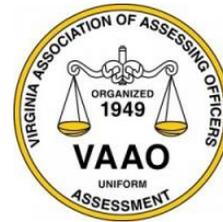


COMMONWEALTH OF VIRGINIA DEPARTMENT OF VETERANS SERVICES



Policy & Guidelines for Commissioners of the Revenue and Other Assessing Officials

for §§ 58.1-3219.5 and 58.1-3219.9

Real Property Tax Relief for 100% Disabled Veterans & Surviving Spouses

**Revised & Updated
April 2019**

Table of Contents

Introduction	2
Legislative History	3
Application Process	8
Meaning of "100% Service-connected, Permanent, and Total Disability"	10
Ownership situations that may arise	12
1VAC80-10 58.1-3219.5	13
1VAC80-20 58.1-3219.9	18
Frequently Asked Questions (FAQ)	23
Effective Dates	23
Qualifications	23
Surviving Spouse	25
Property Issues	26
Appendix A – Resources	28
DVS Locations	28
VA Form 21-4138	28
Appendix B - Sample Application Form	29
Appendix C - Sample approved letters received from the U.S. Department of Veterans Affairs.....	31
Disabled Veteran Ratings Letter – 100% Service Connected Disabled and Permanent & Total Rating	31
Disabled Veteran Ratings Letter – 100% Service Connected Disabled and Permanent & Total Rating	32
Disabled Veteran Ratings Letter – Less than 100% Service Connected Disabled BUT QUALIFIES –	33
Rated at 100% due to UI and Permanent & Total Rating	33
Disabled Veteran Ratings Letter – Veteran Does Not Qualify	34
Appendix D - Sample VA 21-4138	35
Sample VA 21-4138 Con't	36
Appendix E – Attorney General Opinion regarding start date.....	37
Appendix F – Attorney General Opinion July 15, 2011	39
Appendix G – Attorney General Opinion December 18, 2015.....	55

This document provides local officials with the regulations and guidelines to be used for the administration of the real estate tax exemption for 100% service-connected, permanent and totally disabled Armed Forces veterans, their surviving spouses and the surviving spouses of those Killed In Action. These guidelines are designed to promote uniformity in the application and qualification process for veterans who qualify for the real property tax exemption as provided for in Article X, Section 6-A of the Constitution of Virginia, and Title 58.1 of the Code of Virginia. The regulations included in this document will govern compliance with the law, as published in the Virginia Administrative Code (VAC).

Introduction

I am proud to lead the Department of Veterans Services (DVS), and committed to providing opportunities for the over 725,000 veterans, and their families, who call the Commonwealth home and contribute to our Virginia economy. Our mission is to serve Virginia's veterans, members of the Virginia National Guard, Virginia residents in the Armed Forces Reserves, and their family members, by ensuring they receive timely transition, employment and education assistance, benefits, health care and long-term care, and the recognition they have earned through service to our country and Commonwealth.

This document provides Commissioners of the Revenue, along with other local assessing officials and veterans, with the guidelines to be used for the administration of the real estate tax exemption for 100% service-connected, permanent and totally disabled veterans and their qualifying surviving spouses ([58.1-3219.5](#)), and the surviving spouses of those killed in action (KIA) including those who died of wounds (DOW) as determined by the U.S. Department of Defense ([58.1 3219.9](#)) as provided for in Article X, Section 6-A of the Constitution of Virginia. This document also includes the regulations as published in the Virginia Administrative Code (VAC) for §58.1-3219.5 – 1VAC80-10 et. seq., and §58.1-3219.9 – 1VAC80-20 et seq.

These guidelines are designed to promote uniformity in the application and qualification process for those veterans and surviving spouses who qualify for real property tax exemption. The guidelines and regulations outlined in this document will aid in compliance with the law.

Any Commissioner of the Revenue, other assessing official, or their staff may always reach out to me, or my Director of Policy & Planning, with any questions, or in search of advice or clarifications regarding the real property tax exemption.

Regards,
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Legislative History

In 2009, the initial resolutions proposing the amendment for the real estate tax exemption for 100% service-connected, permanent and totally disabled veterans and their qualifying surviving spouses were: **HJ648 (O'Bannon)**, incorporating **HJ669 (Janis)**, and **SJ275 (Puller)**, incorporating **SJ304 (Stuart)**. In 2010, **HJ33/HB149 (O'Bannon)** and **SJ13/SB31 (Puller)** passed and were signed by the Governor placing the issue before the voters in November 2010.

On November 2, 2010, the citizens of the Commonwealth of Virginia ratified a proposed amendment, adding Section 6-A to the Constitution of Virginia:

Section 6-A. Property tax exemption for certain veterans.

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.

In 2011, the General Assembly passed enabling legislation **HB1645 (O'Bannon)** and **SB987 (Puller)** which amended **Title 58.1, Chapter 32** to provide guidance for implementing the tax exemption.

The amendment exempts from the real property tax the principal place of residence owned either individually or jointly, of those Virginians who, in the line of duty, while serving in the Armed Forces of the United States, were injured to the extent that they were rated by the United States Department of Veterans Affairs (VA) as having a 100%, service-connected, permanent, and total disability.

During 2011, the initial tax year of implementation, a number of previously unanticipated issues were identified by local officials. Some questions were referred to the Attorney General for advisory opinions. Hampton Commissioner of the Revenue, Ross Mugler, requested guidance regarding the effect of the emergency clause, requiring the effective date of implementation to be January 1, 2011, on those jurisdictions that operate on a July to June tax year. The Attorney General's response can be found in **Appendix E**.

Subsequently, a series of questions were developed by members of the Commissioners of the Revenue Association and submitted to Delegate Lingamfelter. Those questions were consolidated with additional questions posed by Delegate O'Bannon, Senator Puller and Senator Newman, and submitted to the Attorney General in May 2011. On July 15, 2011, the Attorney General provided guidance to proceed with application of Article X Section 6-A as ratified, and this may be found in **Appendix F**. This AG Opinion is the basis for current interpretation.

It was determined that some refinements were needed to the enabling statutes to provide additional clarification and guidance as to the scope of the Amendment. Some of the specific

issues to be clarified included the question as to whether an *inter vivos* trust created by the otherwise qualified veteran would qualify; whether an otherwise qualifying veteran could claim exemption if absent from the principal residence due to long-term medical care; and the method for proration of taxes for the qualified veteran both upon initial qualification and subsequent purchases of a principal residence.

The 2012 Virginia General Assembly passed several bills clarifying the outstanding questions. **HB922 (Lingamfelter)** and **SB540 (Puller)**, incorporating **SB529 (Marsden)** addressed the trust issue. **HB933 (Lingamfelter)** addressed the absence from residence. **SB22 (Stuart)** addressed the proration issues.

In addition, the 2012 General Assembly passed **HB190 (O'Bannon)**, which directs the Commissioner of the Virginia Department of Veteran Services (DVS) to promulgate rules and regulations governing the administration and implementation of the veteran's property tax exemption: § **58.1-3219.7**. These rules and regulations must include written guidance for veterans residing in the Commonwealth, and for Commissioners of the Revenue, or other assessing officers, relating to the determination of eligibility for the property tax exemption, procedures for noting an appeal to a denial of a request for exemption to the DVS Commissioner, and procedures for appealing a decision of the DVS Commissioner to a circuit court.

This document also includes the regulations as published in the Virginia Administrative Code (VAC) for §58.1-3219.5 – 1VAC80-10 et. seq., and §58.1-3219.9 – 1VAC80-20 et seq. (*Pages 13-22*). 1VAC80-10-50 amended to comply with the recent actions by the General Assembly will be published on or about July 1, 2019. The enabling legislation made the full tax year 2019 eligible for the amendment to allow surviving spouses of 100% disabled veterans who pass away to move and retain the tax exemption. 1VAC80-20-50, governing surviving spouses of those killed in action, was not affected by the legislation and was not amended.

The DVS Commissioner may also provide advisory guidance in response to requests for information from veterans residing in the Commonwealth, and Commissioners of the Revenue or other assessing officials regarding the exemption under this article, including interpretation of the provisions of Article X, Section 6-A of the Constitution of Virginia.

In 2013, recognizing that the surviving spouses of active duty military killed in action were not included in the constitutional amendment, Del. Ramadan proposed **HJ551**.

