WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2477

(By Delegates Perry, Williams, Mezzatesta, Trump and Pino)

Passed March 8, 2003

In Effect Ninety Days from Passage
AN ACT to amend and reenact section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, four, five and six, article six-b of said chapter, all relating to property tax designations and homestead exemptions from property taxes, and permitting certain homeowners to retain a homestead exemption and class two property designation for certain property while they are residing with family members or resident of a nursing home or other facility as a result of illness, accident or infirmity and changing due dates and response deadlines to exemption requests.

Be it enacted by the Legislature of West Virginia:
That section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, four, five and six, article six-b of said chapter, be amended and reenacted, all to read as follows:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

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

“Owner” means the person, as defined in section ten, article two, chapter two of this code, who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is considered the owner until the mortgagee or trustee takes possession, after which the mortgagee or trustee shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also considered the owner.

“Used and occupied by the owner thereof exclusively for residential purpose” means actual habitation by the owner or the owner’s spouse of all or a portion of a parcel of real property as a primary place of abode to the exclusion of any commercial use: Provided, That if the parcel of real property was unoccupied at the time of assessment and either (a) was used and occupied by the owner thereof exclusively for residential purposes on the first day of July of the previous year assessment date, (b) was unimproved on the first of July of the previous year but a building improvement for residential purposes was subsequently constructed thereon between that
date and the time of assessment, or, (c) is retained by the
property owner for non-commercial purposes and was most
recently used and occupied by the owner or the owner's spouse
as a residence, and the owner, as a result of illness, accident or
infirmity, is residing with a family member or is a resident in a
nursing home, personal care home, rehabilitation center or
similar facility, then the property shall be considered "used and
occupied by the owner thereof exclusively for residential
purpose": Provided, however, That nothing herein contained
shall permit an unoccupied or unimproved property to be
considered "used and occupied by the owner thereof exclu-
sively for residential purposes" for more than one year unless
the owner, as a result of illness, accident or infirmity, is
residing with a family member or is a resident of a nursing
home, personal care home, rehabilitation center or similar
facility. If a license is required for an activity on the premises
or if an activity is conducted thereon which involves the use of
equipment of a character not commonly employed solely for
domestic as distinguished from commercial purposes, the use
may not be considered to be exclusively residential.

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

"Farm" means a tract or contiguous tracts of land used for
agriculture, horticulture or grazing and includes all real
property designated as "wetlands" by the United States army
corps of engineers or the United States fish and wildlife service.

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

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.
For purposes of this article, the term:

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

(2) “Claimant” means a person who is age sixty-five or older or who is certified as being permanently and totally disabled, and who owns a homestead that is used and occupied by the owner thereof exclusively for residential purposes:

Provided, That (1) if the property was most recently used and occupied by the owner or the owner’s spouse thereof exclusively for residential purposes, (2) the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility, and (3) the property is retained by the owner for noncommercial purposes, then the owner of that property may continue to claim a homestead property tax exemption on the property.

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

(4) “Homestead” means a single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned or leased.

(5) “Owner” means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be considered the owner. Personal property mortgaged or pledged shall, for
the purpose of taxation, be considered the property of the party
in possession.

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

(7) "Sixty-five years of age or older" includes a person who
attains the age of sixty-five on or before the thirtieth day of
June following the July first assessment day.

(8) "Used and occupied exclusively for residential pur-
poses" means that the property is used as an abode, dwelling or
habitat for more than six consecutive months of the calendar
year prior to the date of application by the owner thereof; and
that the property is used only as an abode, dwelling or habitat
to the exclusion of any commercial use: Provided, That failure
to satisfy this six-month period shall not prevent allowance of
a homestead exemption to a former resident in accordance with
section three of this article.

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

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

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

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

(b) Claims for disability exemption. — Each claim for exemption based on the owner being permanently and totally disabled shall include one of the following forms of documentation in support of said claim: (1) A written certification by a doctor of medicine or doctor of osteopathy licensed to practice their particular profession in this state that the claimant is permanently and totally disabled; (2) a written certification by the social security administration that the claimant is currently receiving benefits for permanent and total disability; (3) a copy of the letter from the social security administration originally awarding benefits to the claimant for permanent and total disability and a copy of a current check for such benefits, marked void; (4) a current social security health insurance (medicare) card in the name of the claimant and a copy of a current check to the claimant, marked void, for benefits from the social security administration for permanent and total disability; (5) a written certification signed by the veterans administration certifying that a person is totally and permanently disabled; (6) any lawfully recognized workers’ compensation documentation certifying that a person is totally and permanently disabled; (7) any lawfully recognized pneumoconiosis documentation certifying that a person is totally and permanently disabled; or (8) any other lawfully recognized documentation certifying that a person is totally and permanently disabled.

(c) Renewals. —

(1) Senior citizens. — If the claimant is age sixty-five or older, then after the claimant has filed for the exemption once with his or her assessor, there shall be no need for that claimant to refile unless the claimant moves to a new homestead.
(2) Disabled. — If the claimant is permanently and totally disabled, then after the claimant has filed for the exemption once with his or her assessor, and signed a statement certifying that he or she will notify the assessor if he or she is no longer eligible for an exemption on the basis of being permanently and totally disabled and that the claimant will notify the assessor within thirty days of the discontinuance of the receipt of benefits for permanent and total disability, if the claimant originally claimed receipt of said benefits to document his or her claim for exemption, there shall be no need for that claimant to refile, unless the claimant moves to a new homestead.

(3) Waiver of exemption. — Any person not filing his or her claim for exemption on or before the first day of December shall be determined to have waived his or her right to exemption for the next tax year.

(4) Residential care exception. — For purposes of this section, an otherwise qualified claimant who, as a result of illness, accident or infirmity, resides with a family member or is a resident at a nursing home, personal care home, rehabilitation center or similar facility is not considered to have moved to a new homestead.

§11-6B-5. Determination; notice of denial of claim or exemption.

(a) The assessor shall, as soon as practicable after a claim for exemption is filed, review that claim and either approve or deny it. If the exemption is denied, the assessor shall promptly, but not later than the first day of January, serve the claimant with written notice explaining why the exemption was denied and furnish a form for filing with the county commission should the claimant desire to take an appeal. The notice required or authorized by this section shall be served on the claimant or his or her authorized representative either by personal service or by certified mail.
(b) In the event that the assessor shall have information sufficient to form a reasonable belief that a claimant, after having been originally granted an exemption, is not eligible for said exemption, he or she shall deny the exemption on the next assessment date and shall promptly, but no later than the first day of January, serve the claimant with written notice explaining the reasons for the denial and furnish a form for filing with the county commission should the claimant desire to take an appeal.

§11-6B-6. Appeals procedure.

(a) Notice of appeal; thirty days. — Any claimant aggrieved by the denial of his or her claim for exemption or the subsequent denial of his or her exemption may appeal to the county commission within thirty days after receipt of written notice explaining why the exemption was denied.

(b) Review; determination; appeal. — The county commission shall complete its review and issue its determination as soon as practicable after receipt of the notice of appeal, but in no event later than the twenty-eighth day of February of the tax year for which the exemption is first applied. In conducting its review, the county commission may hold a hearing on the claim. The assessor or the claimant may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of April, 2003.

Governor