled shall include one of the following forms of
11 documentation in support of said claim: (1) A written
12 certification by a doctor of medicine or doctor of osteopathy
13 licensed to practice their particular profession in this state
14 that the claimant is permanently and totally disabled; (2) a

15 written certification by the social security administration that
16 the claimant is currently receiving benefits for permanent and
17 total disability; (3) a copy of the letter from the social
18 security administration originally awarding benefits to the
19 claimant for permanent and total disability and a copy of a
20 current check for such benefits, marked void; (4) a current
21 social security health insurance (Medicare) card in the name
22 of the claimant and a copy of a current check to the claimant,
23 marked void, for benefits from the social security
24 administration for permanent and total disability; (5) a
25 written certification signed by the veterans administration
26 certifying that a person is totally and permanently disabled;
27 (6) any lawfully recognized workers' compensation
28 documentation certifying that a person is totally and
29 permanently disabled; (7) any lawfully recognized
30 pneumoconiosis documentation certifying that a person is
31 totally and permanently disabled; or (8) any other lawfully
32 recognized documentation certifying that a person is totally
33 and permanently disabled.

34 (c) *Renewals.*

35 (1) *Senior citizens.* -- If the claimant is age sixty-five or
36 older, then after the claimant has filed for the exemption once

37 with his or her assessor, there shall be no need for that
38 claimant to refile unless the claimant moves to a new
39 homestead.

40 (2) *Disabled.* -- If the claimant is permanently and totally
41 disabled, then after the claimant has filed for the exemption
42 once with his or her assessor, and signed a statement
43 certifying that he or she will notify the assessor if he or she
44 is no longer eligible for an exemption on the basis of being
45 permanently and totally disabled and that the claimant will
46 notify the assessor within thirty days of the discontinuance of
47 the receipt of benefits for permanent and total disability, if
48 the claimant originally claimed receipt of said benefits to
49 document his or her claim for exemption, there shall be no
50 need for that claimant to refile, unless the claimant moves to
51 a new homestead.

52 (3) *Waiver of exemption.* -- Any person not filing his or
53 her claim for exemption on or before December 1, shall be
54 determined to have waived his or her right to exemption for
55 the next tax year.

56 (4) *Residential care exception.* -- For purposes of this
57 section, an otherwise qualified claimant who, as a result of
58 illness, accident or infirmity, resides with a family member

59 or is a resident at a nursing home, personal care home,
60 rehabilitation center or similar facility is not considered to
61 have moved to a new homestead.

62 (5) Death of claimant with a surviving spouse -- For
63 purposes of this section, if the property is owned by a
64 husband and wife as joint tenants with the right of
65 survivorship and the claimant dies leaving a spouse who is
66 under sixty-five years of age and not totally and permanently
67 disabled, the surviving spouse is entitled to retain the
68 exemption from ad valorem property taxation provided in
69 section three of this article for as long as such surviving
70 spouse occupies the property as his or her residence and the
71 property is exclusively used for residential purposes. The
72 surviving spouse must refile, with a death certificate of the
73 claimant, for the exemption pursuant to the provisions of
74 subsection (a) in this section on or before December 1. When
75 the surviving spouse has filed for the exemption once with
76 his or her assessor, there shall be no need to refile as long as
77 the homestead is being used exclusively for residential
78 purposes and the spouse occupies the property as his or her
79 residence.