Section 6-A. Property tax exemption for certain veterans *and surviving spouses of soldiers killed in action.*

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section *subdivision*, so long as the surviving spouse does not remarry and

continues to occupy the real property as his or her principal place of residence. *(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.* (New amending language in italics)

In 2014, **HJ8 (Ramadan)** was passed and was signed by the Governor, placing the issue before the voters in November 2014. On November 4, 2014, the citizens of the Commonwealth of Virginia ratified the proposed amendment. In 2015, the General Assembly passed the enabling legislation, **HB1721 (Ramadan)**, which amended **Title 58.1, Chapter 32** for implementing the tax exemption ([58.1 3219.9](#)). The qualifying date for this amendment is January 1, 2015 (“If such member of the armed forces of the United States is killed in action after January 1, 2015...”), NOT January 1, 2011.

- *Currently, the two exemptions are often referred to as “the Point 5 exemption” (100% disabled veterans and surviving spouses) and “the Point 9 exemption” (surviving spouses of KIA/DOW).*

In 2016, the General Assembly determined refinements were needed to the enabling statute of the Ramadan Amendment, to provide clarification and guidance as to scope of eligibility, after a constituent issue regarding a loophole in the KIA exemption was brought to the attention of several legislators. **HB127 (Knight)** and **SB99 (Cosgrove)** were proposed to clarify that active duty service members who die of wounds resulting from combat, en route to a field or military hospital or medical facility, are covered under the “killed in action (KIA)” designation. The U.S. Department of Defense (DOD) refers to this situation as “died of wounds received in action (DOW).” This means that a surviving spouse of a soldier, sailor, marine or airman who is wounded in combat *and* while *in transport* dies of said wounds *before* reaching the medical facilities qualifies for the exemption under § [58.1 3219.9](#).

This legislation clarified, but did not fundamentally alter, the constitutional amendment, and therefore, it did not need to go before the Virginia voters. The Governor signed the legislation and it was incorporated into § [58.1 3219.9](#) on July 1, 2016. Enactment goes back to the qualifying date in the original constitutional amendment, which is January 1, 2015.

Addition, the 2016 General Assembly passed several other pieces of legislation clarifying the parameters of, but not fundamentally altering, both §§ [58.1-3219.5](#) and [58.1 3219.9](#):

SB366 (Chafin) and **HB1203 (Yost)** allows for manufactured homes as defined in § [46.2-100](#) to be included in the exemption, as long as all the other qualifications are met, including proof of

primary residency. The manufactured home qualifies whether or not the wheels and other equipment previously used for mobility have been removed. If the land is not owned by the veteran, then the land is not exempt, only the home.

HB421 (Helsel) allows for inclusion in the exemption of improvements to be made to “other than the dwelling,” including the land upon which the improvement is situation – so long as “the principal use of the improvement is (i) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § [58.1-3503](#) **and** as listed in § [58.1-3504](#) **and** (ii) for other than a business purpose.” This means that a veteran or surviving spouse who qualifies for the real property tax exemption and who builds or modifies or improves upon a car port, garage, storage shed or other structure for the housing or covering of a motor vehicle or certain household goods as classified in the listed Code sections can include those improvements in the exemption from taxation. This does not include other improvements to the land or for building or modifying structures that do not meet this narrow distinction. It will not include building guest houses, free-standing offices, additional residences, pools or spas, etc.

The amendment for the real estate tax exemption for surviving spouses of those killed in action provided for the ability of surviving spouses to move to a different place of residence and keep the tax exemption, a benefit not extended to the surviving spouses of 100% service-connected, permanent and totally disabled veterans.

In 2017, an initial resolution to conform the two sections of code to allow all surviving spouses the exemption without any restriction on moving to a new principal place of resident was offered as **HJ562 (Miyares)**, which incorporated **HJ697 (Byron)**.

Proposing an amendment to Section 6-A of Article X of the Constitution of Virginia, relating to real property tax; exemption.

Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action. (a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence. *This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.* (b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse

remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces. (New amending language in italics.)

In 2018, Delegate Miyares and Senator Stuart introduced HB792/HJ6 and SJ76, the second resolutions. They passed and were signed by Governor McAuliffe. The issue was placed before the voters on November 8, 2018 and it passed overwhelmingly. In 2019, Delegate Miyares and Senator Stuart patroned the enabling legislation, HB1655 and SB1270. The legislation did not amend the original enactment date, or any of the other regulations. HB 1655 was signed by Governor Northam before the Session ended. SB1270 has also been signed by the Governor.

The Constitution now reads:

Be it enacted by the General Assembly of Virginia: 1. That §§ 58.1-3219.5, 58.1-3219.9, and 58.1-3219.14 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3219.5. Exemption from taxes on property for disabled veterans

B. The surviving spouse of a veteran eligible for the exemption set forth in this article shall also qualify for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, and the surviving spouse does not remarry. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

F. 2. That the provisions of this act shall apply to taxable years beginning on and after January 1, 2019.

Additionally, the legislators included a final paragraph to assist those surviving spouses who had lost the exemption due to moving to a new locality:

3. That if a surviving spouse was eligible for an exemption pursuant to the provisions of 206 § 58.1-3219.5 of the Code of Virginia prior to January 1, 2019, but became ineligible for such exemption prior to January 1, 2019, solely because he moved to a different principal place of residence, then he shall be eligible to claim such exemption for taxable years beginning on and after January 1, 2019, so long as he is eligible for such exemption pursuant to the provisions of § 58.1-3219.5 of the Code of Virginia, as amended by this act.

- Localities do not have to reimburse for intervening years. The new provision does NOT back date the exemption to time of loss, it only reinstates moving forward.
- *Additionally, the enabling legislation was also used as a vehicle to clarify and amend Article X, Section 6-B of the Constitution of Virginia, and § 58.1-3219.14 of the Code of Virginia. Exemption from taxes on property of surviving spouses of certain persons killed 138 in the line of duty. This set of regulations and policy guidelines does not cover*

6-B of the Constitution. Please contact the appropriate agency personnel responsible for administering the regulations for 6-B for further guidance.

All legislation in this section can be found on Virginia's Legislative Information System (LIS) at lis.virginia.gov. All hyperlinks are to the Code of Virginia website to read those exact Code sections.

Any questions about legislation or the Code of Virginia should be directed to the DVS Director of Policy & Planning, Carrie Ann Alford, carriann.alford@dvs.virginia.gov or 804-225-4716.

Application Process

The Virginia Department of Veterans Services serves in a solely advisory capacity. We do not generate the application for the localities. We do not send the applications directly to veterans or surviving spouses. They must go through their local jurisdiction. We have no direct connection to the U.S. Department of Veterans Affairs on this issue, and cannot control how the various VA offices format Summary of Benefits letters.

58.1-3219.5, et.seq. provides the sole, exclusive and comprehensive list of conditions necessary and sufficient to qualify for the exemption. Pursuant to the Dillon Rule, no locality may impose any additional requirements beyond those specified in the Constitution of Virginia and the Code of Virginia, as outlined in these guidelines and regulations. Specifically, there are no income or asset limitations, there is no application deadline, and, once qualified, qualified veterans and surviving spouses need only to reapply if they change their principal residence.

There are three necessary conditions that must be met by **the veteran** to qualify for the exemption:

1. *Qualifying disability rating includes "permanent and total" rating from the VA,*
2. *Ownership (solely or jointly), and*
3. *Principal residency.*

To qualify for the exemption, **the surviving spouse of a disabled veteran** must satisfy four additional necessary conditions:

1. *Married to the veteran on or after January 1, 2011,*
2. *The death of the veteran must have occurred on or after January 1, 2011,*
3. *The spouse must not remarry, and*
4. *The spouse may now relocate within the Commonwealth of Virginia, provided that the residence is the principal place of residence and all other qualifications are met.*

To qualify for the exemption, **the surviving spouse of a member of the armed services killed in combat** must satisfy three additional necessary conditions:

1. *Married to the veteran on or after January 1, 2015,*
2. *The death of the veteran must have occurred in combat, and*
3. *The spouse must not remarry.*

➤ **In all instances, while each condition is necessary, no single condition is sufficient to qualify for exemption.**

Pursuant to the Virginia Constitution, Article X Section 6-A, and Code of Virginia §58.1-3219.5: the General Assembly exempted from taxation the real property of qualifying veterans and their spouses for *tax years beginning on or after January 1, 2011*. This language, to wit: “*for tax years beginning on or after January 1, 2011, the General Assembly hereby exempts from taxation the real property...*” indicates that the exemption commences by operation of law upon meeting all necessary conditions without regard to application for the exemption by the qualified veteran or spouse.

