# WEST VIRGINIA CODE CHAPTER 11 ARTICLE 25

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## §11-25-1. Declaration of purpose; rule of construction.

This article is enacted to provide general relief for low income citizens who are sixty-five years of age or over to aid them in providing or maintaining a homestead, by authorizing a claim for relief to be filed with the State Tax Commissioner and payment thereof from state funds, the amount of relief to be measured in part by the real property taxes or that portion of rent attributable to real property taxes paid by any such citizen, and the providing of such general relief is hereby declared to be a public purpose. This article shall, therefore, be liberally construed.

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## §11-25-2. Definitions.

When used in this article, unless the context clearly requires a different meaning:

(1) "Claimant" means a person sixty-five years of age or older who was domiciled in this state during any portion of the calendar year preceding the year in which the claimant is eligible to file a claim for relief under this article and who had a gross household income of not more than $5,000 during the calendar year preceding the year in which he is eligible to file a claim for relief under this article. If two or more individuals, who otherwise qualify as claimants under this article, occupy a single homestead, such individuals may determine between themselves as to which individual shall be the claimant; however, if such individuals are unable to agree, the matters shall be referred to the State Tax Commissioner for determination and his decision shall be final.

(2) "Claimant's spouse" means the spouse of the claimant if such spouse resides in the homestead during any portion of the calendar year preceding the year in which the claimant is eligible to file a claim for relief under this article.

(3) "Gross household income" means all actual income received by a claimant and the claimant's spouse during the calendar year preceding the year in which he is eligible to file a claim for relief under this article and such actual income shall be computed by adding to the West Virginia adjusted gross income (as that term is defined in section twelve, article twenty-one of this chapter) of such claimant and the claimant's spouse all of the following actually received by the claimant and claimant's spouse during such calendar year:

(a) Amount of capital gains excluded from West Virginia adjusted gross income;

(b) Support money;

(c) Nontaxable strike benefits;

(d) Cash public assistance, welfare and relief but not any relief under this article;

(e) Gross amount of any pension or annuity, including railroad retirement benefits;

(f) Social security benefits;

(g) Unemployment compensation benefits;

(h) Veterans disability pensions;

(i) Workers' compensation benefits; and

(j) Private disability insurance benefits.

Gross household income does not include gifts from nongovernmental sources, or surplus

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foods or other relief in kind supplied by a governmental agency.

(4) "Gross rent" means the total amount of money or its equivalent actually paid by a claimant during a particular calendar year to his landlord in a bona fide manner solely for the right of occupancy of a homestead, exclusive of any charges for utilities, services, furniture, furnishings or electrical or other appliances furnished by such landlord to such claimant; and if the State Tax Commissioner determines that the rent charged was excessive for the purposes of this article, he may adjust the same, for the purposes of this article, to a reasonable amount.

(5) "Homestead" means a single family residential house and the land surrounding such structure; or a part of a multidwelling building, multipurpose building or apartment house; or a mobile home which is used as a permanent residence and the land upon which such mobile home is situate; and it is immaterial for the purposes of this article whether the foregoing are being purchased, are owned or are rented.

(6) "Household" means a claimant, a claimant and the claimant's spouse or a claimant and any other person or persons who resides or reside in a homestead.

(7) "Property taxes" means the amount of the real property taxes, exclusive of any interest or charges for delinquency thereof, paid by a claimant on his homestead beginning with the calendar year one thousand nine hundred seventy-two, and for any particular calendar year thereafter: Provided, That if a homestead is owned by a claimant and a person or persons (other than the claimant's spouse) as joint tenants or as tenants in common, and such person or persons owning such interest in such homestead do not reside in such homestead, then for the purposes of this article, the property taxes paid by the claimant shall be prorated according to such claimant's percentage of ownership of such homestead: Provided, however, That if the claimant's homestead is a single unit within any multidwelling building, multipurpose building or apartment house, and such claimant owns the entirety of any such structure, the property taxes paid by the claimant for the purposes of this article shall be prorated so as to reflect the percentage of value which the claimant's homestead is to the value of the entire structure which is assessed in a single assessment based upon the entire property.

(8) "Rent constituting property taxes" means twelve percent of the gross rent paid by a claimant for the right of occupancy of his homestead beginning with the calendar year one thousand nine hundred seventy-two, and for any particular calendar year thereafter.

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**§11-25-3. Computation of relief; limits; table.**

(a) The amount of any claim for relief pursuant to this article shall be limited as follows:

(1) If the gross household income of the claimant or of the claimant and the claimant's spouse was $500 or less during the calendar year to which the claim relates, the claim shall be limited to seventy-five percent of the amount of the property taxes, or rent constituting property taxes, or both, in such year on or with respect to the claimant's homestead.

(2) If the gross household income of the claimant or of the claimant and the claimant's spouse was more than $500 but not in excess of $1,000 during the calendar year to which the claim relates, the claim shall be limited to seventy-five percent of the amount by which the property taxes, or rent constituting property taxes, or both, in such year on or with respect to the claimant's homestead are in excess of one half of one percent of that portion of gross household income in excess of $500 but not in excess of $1,000.

