

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 39

FISCAL
NOTE

[Introduced January 11, 2023; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11-4-3 of the Code of West Virginia, 1931, as amended, relating to
 2 assessment of real property; providing that real property occupied by an immediate family
 3 member or former spouse of the owner exclusively for residential purposes be included in
 4 class two for assessment and taxation purposes; and further defining "immediate family
 5 member".

Be it enacted by the Legislature of West Virginia:

§11-4-3.

Definitions.

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

4 (1) "Owner" means the person, as defined in §2-2-10 of this code, who is possessed of the
 5 freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed
 6 of trust securing a debt or liability is considered the owner until the mortgagee or trustee takes
 7 possession, after which the mortgagee or trustee shall be considered the owner. A person who
 8 has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession
 9 before transfer of legal title is also considered the owner. Owner shall also include the corporation
 10 or other organization possessed of the freehold of a qualified continuing care retirement
 11 community.

12 (2) "Used and occupied by the owner thereof exclusively for residential purpose" means
 13 actual habitation by the owner, ~~or the owner's spouse, the owner's former spouse, an immediate~~
 14 family member of the owner, or a qualified resident of all or a portion of a parcel of real property as
 15 a place of abode to the exclusion of any commercial use: *Provided*, That if the parcel of real
 16 property was unoccupied at the time of assessment and either: (A) Was used and occupied by the
 17 owner thereof exclusively for residential purposes on July 1, of the previous year assessment
 18 date; (B) was unimproved on July 1, of the previous year but a building improvement for residential
 19 purposes was subsequently constructed thereon between that date and the time of assessment;

20 or (C) is retained by the property owner for noncommercial purposes and was most recently used
21 and occupied by the owner, ~~or the owner's spouse, the owner's former spouse, or an immediate~~
22 family member of the owner, as a residence and the owner, as a result of illness, accident or
23 infirmity, is residing with a family member or is a resident in a nursing home, personal care home,
24 rehabilitation center or similar facility, then the property shall be considered "used and occupied by
25 the owner thereof exclusively for residential purpose": *Provided, however,* That nothing herein
26 contained shall permit an unoccupied or unimproved property to be considered "used and
27 occupied by the owner thereof exclusively for residential purposes" for more than one year unless
28 the owner, as a result of illness, accident or infirmity, is residing with a family member or is a
29 resident of a nursing home, personal care home, rehabilitation center or similar facility. Except in
30 the case of a qualified continuing care retirement community, if a license is required for an activity
31 on the premises or if an activity is conducted thereon which involves the use of equipment of a
32 character not commonly employed solely for domestic as distinguished from commercial
33 purposes, the use may not be considered to be exclusively residential. In the case of a qualified
34 continuing care retirement community, uses attendant to the functioning of the qualified continuing
35 care retirement community, including, without limitation, cafeteria, laundry, personal and health
36 care services, shall not be considered a commercial use even if such activity or equipment
37 requires a separate license or payment.

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

40 "Immediate family member" means a spouse, child, sibling, parent, grandparent, or
41 grandchild. This includes stepparents, stepchildren, stepsiblings, sons-in-law, daughters-in-law,
42 fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, and adoptive relationships.

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

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

48 ~~(6)~~-"Qualified continuing care retirement community" means a continuing care retirement
49 community: (A) Owned by a corporation or other organization exempt from federal income taxes
50 under the Internal Revenue Code; (B) used in a manner consistent with the purpose of providing
51 housing and health care for residents; and (C) which receives no Medicaid funding under the
52 provisions of article four-b, chapter nine of this code. For purposes of this section, a continuing
53 care retirement community is a licensed facility under the provisions of articles five-c and five-d,
54 chapter 16 of this code at which independent living, assisted living and nursing care, if necessary,
55 are provided to qualified residents.

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

59 **(b)(1) Effective date of amendments.** -- Amendments to this section enacted during the
60 2006 regular session of the Legislature shall have retroactive effect to and including July 1, 2005,
61 and shall apply in determining tax for tax years beginning January 1, 2006, and thereafter.

62 **(2) Effective date of amendments.** -- Amendments to this section enacted during the 2007
63 regular session of the Legislature shall take effect on July 1, 2007.

64 **(3) Effective date of amendments.** -- Amendments to this section enacted during the 2023
65 regular session of the Legislature shall take effect on July 1, 2023.