Pursuant to the Virginia Constitution Article X Section 6-A, and Code of Virginia §58.1-3219.9: the General Assembly exempted from taxation the real property of qualifying surviving spouses of members of the armed forces KIA (including DOW) for *tax years beginning on or after January 1, 2015*. This language, to wit: “*for tax years beginning on or after January 1, 2015, the General Assembly hereby exempts from taxation the real property...*” indicates that the exemption commences by operation of law upon meeting all necessary conditions without regard to application for the exemption by the qualified veteran or spouse.

While there is no deadline to apply for the exemption, §§ 58.1-3980 and 58.1-3990, generally limit the assessing official’s authority for correction of past assessments to no more than the current and three prior tax years, *after* January 1, 2011 or 2015. For counties or independent cities that choose to assess and refund back to 2011 or 2015, it is the opinion of the DVS Commissioner that it is a locality’s prerogative, if approved by their Board of Supervisors or City Council, to go above and beyond what is stated in Code as long as they do at least the current year, plus three years prior.

While it is incumbent upon the property owner seeking the exemption to fill out the application and provide all supporting documentation to the assessing authority for the jurisdiction where the qualifying principal place of residence is located, VDVS highly encourages localities to make every effort to make the tax exemption known by posting the qualifications and a link to an application on their website and any other printed or electronic materials sent out to property owners. VDVS does explain the tax exemption in their *Virginia Veterans Resource Guide*, which is available in print and online at: dvs.virginia.gov.

If the veteran has not received an approved letter, or it cannot be located, the veteran may request assistance from their local VDVS Benefits office, a map of VDVS locations is **Appendix A**. The veteran may submit *VA Form 21-4138*, along with a sample letter directly to the VA office for processing via fax. The Commissioner of Revenue or a DVS Veterans Services Representative (VSR) can assist the veteran in obtaining the unpublished fax number.

If the veteran worked with a veteran service organization or entity with whom the DVS does not share Power of Attorney (POA), the DVS staff will let the veteran know s/he must either sign POA over to DVS, or go back to the originating organization for assistance.

- ***A sample VA Form 21-4138 is available in Appendix B with the necessary statement on the claim that the veteran must submit.***

Staff should make every effort to ensure the veteran is aware that the application is not complete until the required Summary of Benefits letter, including the “permanent and total” designation, is submitted and on file in the assessing official’s office. When the application is complete, the

assessing official should inform the veteran in writing, by mail, whether or not he/she is exempt from the real estate tax and if exempted, the amount of the exemption; or if denied, the reason(s) for denial.

The VA Summary of Benefits letter is issued in multiple states for various purposes, therefore, there has been confusion among Commissioners of the Revenue and other assessing officials regarding the exact language designated in the Code of Virginia and how to interpret the letter. Copies of actual letters that the VA will issue veterans can be found in **Appendix C**.

Assessing officials should use the date on the letter submitted with the application as the start date of the rating, and therefore, tax exemption. If the veteran or surviving spouse are able to produce a letter from the VA with an earlier date then the assessing official should accept that date and adjust accordingly. DVS staff are able to assist in obtaining copies of earlier Summary of Benefits letters.

Assessing officials are always welcome to send a scanned copy of the veteran's Summary of Benefits letter to the VDVS Director of Policy & Planning for review.

- Please email the scanned copy – without any information redacted – to carrieann.alford@dvs.virginia.gov along with any questions you have. Please use the subject line: **Tax Exemption Application Question**

Meaning of "100% Service-connected, Permanent, and Total Disability" and "Disability Rating"

Article X Section 6-A and § **58.1-3219.5** requires exemption from taxation on the real property *“of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability.”*

Veterans are rated by the VA and given a rating anywhere from 0% to 100%, in increments of 10%, and are based on the average impairment of a veteran's occupational earning capacity. This rating involves a medical assessment and determination by the VA of inability of the veteran to engage in substantially gainful employment.

Under the VA Schedule for Rating Disabilities schedule, the highest grade of disability is 100%, which means that a veteran is totally disabled. However, rating decisions and the resulting disability rating is the result of the VA using “a combined rating table that considers the effect from the most serious to the least serious conditions.” (*U.S. Dept. of Veterans Affairs, Summary of Benefits letter “What We Decided” [explanatory language]*)

Additionally, the VA uses the term “disability rating” as the term covering all the veteran's disabilities. It is not to be interpreted as “singular” for “a disability” but the sum total rating.

According to U.S. Code, [38 C.F.R. §4.1](#) **Essentials of evaluative rating.:**

“This rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service.”

And, per the U. S. Department of Veterans Affairs:

“If VA finds that a Veteran has multiple disabilities, VA uses the [Combined Ratings Table](#) below to calculate a combined **disability rating**...If there are more than two disabilities, the combined value for the first two will be found as previously described for two disabilities. The exact combined value (without rounding yet), is combined with the degree of the third disability. This process continues for subsequent disabilities and the final number is rounded to the nearest 10%...to represent the final **degree of disability**.”
<https://www.benefits.va.gov/compensation/rates-index.asp> [emphasis added]

A “one hundred percent service-connected, permanent, and total disability rating” (TDIU or IU), relates to the inability of the veteran to engage in “substantially gainful employment,” meaning a job that pays at least the annual poverty level set by the federal government.

Under the VA Schedule for Rating Disabilities schedule, the highest grade of disability is 100%, which means that a veteran is totally disabled. However, under the provisions of [38 C.F.R. § 4.16](#), a total disability rating may also be assigned by the VA where a person who fails to meet the schedular rating percentage is, nevertheless, unable to secure a substantially gainful occupation. TDIU ratings consider the effect that service-connected disabilities have on an individual veteran’s ability to work. Therefore, a total rating based on TDIU is more individualized than a schedular rating, which is based on the average impairment of earnings. The application should therefore be approved when the combined service-connected evaluation is less than 100%, if the veteran is paid at the 100% rate because he/she is unemployable **due to his/her service connected disability and** determined to be totally and permanently disabled due to his/her service connected disability. The Summary of Benefits letter from the VA will indicate such clearly [see **FAQ** and **Appendix C**].

In the case of *Norris v. West*, the U.S. Court of Appeals for Veterans Claims found that a “claim for TDIU is based on an acknowledgement that even though a rating less than 100% under the rating schedule may be correct, objectively, there are subjective factors that may permit assigning a 100% rating to a particular veteran under particular facts.” Therefore, under federal law, a determination of the veteran’s entitlement to TDIU is considered in the context of the individual veteran’s capabilities, regardless of whether an average person would be rendered unemployable under the same circumstances.

Given the VA policy providing that “all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled,” receiving a TDIU rating is simply “*an alternative way to obtain a total disability rating without being rated 100% disabled under the Rating Schedule.*” Furthermore, the VA regulations provide that “all veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reasons of disabilities which are likely to be permanent shall be rated as permanently and totally disabled.”

Therefore, the tax exemption pursuant to Code of Virginia § 58.1-3219.5, *et seq.* extends to veterans rated by the VA with a total (100 percent) disability rating on the basis of individual unemployability due to service-connected disability (TDIU or IU). Additionally, Article X, § 6-A to the Constitution of Virginia and Code of Virginia §§ 58.1-3219.5 and 58.1-3219.6, do not indicate the reasons the 100% disability rating must be incurred other than that it must be service connected. In fact, the language “*any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law*” explicitly incorporates by reference the VA standard as interpreted by federal statute and case law.

Please note: Not all VA-accepted disability claims are “service-connected.” Active duty military injured under other circumstances that are not “service connected” may still receive a medical discharge and/or disability ratings from the VA. Qualifying veterans are those with a total disability rating of 100% on the basis of a service-connected disability.

Ownership situations that may arise

Property is deeded in many ways in the Commonwealth. The law attempts to address most arrangements. However, a number of combinations are possible. The following determinations represent the current law.