(3) If the gross household income of the claimant or of the claimant and the claimant's spouse was more than $1,000 but not in excess of $2,000 during the calendar year to which the claim relates, the claim shall be limited to sixty percent of the amount by which the property taxes, or rent constituting property taxes, or both, in such year on or with respect to the claimant's homestead are in excess of (i) one half of one percent of that portion of gross household income in excess of $500 but not in excess of $1,000, (ii) one percent of that portion of gross household income in excess of $1,000 but not in excess of $1,500 and (iii) one and one- half percent of that portion of gross household income in excess of $1,500 but not in excess of $2,000.

(4) If the gross household income of the claimant or of the claimant and the claimant's spouse was more than $2,000 but not in excess of $3,000 during the calendar year to which the claim relates, the claim shall be limited to forty-five percent of the amount by which the property taxes, or rent constituting property taxes, or both, in such year on or with respect to the claimant's homestead are in excess of (i) one half of one percent of that portion of gross household income in excess of $500 but not in excess of $1,000, (ii) one percent of that portion of gross household income in excess of $1,000 but not in excess of $1,500, (iii) one and one- half percent of that portion of gross household income in excess of $1,500 but not in excess of $2,000, (iv) two percent of that portion of gross household income in excess of $2,000 but not in excess of $2,500 and (v) two and one- half percent of that portion of gross household income in excess of $2,500 but not in excess of $3,000.

(5) If the gross household income of the claimant or of the claimant and the claimant's spouse was more than $3,000 but not in excess of $4,000 during the calendar year to which the claim relates, the claim shall be limited to thirty percent of the amount by which the property taxes, or rent constituting property taxes, or both, in such year on or with respect to the claimant's homestead are in excess of (i) one half of one percent of that portion of gross household income in excess of $5,000 but not in excess of $1,000, (ii) one percent of that portion of gross household income in excess of $1,000 but not in excess of $1,500, (iii)

one and one- half percent of that portion of gross household income in excess of $1,500 but not in excess of $2,000, (iv) two percent of that portion of gross household income in excess of $2,000 but not in excess of $2,500, (v) two and one-half percent of that portion of gross household income in excess of $2,500 but not in excess of $3,000, (vi) three percent of that portion of gross household income in excess of $3,000 but not in excess of $3,500 and (vii) three and one-half percent of that portion of gross household income in excess of $3,500 but not in excess of $4,000.

(6) If the gross household income of the claimant or of the claimant and the claimant's spouse was more than $4,000 but not in excess of $5,000 during the calendar year to which the claim relates, the claim shall be limited to thirty percent of the amount by which the property taxes, or rent constituting property taxes, or both, in such year on or with respect to the claimant's homestead are in excess of (i) one half of one percent of that portion of gross household income in excess of $500 but not in excess of $1,000, (ii) one percent of that portion of gross household income in excess of $1,000 but not in excess of $1,500, (iii) one and one- half percent of that portion of gross household income in excess of $1,500 but not in excess of two thousand dollars, (iv) two percent of that portion of gross household income in excess of $2,000 but not in excess of $2,500, (v) two and one-half percent of that portion of gross household income in excess of $2,500 but not in excess of $3,000, (vi) three percent of that portion of gross household income in excess of $3,000 but not in excess of $3,500, (vii) three and one-half percent of that portion of gross household income in excess of $3,500 but not in excess of $4,000, (viii) four percent of that portion of gross household income in excess of $4,000 but not in excess of $4,500 and (ix) four and one-half percent of that portion of gross household income in excess of $4,500 but not in excess of $5,000.

(b) In any case in which the property taxes, or rent constituting property taxes, or both, during any one calendar year on or with respect to any homestead exceed $125, the amount thereof shall, for purposes of this article, be deemed to have been $125.

(c) The State Tax Commissioner shall prepare a table under which claims under this article shall be determined. The table shall be published in the department's official rules and regulations and shall be printed on the appropriate claim forms. The amount of relief as shown in the table for each bracket shall be computed only to the nearest 10¢.

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## §11-25-4. Forms and instructions; maximum participation.

The State Tax Commissioner shall prescribe and make available claim forms with instructions for claimants, and every assessor and sheriff shall comply with all reasonable requests and rules and regulations of the State Tax Commissioner in order to encourage maximum participation of claimants eligible for relief under the provisions of this article.

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## §11-25-5. Proof of claim; landlord's cooperation required; relief limited to one claimant per homestead per year.

Every claimant who is a homestead owner shall supply to the State Tax Commissioner, in support of his claim, reasonable proof of property taxes paid, information as to the size and nature of the property claimed as the homestead and a statement that the real property taxes thereon have been paid by him and that there are no delinquent real property taxes on the homestead.

