

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 39**

[Originating in the Committee on Government  
Organization; reported on February 17, 2023]

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:*

## **CHAPTER 11. TAXATION.**

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

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

12 (A) For the purposes of this section, if a parcel of real property is held in family trust, the  
13 owner of the property is the person who is using and occupying all or a portion of the parcel:  
14 Provided, That the parcel is used and occupied by the owner thereof exclusively for residential  
15 purpose pursuant to subsection (2) of this section.

16 (2) "Used and occupied by the owner thereof exclusively for residential purpose" means

17 actual habitation by the owner, ~~or the owner's spouse,~~ an immediate family member of the owner,  
18 or a qualified resident of all or a portion of a parcel of real property as a place of abode to the  
19 exclusion of any commercial use: *Provided*, That if the parcel of real property was unoccupied at  
20 the time of assessment and either:

21 (A) Was used and occupied by the owner thereof exclusively for residential purposes on  
22 July 1, of the previous year assessment date;

23 (B) ~~was~~ Was unimproved on July 1, of the previous year but a building improvement for  
24 residential purposes was subsequently constructed thereon between that date and the time of  
25 assessment; or

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

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

45 (B) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or  
46 grandchild. This includes stepparents, stepchildren, stepsiblings, sons-in-law, daughters-in-law,  
47 fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, and adoptive relationships.

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

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

53 (6) "Qualified continuing care retirement community" means a continuing care retirement  
54 community:

55 (A) Owned by a corporation or other organization exempt from federal income taxes under  
56 the Internal Revenue Code;

57 (B) ~~used~~ Used in a manner consistent with the purpose of providing housing and health  
58 care for residents; and

59 (C) ~~which~~ Which receives no Medicaid funding under the provisions of article four-b,  
60 chapter nine of this code. For purposes of this section, a continuing care retirement community is a  
61 licensed facility under the provisions of ~~articles five-c and five-d, chapter sixteen~~ §16-5-1 et seq.  
62 and §16-5D-1 et seq. of this code at which independent living, assisted living, and nursing care, if  
63 necessary, are provided to qualified residents.

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

67 (b)(1) *Effective date of amendments.* -- Amendments to this section enacted during the  
68 2006 regular session of the Legislature shall have retroactive effect to and including July 1, 2005,

69 and shall apply in determining tax for tax years beginning January 1, 2006, and thereafter.

70 ~~(2) *Effective date of amendments.*—~~ Amendments to this section enacted during the 2007  
71 regular session of the Legislature shall take effect on July 1, 2007.

72 (3) Amendments to this section enacted during the 2023 regular session of the Legislature  
73 shall take effect on July 1, 2023.