Deed Scenario	Occupancy	Qualify?	Logic
Veteran only	Vet lives there	YES	Plainly stated in the law
Veteran & spouse	Vet lives there	YES	Plainly stated in the law
Veteran & spouse	vet lives there but spouse does not (say in assisted living)	YES	As long as vet is the “owner occupant” and property jointly owned
Veteran & spouse	and spouse lives there but vet does not (say in assisted living)	YES	Since spouse would be eligible under the survivorship clause
Spouse only	Vet lives there	PARTIAL	58.1-3219.5 addresses apportionment
Other persons, related or not	Only Vet lives there	PARTIAL	58.1-3219.5(E2) addresses apportionment
Veteran & other persons, related or not	Vet lives there	PARTIAL	58.1-3219.5 addresses apportionment
Property in Irrevocable Trust	Vet and other qualified combination live there	YES	58.1-3219.5 (D) and (E1) addresses the trust arrangements
Property in Revocable Trust	Vet and other qualified combination live there	YES	58.1-3219.5 (D) and (E1) addresses the trust arrangements



1VAC AGENCY NO. 80
DEPARTMENT OF VETERANS SERVICES
CHAPTER 10
100 PERCENT DISABLED VETERAN REAL PROPERTY TAX EXEMPTION

The publication of these regulations, as amended due to HB1655 and SB1270, will be published through the VAC on or about July 1, 2019. The Commissioners of the Revenue and Virginia Association of Assessing Officials, and other official VDVS channels to veterans or any assessing official, is done in advance of the July 1, 2019 VAC publication with the approval of the Division of Legislative Services (DLS) and in conjunction with this policy guidelines to comply with the Code of Virginia [§ 58.1-3219.7](#): *“The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article.”*

Questions regarding these regulations should be directed to the VDVS Director of Policy & Planning.

1VAC80-10-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the Department of Veterans Services.

“Department” means the Virginia Department of Veterans Services.

“Dwelling” means the single structure, including any permanent attachments thereto, that is the principal place of residence of the qualifying veteran or surviving spouse.

“Exemption” means the exemption from real property taxes authorized by subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and § 58.1-3219.5 of the Code of Virginia.

“Qualified veteran” is a veteran who has been rated by the U.S. Department of Veterans Affairs, or any successor agency, to have a 100 percent service-connected, permanent, and total disability. If a 100 percent disability rating is not permanent (i.e., has not been finally adjudicated/is scheduled to be reviewed at a future date), the exemption does not apply.

“Surviving spouse” is a spouse (i) of any member of the armed forces of the United States as determined by the U.S. Department of Defense, who has been rated by the U.S. Department of Veterans Affairs, or any successor agency, to have a 100 percent service-connected, permanent, and total disability.

“Real property” is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land, and the dwelling occupied by the qualified veteran or surviving spouse.

“VA” means the United States Department of Veterans Affairs or any successor agency.

1VAC80-10-20. Real Property Exempt from Taxation.

A. The dwelling that is the principal residence of a qualified veteran, plus up to one acre of land, or more than one acre if a given locality has exempted such larger acreage pursuant to § 58.1-3210 of the Code of Virginia shall be exempt. The exemption extends to real property improvements other than a dwelling, including the land upon which such improvements is situated, so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and other personal effects as classified in subdivision A 14 of § 58.1-3503 of the Code of Virginia and as listed in § 58.1-3504 of the Code of Virginia and (ii) for other than a business purpose.

B. Manufactured homes, as defined in § 46.2-100 of the Code of Virginia, whether or not the wheels and other equipment previously used for mobility have been removed, shall be exempt after the qualifying veteran has titled the home in the Commonwealth and shown proof of ownership. §§ 58.1-3219.5 and 58.1-3219.9 of the Code of Virginia are the only instances when manufactured homes may be classified as real property. If the veteran does not own the land on which the manufactured home is located, then the land is not exempt. The veteran or spouse must meet all other provisions of § 58.1-3219.5.

Statutory Authority: § 58.1-3219.5 of the Code of Virginia.

1VAC80-10-30. Full exemption; joint ownership; trusts.

A. The full exemption is authorized when the dwelling and land are held by a veteran alone or in conjunction with the veteran's spouse as tenant or tenants for life or joint lives. The exemption does not apply if the qualified veteran is not on the deed, except when the real property is held in one of the trusts listed in subsection B of this section.

B. Trusts – The full exemption is authorized when the real property is held in one of the following trusts: 1) revocable inter vivos trust over which the veteran or the veteran and his or her spouse hold the power of revocation, or 2) an irrevocable trust under which a veteran alone or in conjunction with his or her spouse possesses a life estate or an estate for joint lives or enjoys a continuing right of use or support. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

1VAC80-10-40. Partial Exemptions.

A. If the veteran's 100% disability rating occurs after January 1, 2011, and the veteran owns a qualified primary residence on the date of the rating, then the tax exemption begins on the date of such rating.

B. If the qualified veteran acquires the property after January 1, 2011, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360 of the Code of Virginia.

1VAC80-10-50. Surviving Spouse Exemption.

A. The surviving spouse of a veteran eligible for the exemption shall also qualify for the exemption, so long as:

1. The death of the qualified veteran occurs on or after January 1, 2011;

2. The surviving spouse was married to the qualified veteran at the time of the veteran's death;
3. The surviving spouse does not remarry; and
4. ~~The surviving spouse continues to occupy the real property as his or her principal place of residence; and [Repealed.]~~
5. The veteran was eligible for the exemption at the time of death. This exemption is available even if the qualifying veteran never requested the exemption.

B. The exemption for a surviving spouse includes real property (a) held by the veteran's spouse as tenant for life, (b) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (c) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

1VAC80-10-60. Proration when not all owners qualify for the exemption.

In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to subsection A or B of §§ 58.1-3219.5 and 58.1-3219.9 of the Code of Virginia, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D, then the exemption shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption pursuant to subsections A and B, and as a denominator, 100 percent.

Statutory Authority: § 58.1-3211.1 of the Code of Virginia.

1VAC80-10-70. Cooperative Associations.

The exemption does not apply to property owned by a cooperative association or any other form of ownership in which the qualified veteran does not actually own the real property other than the trusts detailed in **1VAC80-10-30**.

1VAC80-10-80. Qualified veterans and surviving spouses residing in hospitals, nursing homes, convalescent homes or other care facilities.

If the qualified veteran or surviving spouse is residing in a hospital, nursing home, convalescent home, or other facility for physical or mental care for an extended period of time, the exemption will continue on the property so long as such real estate is not used by or leased to others for consideration.

Statutory Authority: § 58.1-3219.8 of the Code of Virginia

1VAC80-10-90. Application.

A. A **veteran** claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in the veteran's respective locality:

1. A Summary of Benefits letter issued by the VA, or its successor agency, indicating that the veteran has a 100% service-connected, permanent, and total disability;

2. An affidavit or application on a form provided by the locality that:
 - a. Sets forth the name of the veteran and the name of the spouse, if any, also occupying the real property;
 - b. Indicates whether the real property is jointly owned by two spouses; and
 - c. Certifies that the real property is occupied as the veteran's principal place of residence; and
3. Proof of residence occupancy acceptable to the applicable locality, such as a valid Virginia driver's license, or other proof of residency acceptable to the locality.

B. A **surviving spouse of a veteran** claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in her/his respective locality:

1. A summary of benefits letter issued by the VA, or its successor agency, indicating that the veteran had a 100% service-connected, permanent, and total disability;
2. An affidavit or application on a form provided by the locality that:
 - a. Sets forth the name of the deceased veteran and the name of the spouse;
 - b. Indicates whether the real property is jointly owned by the two spouses; and
 - c. Certifies that the real property is occupied as the surviving spouse's principal place of residence;
3. Proof of residence occupancy acceptable to the applicable locality, such as a valid Virginia driver's license, or other proof of residency acceptable to the locality;
4. Death certification to confirm veteran's date of death is on or after January 1, 2011; and
5. A certificate of marriage from the appropriate state office of records.

C. The veteran or surviving spouse may complete the local tax exemption application before receipt of the VA Summary of Benefits letter. The Commissioner of Revenue, or other assessing official, shall ensure that the veteran is aware the application is not complete without the required VA letter. When the application is complete, the assessing official shall inform the veteran or surviving spouse by mail whether or not the application is approved, and if exempted, the amount of the exemption.

D. The veteran or surviving spouse shall be required to re-file the application, and notify the previous jurisdiction, required by this section only if the principal place of residence changes.

E. While there is no deadline to apply for the exemption, the Commissioner of the Revenue, or assessing official, may only correct and refund (without interest) the past assessments of an initially qualified applicant for no more than the current tax year, plus up to three prior tax years after January 1, 2011.