Every claimant who is a homestead renter shall supply to the State Tax Commissioner, in support of his claim, reasonable proof, as required by the State Tax Commissioner, of rent paid and the name and address of the owner or managing agent of the property rented. The claimant's landlord shall at the claimant's request sign a statement setting forth the gross rent paid by the claimant for the particular calendar year. Any landlord who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required by the claimant in order to file a timely claim, shall for each such violation be guilty of a misdemeanor, and, upon conviction thereof, shall be fined an amount not exceeding $50.

Only one claimant for a homestead for a calendar year shall be entitled to relief under this article.

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## §11-25-6. Filing date.

No claim for relief shall be paid or allowed unless such claim for relief is actually filed with and in the possession of the State Tax Commissioner between and including the respective dates of July one and September thirty following the calendar year with respect to which the claim for relief under the provisions of this article is based. Persons not filing claims for relief as provided by this article within the appropriate ninety-day filing period are deemed to have waived all claims for relief for that particular calendar year. A claimant filing a timely claim for relief may submit an amended claim for relief within two years following the close of the appropriate filing period.

In case of sickness, absence or other disability of the claimant or if, in the State Tax Commissioner's judgment good cause exists, the State Tax Commissioner may extend the time for filing a claim for relief for a period not to exceed six months.

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## §11-25-7. Claim as disbursement from state funds; claim is personal; offset.

Upon the State Tax Commissioner's determination that a claimant is entitled to relief under the provisions of this article, and after audit and certification of his claim for relief, such relief shall be paid upon a state warrant drawn upon the State Treasury from balances retained for general purposes. The right to file a claim for relief under this article is personal to the claimant and shall not survive his death except that the spouse of such decedent shall be entitled to file such claim if decedent had not filed the same. In the event the claimant is incompetent or insane, his claim may be filed by his duly appointed and qualified legal guardian or committee. If a claimant dies after having filed a timely claim for relief under the provisions of this article, and the State Tax Commissioner determines that such relief or any portion thereof is proper, then such relief or portion thereof shall be paid to such claimant's executor or administrator: Provided, That if an executor or administrator has not been appointed and qualified within a reasonable time after the claimant's death, the State Tax Commissioner may in his discretion pay such relief to any other person residing in the claimant's homestead if there be such person and if there be no such other person residing in such homestead, the amount of such relief shall escheat to the state.

The amount of any claim for relief otherwise payable under this article may be applied by the State Tax Commissioner against any liability outstanding on the books of the commissioner against the claimant.

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## §11-25-8. Denial of claim; violation of article; assessment; interest and penalties; crime.

If it is determined that a claim for relief was filed by a claimant who was the recipient of public funds for the payment of his real property taxes or rent during the period for which the claim for relief was filed, or that such claimant received title to his homestead primarily for the purpose of receiving relief under this article, or that a claim for relief was filed with fraudulent intent, such claim for relief shall be disallowed in full, and, if any such claim for relief has been paid, the amount paid may be recovered by assessment in the same manner as taxes are assessed under article ten of this chapter and the assessment shall bear interest from the date of payment of the claim for relief, until refunded to the State Tax Commissioner, at the rate of one percent per month. Any claimant willfully and knowingly filing a fraudulent claim for relief, and any person who assisted in the preparation or filing of such fraudulent claim for relief or supplied information upon which such fraudulent claim for relief was prepared, with knowledge of such fraudulent intent of the claimant, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than $100, or imprisoned in the county jail not more than six months, or both fined and imprisoned. If it is determined that a claim for relief is excessive and was through negligence incorrectly prepared, ten percent of the corrected claim for relief shall be disallowed, and if the claim for relief has been paid, the excessive portion of any amount paid and the ten percent disallowed shall be similarly recovered by assessment in the same manner as taxes are assessed under article ten of this chapter and the assessment shall bear interest from the date of payment of the claim for relief until refunded to the State Tax Commissioner at the rate of one percent per month.

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## §11-25-9. Hearings and appeals.

Any claimant aggrieved by the denial in whole or in part of his claim for relief, except when the denial is based upon the late filing of a claim for relief, may demand a hearing within thirty days after such denial by filing with the State Tax Commissioner a verified petition for hearing, which petition shall set forth with definiteness and particularity the reasons for objecting to such denial. In every case where a petition is filed, the State Tax Commissioner shall assign a time and place for a hearing upon the same and shall proceed in accordance with the provisions of article ten of this chapter and all of the applicable provisions of said article ten shall be applicable with like effect as if the petition were a petition for reassessment as provided in said article ten. In connection with holding any such hearing, the State Tax Commissioner shall have all of the relevant powers and authority set forth in said article ten. An appeal from a final decision of the State Tax Commissioner made after any such hearing may be taken by the claimant in accordance with the provisions of said article ten of this chapter, and such appeal shall be processed and determined with like effect as if said claimant were a "taxpayer" as that term is used in said article ten.

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## §11-25-10. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

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## §11-25-11. Effective date.

The provisions of this article shall take effect on January 1, 1972.

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