

1 **H. B. 2984**

2  
3 (By Delegate Canterbury)

4 [Introduced March 19, 2013; referred to the  
5 Committee on the Judiciary then Finance.]

6 **FISCAL**  
7 **NOTE**

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10 A BILL to amend and reenact §11-4-3 of the Code of West Virginia,  
11 1931, as amended, relating to assessment of real property;  
12 definitions; and providing that "owner" includes the trustee  
13 of a trust or a majority of the voting shareholders of a  
14 limited liability company or corporation who reside on the  
15 real property which is the subject of the trust or owned by a  
16 limited liability company or corporation and which has an  
17 annual production of agriculture or forest products that  
18 exceeds \$5,000.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §11-4-3 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted to read as follows:

22 **ARTICLE 4. ASSESSMENT OF REAL PROPERTY.**

23 **§11-4-3. Definitions.**

1 (a) For the purpose of giving effect to the Tax Limitations  
2 Amendment, this chapter shall be interpreted in accordance with the  
3 following definitions, unless the context clearly requires a  
4 different meaning:

5 (1) "Owner" means the person, as defined in section ten,  
6 article two, chapter two of this code, who is possessed of the  
7 freehold, whether in fee or for life. A person seized or entitled  
8 in fee subject to a mortgage or deed of trust securing a debt or  
9 liability is considered the owner until the mortgagee or trustee  
10 takes possession, after which the mortgagee or trustee shall be  
11 considered the owner. A person who has an equitable estate of  
12 freehold, or is a purchaser of a freehold estate who is in  
13 possession before transfer of legal title is also considered the  
14 owner. Owner ~~shall also include~~ also includes the corporation or  
15 other organization possessed of the freehold of a qualified  
16 continuing care retirement community. Owner also includes the  
17 trustee of a trust or a majority of the voting shareholders of a  
18 limited liability company or corporation who reside on the real  
19 property which is the subject of the trust or owned by a limited  
20 liability company or corporation and which has an annual production  
21 of agriculture or forest products that exceeds \$5,000.

22 (2) "Used and occupied by the owner thereof exclusively for  
23 residential purpose" means actual habitation by the owner or the  
24 owner's spouse, or a qualified resident of all or a portion of a

1 parcel of real property as a place of abode to the exclusion of any  
2 commercial use: *Provided*, That if the parcel of real property was  
3 unoccupied at the time of assessment and either: (A) Was used and  
4 occupied by the owner thereof exclusively for residential purposes  
5 on July 1, of the previous year assessment date; (B) was unimproved  
6 on July 1, of the previous year but a building improvement for  
7 residential purposes was subsequently constructed thereon between  
8 that date and the time of assessment; or (C) is retained by the  
9 property owner for noncommercial purposes and was most recently  
10 used and occupied by the owner or the owner's spouse as a residence  
11 and the owner, as a result of illness, accident or infirmity, is  
12 residing with a family member or is a resident in a nursing home,  
13 personal care home, rehabilitation center or similar facility, then  
14 the property ~~shall be~~ is considered "used and occupied by the owner  
15 thereof exclusively for residential purpose": *Provided, however*,  
16 That nothing herein contained ~~shall permit~~ permits an unoccupied or  
17 unimproved property to be considered "used and occupied by the  
18 owner thereof exclusively for residential purposes" for more than  
19 one year unless the owner, as a result of illness, accident or  
20 infirmity, is residing with a family member or is a resident of a  
21 nursing home, personal care home, rehabilitation center or similar  
22 facility. Except in the case of a qualified continuing care  
23 retirement community, if a license is required for an activity on  
24 the premises or if an activity is conducted thereon which involves

1 the use of equipment of a character not commonly employed solely  
2 for domestic as distinguished from commercial purposes, the use may  
3 not be considered to be exclusively residential. In the case of a  
4 qualified continuing care retirement community, uses attendant to  
5 the functioning of the qualified continuing care retirement  
6 community, including, without limitation, cafeteria, laundry,  
7 personal and health care services, ~~shall~~ may not be considered a  
8 commercial use even if ~~such~~ the activity or equipment requires a  
9 separate license or payment.

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

13 (4) "Farm" means a tract or contiguous tracts of land used for  
14 agriculture, horticulture or grazing and includes all real property  
15 designated as "wetlands" by the United States Army Corps of  
16 Engineers or the United States Fish and Wildlife Service.

17 (5) "Occupied and cultivated" means subjected as a unit to  
18 farm purposes, whether used for habitation or not, and although  
19 parts may be lying fallow, in timber or in wastelands.

20 (6) "Qualified continuing care retirement community" means a  
21 continuing care retirement community: (A) Owned by a corporation  
22 or other organization exempt from federal income taxes under the  
23 Internal Revenue Code; (B) used in a manner consistent with the  
24 purpose of providing housing and health care for residents; and (C)

1 which receives no Medicaid funding under ~~the provisions of~~ article  
2 four-b, chapter nine of this code. For purposes of this section,  
3 a continuing care retirement community is a licensed facility under  
4 ~~the provisions of~~ articles five-c and five-d, chapter sixteen of  
5 this code at which independent living, assisted living and nursing  
6 care, if necessary, are provided to qualified residents.

7 "Qualified resident" means a person who contracts with a  
8 qualified continuing care retirement community to reside therein,  
9 in exchange for the payment of an entrance fee or deposit, or  
10 payment of periodic charges, or both.

11 (b) *Effective date of amendments.* -- Amendments to this  
12 section enacted during the 2006 regular session of the Legislature  
13 shall have retroactive effect to and including July 1, 2005, and  
14 shall apply in determining tax for tax years beginning January 1,  
15 2006, and thereafter.

16 *Effective date of amendments.* -- Amendments to this section  
17 enacted during the 2007 regular session of the Legislature shall  
18 take effect on July 1, 2007.

19 *Effective date of amendments.* -- Amendments to this section  
20 enacted during the 2013 regular session of the Legislature shall  
21 take effect on July 1, 2013.

NOTE: The purpose of this bill is to provide that in the assessment of real property the word "owner" includes the trustee

of a trust or a majority of the voting shareholders of a limited liability company or corporation who reside on the real property which is the subject of the trust or owned by a limited liability company or corporation and which has an annual production of agriculture or forest products that exceeds \$5,000.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.