F. No county, city, or town shall be liable for any interest on any refund due to the veteran or surviving spouse for taxes paid prior to the filing of the application required by § 58.1-3219.6 of the Code of Virginia.

G. In the determination of the exemption, no locality may implement income or asset limitations or a deadline for application.

H. This chapter does not prohibit the locality's ability to require an annual confirmation of continued residence from the qualifying veteran or surviving spouse.

Statutory Authority: § 58.1-3219.6 of the Code of Virginia.

1VAC80-10-100. Informal requests for information; formal appeals process.

A. The Commissioner will provide written guidance to, and respond to requests for information from, Commissioners of the Revenue, other assessing officials, or veterans, regarding the exemption, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and the implementing statutes. Such requests may be by phone or in writing. Request for an appeal must be in writing.

B. The Commissioner does not have the authority to answer questions regarding the assessed value of any property. Such questions should be answered solely by the veteran's respective Commissioner of Revenue, or other assessing official.

C. A veteran or surviving spouse desiring to appeal a denial of an application for exemption by a Commissioner of the Revenue, or other assessing official, shall send a written request for appeal and the document from the veteran's respective Commissioner of Revenue or other assessing official denying the veteran's application as follows:

1. By electronic mail to john.newby@dvs.virginia.gov; carrieann.alford@dvs.virginia.gov with a subject line that states ATTN: Tax Exemption – APPEAL; or

2. By U.S. mail or delivery to Commissioner, Virginia Department of Veterans Services, ATTN: Tax Exemption – APPEAL, 101 N. 14th St., 17th Floor, Richmond, VA 23219

D. The Commissioner may conduct hearings telephonically, by video conferencing means, or if he determines it necessary, in person at the Department's headquarters in Richmond. The appeal shall be limited to issues involving the tax exemption eligibility criteria. The Commissioner is not authorized to hear or decide appeals regarding a dispute over a property's assessed value.

E. In advance of any hearing, both the veteran, or surviving spouse, and the Commissioner of the Revenue, or other assessing official, shall be provided: (i) reasonable notice of the time, date, and location of the hearing; (ii) the right to appear in person or by counsel, or other qualified representative, before the agency or its subordinates for the presentation of factual data, argument, or proof in connection with any case, and (iii) notice of all facts or information in the possession of the Department that could be relied upon in making a decision.

F. The Commissioner shall render a decision within 90 days from the date of the hearing, or from a later date agreed to by the veteran, or surviving spouse, and the Commissioner. If the Commissioner does not render a decision within 90 days, the veteran may provide written notice to the Commissioner that a decision is due. If no decision is made within 30 days from the Commissioner's receipt of the notice, the decision shall be deemed to be in favor of the veteran.

G. The final decision by the Commissioner shall be mailed to all named parties.

H. A decision of the Commissioner may be appealed by either party to the circuit court in the locality in which the veteran, or surviving spouse, resides.

I. The burden shall be upon the party complaining of the Commissioner's decision to designate and demonstrate an error of law subject to review by the circuit court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter and the factual showing respecting entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. Any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes,

and records of its proceedings, augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court, except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency. The court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.



1VAC AGENCY NO. 80
DEPARTMENT OF VETERANS SERVICES
CHAPTER 20
SURVIVING SPOUSES OF SERVICE MEMBERS KILLED IN ACTION
REAL PROPERTY TAX EXEMPTION

The publication of these regulations through the VAC, distributed to the Commissioners of the Revenue and Virginia Association of Assessing Officials, and through other official VDVS channels to veterans or any assessing official, is done to comply with the Code of Virginia § 58.1-3219.11: *“The Commissioner of the Department of Veterans Services shall promulgate rules and regulations governing the administration and implementation of the property tax exemption under this article.”* Nothing in this section of VAC regulations was affected by the passage of HB1655 and SB1270.

Questions regarding these regulations should be directed to the VDVS Director of Policy & Planning.

1VAC80-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the Department of Veterans Services.

“Department” means the Virginia Department of Veterans Services.

“Dwelling” means the single structure, including any permanent attachments thereto, that is the principal place of residence of the qualifying surviving spouse.

“Exemption” means the exemption from real property taxes authorized by subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and § 58.1-3219.9 of the Code of Virginia.

“Surviving spouse” is a spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the U.S. Department of Defense, or (ii) of any member of the armed forces of the United States who died of wounds as determined by the U.S. Department of Defense. The surviving spouse must be able to show the surviving spouse was married to the qualifying service member at the time of the service member’s death.

“Real property” is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land, and the dwelling occupied by the qualified surviving spouse.

“VA” means the United States Department of Veterans Affairs or any successor agency.

1VAC80-20-20. Real Property Exempt from Taxation.

A. The following is exempt from taxation: the dwelling that is the principal residence of a qualified surviving spouse, plus up to one acre of land, or more than one acre if a given locality has exempted such larger acreage pursuant to § 58.1-3210 of the Code of Virginia (exemption for elderly and handicapped). The exemption extends to real property improvements other than a dwelling, including the land upon which such improvements is situated, so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and other personal effects as classified in subdivision A 14 of § 58.1-3503 of the Code of Virginia and as listed in § 58.1-3504 of the Code of Virginia and (ii) for other than a business purpose.

B. If the value of a dwelling is in excess of the average assessed value, in the locality which it is located, as described in this subsection, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes.

C. Manufactured homes, as defined in § 46.2-100 of the Code of Virginia, whether or not the wheels and other equipment previously used for mobility have been removed, shall be exempt after the qualifying surviving spouse has titled the home in the Commonwealth and shown proof of ownership. §§ 58.1-3219.5 and 58.1-3219.9 of the Code of Virginia are the only instances when manufactured homes may be classified as real property. If the surviving spouse does not own the land on which the manufactured home is located, then the land is not exempt. The spouse must meet all other provisions of § 58.1-3219.9 of the Code of Virginia.

Statutory Authority: § 58.1-3219.9 of the Code of Virginia.

1VAC80-20-30. Full exemption; joint ownership; trusts.

A. For purposes of this exemption, the full exemption is authorized when real property of any surviving spouse of a member of the armed forces killed in action is held in one of the following trusts: (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support.

B. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

1VAC80-20-40. Partial Exemptions.

If the qualified surviving spouse acquires the property after January 1, 2015, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360 of the Code of Virginia.

1VAC80-20-50. Surviving Spouse Exemption.

The surviving spouse shall qualify for the exemption, so long as:

1. The death of the qualified service member occurs in combat;
2. The surviving spouse was married to the qualified service member at the time of death;
3. The surviving spouse does not remarry;

1VAC80-20-60. Proration when not all owners qualify for the exemption.

In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to subsection A or B of §§ 58.1-3219.5 and 58.1-3219.9 of the Code of Virginia, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D, then the exemption shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption pursuant to subsections A and B, and as a denominator, 100 percent.

Statutory Authority: § 58.1-3211.1 of the Code of Virginia.

1VAC80-20-70. Cooperative Associations.

The exemption does not apply to property owned by a cooperative association or any other form of ownership in which the qualified surviving spouse does not actually own the real property other than the trusts detailed in **1VAC80-20-30**.

1VAC80-20-80. Qualified surviving spouses residing in hospitals, nursing homes, convalescent homes or other care facilities.

If the qualified surviving spouse is residing in a hospital, nursing home, convalescent home, or other facility for physical or mental care for an extended period of time, the exemption will continue on the property so long as such real estate is not used by or leased to others for consideration.

Statutory Authority: § 58.1-3219.12 of the Code of Virginia.

1VAC80-20-90. Application.

A. A surviving spouse claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in her/his respective locality:

6. A DD-1300 death certification, issued by the U.S. Department of Defense (DOD), or its successor agency, to confirm date of death *and* indicating that the service member was killed in action as determined by the DOD. For purposes of this section, such determination of “killed in action” includes a determination by the DOD of “died of wounds received in action”;

7. An affidavit or application on a form provided by the locality that:
 - a. Sets forth the name of the deceased service member and the name of the spouse;
 - b. Indicates whether or not the real property is jointly owned by the two spouses; and
 - c. Certifies that the real property is occupied as the surviving spouse's principal place of residence;
8. Proof of residence occupancy acceptable to the applicable locality, such as a valid Virginia driver's license, or other proof of residency acceptable to the locality; and
9. A certificate of marriage from the appropriate state office of records.

D. The surviving spouse shall be required to re-file the application, and notify the previous jurisdiction, required by this section only if the principal place of residence changes.

E. While there is no deadline to apply for the exemption, the Commissioner of the Revenue, or assessing official, may only correct and refund (without interest) the past assessments of an initially qualified applicant for no more than the current, plus up to three prior tax years after January 1, 2015.

F. No county, city, or town shall be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the filing of the application required by § 58.1-3219.10 of the Code of Virginia.

G. In the determination of the exemption, no locality may implement income or asset limitations or a deadline for application.

H. The limitations and parameters laid out in this policy do not prohibit the locality's ability to require an annual confirmation of continued residence from the qualifying surviving spouse.

Statutory Authority: § 58.1-3219.10 of the Code of Virginia.

1VAC80-20-100. Informal requests for information; formal appeals process.

A. The Commissioner will provide written guidance to, and respond to requests for information from, Commissioners of the Revenue, other assessing officials, or surviving spouses, regarding the exemption, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and the implementing statutes. Such requests may be by phone or in writing. Request for an appeal must be in writing.

B. The Commissioner does not have the authority to answer questions regarding the assessed value of any property. Such questions should be solely by the surviving spouse's respective Commissioner of Revenue or other assessing official.

C. A surviving spouse desiring to appeal a denial of an application for exemption by a Commissioner of the Revenue, or other assessing official, shall send a written request for appeal and the document from the surviving spouse's respective Commissioner of Revenue or other assessing official denying the surviving spouse's application, to:

1. By electronic mail to john.newby@dvs.virginia.gov; carriann.alford@dvs.virginia.gov with a subject line that states ATTN: Tax Exemption – APPEAL; or

2. By U.S. mail or delivery to Commissioner, Virginia Department of Veterans Services,
ATTN: Tax Exemption – APPEAL, 101 N. 14th St., 17th Floor, Richmond, VA 23219

D. The Commissioner may conduct hearings telephonically, by video conferencing means, or if he determines it necessary, in person at the Department's headquarters in Richmond. The appeal shall be limited to issues involving the tax exemption eligibility criteria. The Commissioner is not authorized to hear or decide appeals regarding a dispute over a property's assessed value.

E. In advance of any hearing, both the surviving spouse and the Commissioner of the Revenue, or other assessing official, shall be provided: (i) reasonable notice of the time, date, and location of the hearing; (ii) the right to appear in person or by counsel, or other qualified representative, before the agency or its subordinates for the presentation of factual data, argument, or proof in connection with any case, and (iii) notice of all facts or information in the possession of the Department of Veterans Services that could be relied upon in making a decision.

F. The Commissioner shall render a decision within 90 days from the date of the hearing, or from a later date agreed to by the surviving spouse and the Commissioner. If the Commissioner does not render a decision within 90 days, the surviving spouse may provide written notice to the Commissioner that a decision is due. If no decision is made within 30 days from the Commissioner's receipt of the notice, the decision shall be deemed to be in favor of the surviving spouse.

G. The final decision by the Commissioner shall be mailed to all named parties.

H. A decision of the Commissioner may be appealed by either party to the circuit court in the locality in which the surviving spouse resides.

I. The burden shall be upon the party complaining of the Commissioner's decision to designate and demonstrate an error of law subject to review by the circuit court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter and the factual showing respecting entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. Any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings, augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court, except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency. The court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

Frequently Asked Questions (FAQ)

These are questions that have come directly from Commissioners of the Revenue to DVS and are representative of the issues facing offices around the Commonwealth. Any Commissioner of the Revenue or other assessing official may always email or call the DVS Policy Director directly with questions about a specific application.

Effective Dates

Q. What are the effective dates of Article X, § 6-A?

A. *The effective date of Article X, § 6-A is January 1, 2011. The effective date of §§ 58.1-3219.5 and 58.1-3219.6 is April 6, 2011, and the legal effect of the statutory provisions must be applied retroactively to January 1, 2011. (AG Opinion 7/15/11)*

The effective date of § 58.1-3219.9 is January 1, 2015.

Qualifications

Q. Must the veteran have a specific letter or may they use any official correspondence from the VA that says “100% service-connected, permanent, and totally disabled”?

A. YES. *The U.S. Department of Veterans Affairs mass mailed letters dated 4/18/2011 to ALL disabled veterans in Virginia. The letter has a section near the bottom of the first page called **VA Benefits Information** which provides questions and answers to the three factors for making an exemption determination. Examples are found in **Appendix C***

- *Service-connected disability: **Yes/No** Your combined service-connected evaluation is: **XX%***
- *Are you being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities: **Yes/No or Not Indicated***
- *Are you considered to be totally and permanently disabled due to your service-connected disabilities: **Yes/No****
- **If the “total and permanent” line is not in the letter then the veteran has **not** been given the permanent and total rating.*
- **Some may say 100% disability rating but **it is a temporary condition**. The letter may include a date for another evaluation in the future. In that case, the rating is temporary and the person is not eligible.*
- *This letter has been developed and mailed especially to assist Commissioners of the Revenue in making their decisions.*
- *If the veteran did not receive the 4/18/2011 letter, the Commissioner of the Revenue or other assessing official should fill out VA form 21-4158 with a request to send a letter in order to get the same information in this format. **Substitute letters should not be accepted.***

Q. Do the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans rated by the U.S. Department of Veterans Affairs (VA) with a total disability rating on the basis of individual unemployability due to service-connected disability?

A. **Yes.** *The tax exemption applies to veterans rated by the VA with a total disability rating on the basis of individual unemployability due to a service-connected disability which rating. (AG Opinion 7/15/11)*

- *If the person has an overall rating less than 100% but has that second designation of “being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities” AND they have the permanent and total rating listed on the letter, then **they are eligible.***

Q. **If the veteran applies for the exemption and proves residency and all other requirements back to the effective date of January 1, 2011, is the legal effect of the statutory provisions that the Commissioner of the Revenue must apply retroactively back to 2011 or the standard three years?**

A. *Some jurisdictions have been applying the tax exemption retroactively back to 2011, even though that is now more than three years past. It is the opinion of the DVS Commissioner that this is a local matter and if the Commissioner of the Revenue or other assessing official, with the support of the County Board of Supervisors or City Council, chooses to retroactively apply the exemption back to 2011 that is within their rights since it is not explicitly stated in Code. However, no county, city, or town shall be liable for any interest on any refund due to the veteran for taxes paid prior to the veteran's filing of the affidavit or written statement required by § 58.1-3219.6.*

Q. **If the disabled veteran can no longer live unattended and someone moves into the real property to assist with care – does the exemption continue to apply?**

A. *This only relates to the income provisions in Tax Relief for the Elderly and Disabled program, and is not applicable to disabled veterans – unless they are named on the title. In that case, an apportionment of the exemption may be necessary. If the caregiver moves into the veteran's primary residence and the veteran's name remains on the mortgage/deed to the house in full or part then they still qualify.*

Q. **Do the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans who are disabled before the effective date of these provisions?**

A. **Yes.** *As long as the veteran meets all other qualifications, the service-connected disability can be from a conflict pre-2011.*

Q. **Does a legal means exist to extend the tax exemption to the surviving spouse of a veteran who was rated 100% service-connected, permanent, and total disability but died before the exemption's effective date?**

A. *Any such authority would have to come from the General Assembly and voters of Virginia through an amendment to the Constitution.*

- Q. When the disabled veteran dies, if there is not a surviving spouse, at what point will the real property revert to taxable status?**
- a) **Date of death of the disabled veteran?**
 - b) **At the next following tax day *i.e.*, January 1 or other set tax day?**
- A.** *Article 2.3 is silent on return to taxable status. However, the exemption is predicated on the fact that the exemption exists as a result of the property being the principal residence of the qualifying veteran and, as such, should that no longer be the case and there is not a surviving spouse, then it is reasonable to conclude that the exemption ceases on the death of the veteran.*
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Surviving Spouse

Q. Does a surviving spouse who was married to an eligible veteran qualify for the tax exemption when the veteran was disabled before the effective date of the tax exemption?

A. *The surviving spouse of a veteran who is disabled before the January 1, 2011, but still alive on or after January 1, 2011 does qualify for this exemption. (AG Opinion 7/15/11) The veteran may have sustained injuries/disability in any conflict and qualify – as long as they are alive on the effective date.*

Q. Do the provisions of §§ 58.1-3219.5 apply to otherwise qualifying veterans who die before the effective date of these provisions, and their spouses who have not remarried and continue to occupy the real property as their principal place of residence?

A. *The provisions of §§ 58.1-3219.5 do not apply. (AG Opinion 7/15/11 for §§ 58.1-3219.5)*

Q. Does the surviving spouse of a service member killed in action before January 1, 2015 qualify?

A. *Yes. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date.(AG Opinion 12/18/15, please see **Appendix G**)*

Q. Does the tax exemption apply to Virginians who were killed in the Pentagon on 9/11?

A. *The exemption currently does not apply to surviving spouses of those who died on 9/11 under either §§ 58.1-3219.5 or 58.1-3219.9. The DD-1300 forms provided by DOD do not list those who died at the Pentagon as having died in combat. Any such authority to include 9/11 widows would have to come from the General Assembly.*

Q. Should the exemption granted to the disabled veteran be included in the tax exempt real estate book?

A. *These exemptions should be treated like tax relief for the elderly/disabled exemptions. Code section 58.1-3219 for disabled veterans is included under Chapter 32 for Real Property Tax instead of under Chapter 36 for Tax Exempt Property. They should be listed in the taxable book and the exemption handled similar to TRE reductions. Information should be confidential.*

- Q. I have towns in my county. Does the veteran have to also file with the town to qualify for the exemption for town real estate tax?**
- A.** *Unlike the regular tax relief program, there is no provision for the town to have different requirements for the exemption; therefore, filing with the county commissioner or assessor is all that is required. However the Commissioner or Assessor will need to notify the town office of any qualified taxpayer in their respective towns.*
-

- Q. Who is the correct official in the Commonwealth who has the responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6?**
- A.** *The Commissioner of the Revenue has the responsibility for interpreting and implementing §§58.1-3219.5 and 58.1-3219.6. (AG Opinion 7/15/11) However, effective in April 2012 the Commissioner of the Department of Veteran’s Services was tasked with the responsibility for promulgating rules and regulations governing the administration and implementation of the property tax exemption. The DVS Commissioner may also receive and decide appeals upon denial of an application.*
-

- Q. Is the tax exemption a “program” within the meaning of § 2.2-2001(A) and (C)?**
- A.** *No. The tax exemption is not a “program” within the meaning of § 2.2-2001(A) and (C). (AG Opinion 7/15/11)*
-

Property Issues

- Q. If the mobile home is classified as the primary residence and taxed at the real estate rate, does the exemption apply? Does it apply to the parcel per the acreage limits?**
- A.** *As of July 1, 2016 mobile or manufactured homes qualify – if the qualifying veteran meets all other requirements and has proof that the manufactured home is his/her primary residence. Manufactured/mobile homes used for camping or other non-primary residence uses do not qualify. If the veteran owns the manufactured/mobile home but not the land it sits upon, then the land does not qualify for the tax exemption and the two can be separated out for tax purposes. If the veteran owns the land and the manufactured/mobile home, then the acreage limits apply and both the land and manufactured/mobile home qualify for the tax exemption.*
- Q. Can the real property in question be under construction and receive the benefit of the disabled veteran exemption?**
- A.** *The Code requires the real property to be occupied as the principal residence of the veteran. A home under construction will not qualify for tax years before it is complete and inhabited by the veteran or surviving spouse.*
- Q. Are improvements to the primary residence or land able to receive the benefit of the disabled veteran exemption? i.e., sheds, barns, other buildings?**
- A.** *Any improvements, additions, etc. to the primary residence must be attached the primary residence. As of January 1, 2017, the law allows for inclusion in the exemption of improvements to be made “other than the dwelling” including the land upon which the improvement is situated – so long as “the principal use of the improvement is (i) to house or*

cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § [58.1-3503](#) and as listed in § [58.1-3504](#) and (ii) for other than a business purpose.” This means that a veteran or surviving spouse who qualifies for the real property tax exemption and who builds or modifies or improves upon a car port, garage, storage shed or other structure for the housing or covering of a motor vehicle or certain household goods as classified in the listed Code sections can include those improvements in the exemption from taxation. This does not include other improvements to the land or for building or modifying structures that do not meet this narrow distinction. It will not include building guest houses, free-standing offices, additional residences, pools or spas, etc.

Q. Would the exemption apply in total as long as the property is the residence of the veteran even if the residential portion is above a commercial store, such as a grocery or commercial repair garage?

A. *It is recommended to use the same logic as TRE/Disabled in this case. That portion of the structure used as the principal residence would receive an exemption and the rest of the improvement(s) would not.*

Q. Does the General Assembly have the authority to enact the provision in § 58.1-3219.5 that restricts the tax exemption to land not exceeding one acre in size?

A. *The General Assembly has the authority to limit the tax break to land that does not exceed one acre. (AG Opinion 7/15/11)*

Q. Where can I find the definition of the term “real property” and other terms related to this tax exemption?

A. *All relevant terms are defined in the Policy Regarding the Mandate §§ 58.1-3219.5 and 58.1-3219.9, which is contained in this publication and upon request to DVS.*

Appendix A – Resources

DVS Locations

Benefits Services Offices

- 1 Abingdon
- 2 Accomac
- 3 Big Stone Gap
- 4 Charlottesville
- 5 Chesapeake
- 6 Danville
- 7 Emporia
- 8 Fairfax
- 9 Fort Belvoir (planned)
- 10 Fredericksburg
- 11 Hampton
- 12 Hampton VA Medical Center
- 13 Henrico
- 14 Loudoun
- 15 Lynchburg
- 16 Manassas
- 17 McGuire VA Medical Center (Richmond)
- 18 NAS Oceana (planned)
- 19 Norfolk
- 20 Pentagon
- 21 Petersburg
- 22 Portsmouth

- 23 Quantico
- 24 Roanoke
- 25 Richmond/Short Pump (planned)
- 26 Salem VA Medical Center
- 27 South Hill
- 28 Springfield
- 29 Staunton
- 30 Strasburg
- 31 Tazewell
- 32 Virginia Beach
- 33 Williamsburg
- 34 Wytheville

* **VVFS:** Underlined offices indicate co-location of VVFS and Benefits Services offices.

Care Centers

- ★ Sitter & Barfoot Veterans Care Center, Richmond
- ★ Virginia Veterans Care Center, Roanoke

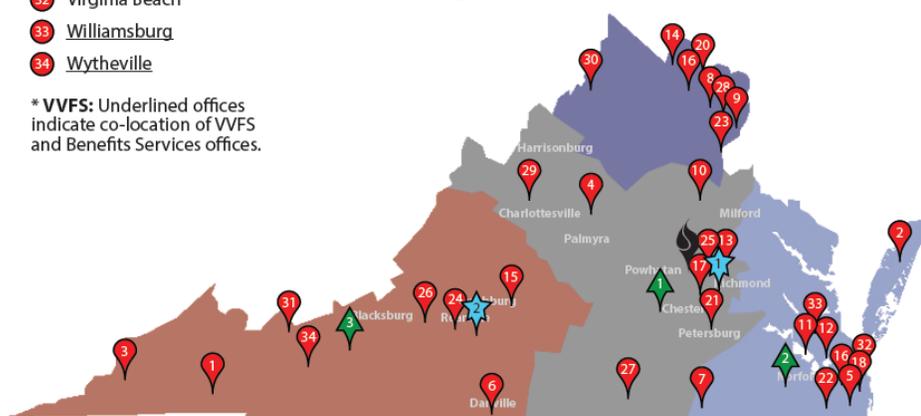
Virginia Veteran and Family Support Regions

- Northern Region
- Eastern Region
- Central Region
- Western Region

Cemeteries

- ▲ Virginia Veterans Cemetery, Amelia
- ▲ Albert G. Horton, Jr., Memorial Veterans Cemetery, Suffolk
- ▲ Southwest Virginia Veterans Cemetery, Dublin

Virginia War Memorial
Richmond



- For the names and contact information for each office around the Commonwealth, please visit <https://www.dvs.virginia.gov/benefits/> or call DVS Headquarters at: 804-786-0286.

VA Form 21-4138

VA Form 21-4138 can be found at: <http://www.vba.va.gov/pubs/forms/VBA-21-4138-ARE.pdf>

- **Please Note:** the request must contain this information and the request must be made in this manner, regardless of who is submitting the form in order to receive the correct qualification letter. If you are unsure of how to fill out or submit this form, please contact the DVS Benefits office within, or closest to, your jurisdiction.

I AM 100% SCD AND AM REQUESTING A LETTER STATING THAT I AM RATED 100% PERMANENTLY AND TOTALLY DISABLED BY THE U.S. DEPARTMENT OF VETERANS AFFAIRS.

THIS LETTER WILL BE PROVIDED TO THE COMMISSIONER OF THE REVENUE FOR A REAL ESTATE TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS. I REQUEST YOU ISSUE A LETTER SIMILAR TO THE ATTACHED SAMPLE LETTER WHICH INCLUDES ALL REQUIRED INFORMATION.

Appendix B - Sample Application Form



LOCALITY CoR

Commissioner of the Revenue
Address 1
City, VA, 99999
www.localwebsite.gov

Need Assistance?
(999) 999-9999
Fax: (999) 999-9999

APPLICATION FOR REAL PROPERTY TAX RELIEF FOR VETERANS WITH 100% SERVICE-CONNECTED DISABILITY

QUALIFICATIONS:

- Disability of Veteran must be 100% service-connected AND permanent AND total.
- Residence must be Veteran's primary residence (proof, such as resident State tax return, may be requested).
- Spouse (if applicable) must also be identified.
- Deceased Veteran (if applicable) must have died on or after January 1, 2011.
- Surviving Spouse (if applicable) must not be remarried.
- Surviving Spouse (if applicable) must continue to reside in primary residence.

REQUIRED DOCUMENTATION:

- Certification of disability from the Department of Veterans Affairs indicating the disability is: (a) 100% service-connected, AND (b) permanent, AND (c) total.
- A copy of a recent utility bill for the personal residence.
- (If applicable) Copy of Veteran's death certificate showing death occurred on or after January 1, 2011.

APPLICANT INFORMATION

Name of Veteran (<i>Last, First, Middle Initial</i>):	Social Security No	Telephone No(s):
Name of Spouse (<i>Last, First, Middle Initial</i>):	Social Security No.:	Telephone No(s):
Address of Primary Residence To Be Granted Local Real Estate Tax Relief :		
Mailing Address (<i>if different from Primary Residence Address</i>):		
Is the above-listed Primary Residence occupied by the Veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is the above-listed Primary Residence occupied by the Veteran's Surviving Spouse? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is the above-listed Primary Residence jointly owned by the Veteran and Spouse? <input type="checkbox"/> Yes <input type="checkbox"/> No (If no, please describe ownership.)		
If the Veteran is deceased, has the above-named Surviving Spouse remarried? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Certification from the U.S. Department of Veterans Affairs of 100% service-connected, permanent, and total disability is: <input type="checkbox"/> Attached <input type="checkbox"/> Already on file with the Commissioner of Revenue		

CERTIFICATION

VETERAN:

I declare, under penalty of perjury, that the above-listed physical address is occupied as my primary place of residence, that I have provided to this office the original, designated U.S. Department of Veterans Affairs letter issued to me attesting to my 100% service-connected, permanent, and total disability, and that I understand I must reapply for tax relief if my primary place of residence changes. I further declare, under penalty of perjury, that the foregoing information and accompanying documentation are true, correct, and complete to the best of my knowledge and belief.

Signature of Applicant/Owner _____ Signature of Co-Owner/Spouse _____ Date _____

(OR) SURVIVING SPOUSE OF VETERAN:

I declare, under penalty of perjury, that I am the Surviving Spouse of the above-listed Veteran, that I have presented to this office a certified copy of the Veteran's death certificate confirming a date of death on or after January 1, 2011, that I continue to occupy the above-listed physical address as my primary place of residence, that I have provided to this office the original, designated U.S. Department of Veterans Affairs letter issued to the Veteran attesting to his/her 100% service-connected, permanent, and total disability, and that I have not remarried. I further declare, under penalty of perjury, that the foregoing information and accompanying documentation are true, correct, and complete to the best of my knowledge and belief.

Signature of Surviving Spouse _____ Date _____

Signature of Preparer (if not Applicant) _____ Relationship _____ Telephone No. _____ Date _____

FOR MORE INFORMATION, CONTACT:

Office of the Commissioner of the Revenue
 Email: employee@locality.gov
 Telephone: 999-999-9999
 Facsimile: 999-999-9999

Mailing Address: **Address**
 Physical Address: **Street address**
 Website: www.localityname.gov

IMPORTANT INFORMATION

Pursuant to Article X, Section 6-A of the Constitution of Virginia, the General Assembly exempted from taxation the real property, including the joint real property of husband and wife, of any Veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent and total disability, and who occupies the real property as his/her primary place of residence.

The Surviving Spouse of a Veteran eligible for the exemption set forth in this Article shall also qualify for the exemption, so long as the death of the Veteran occurred on or after January 1, 2011, the Surviving Spouse does not remarry, and the Surviving Spouse continues to occupy the real property as his/her primary place of residence.

The Veteran or Surviving Spouse claiming the exemption under this Article shall file with the Commissioner of the Revenue an Application, including Certification:

- (a) setting forth the name of the disabled Veteran and the name of the Spouse (if any) also occupying the real property,
- (b) indicating whether the real property is jointly owned by the husband and wife,
- (c) certifying that the real property is occupied as the primary residence by either the Veteran or Surviving Spouse (if applicable); and
- (d) certifying that the Surviving Spouse (if applicable) has not remarried.

The Veteran or Surviving Spouse shall also provide documentation from the U.S. Department of Veterans Affairs or its successor indicating that the Veteran has a 100 percent service-connected, permanent, and total disability. This document can be obtained by filing a *VA Form 21-4138* with the regional office of the Department of Veterans Affairs at *U.S. Department of Veterans Affairs, Regional Office, 210 Franklin Rd SW, Roanoke, VA 24011*. The Veteran shall only be required to re-file the required information if the Veteran's primary residence changes. If a Surviving Spouse of a Veteran is applying for the exemption, the Surviving Spouse shall also provide documentation that the Veteran's death occurred on or after January 1, 2011.

Privacy Act Notice: Disclosure of your social security number on this form is mandatory, as authorized by the Virginia State Code, Section 58.1-3017. Social security numbers are regarded as confidential, and except as otherwise provided by law, those numbers will not be disclosed for any other purpose.

**** FOR OFFICE USE ONLY ****

Date Application Received:	PIN:
Acreage:	Map No.:

Qualifies for Relief: **Yes** **No** **If no, explain:**

	Exempted	Taxable
Land Value		
Building Value		
Total Value:		
Tax Rate:		
Total Taxes		
Amount of Relief		

Appendix C - Sample approved letters received from the U.S. Department of Veterans Affairs

Disabled Veteran Ratings Letter - 100% Service Connected Disabled and Permanent & Total Rating



DEPARTMENT OF VETERANS AFFAIRS
VA Regional Office
210 Franklin Rd. SW
Roanoke, VA 24011

March 22, 2011

In reply, refer to: 314/211
C.

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to you as disabled veterans to use in applying for benefits such as state or local property, vehicle tax relief, civil service preference, housing entitlements, free or reduced state park annual memberships, or any other program or entitlement for which verification of VA benefits is required. Please safeguard this important document. This letter is considered an official record of your service-connected disability(ies).

Our records contain the following information:

Personal Claim Information:

Your VA claim number is

You are the veteran.

Military Information:

Your character of discharge and service dates include:

Character of Discharge **Honorable** Entrance: Separation
(You may have additional periods of service not listed above)

VA Benefits Information:

Service-connected disability: **Yes**

Your combined service-connected evaluation is: **100%**

Are you entitled to a higher level of disability compensation due to being unemployable: **No**

Are you considered to be totally and permanently disabled due to your service-connected disabilities: **Yes**

Are you service-connected for loss of or loss of use of a limb, or you are totally blind in or missing at least one eye: **NO**

Have you received a Specially Adapted Housing (SAH) and /or Special Home Adaptation (SHA) grant: **No**

Are you in receipt of nonservice-connected pension: **No**

You should contact your state or local office of veterans affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of veterans affairs are available at <http://www.va.gov/statedva.htm>.

If you have any questions about this letter or need additional verification of VA benefits, please call 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833. Send electronic inquiries through the Internet at <https://iris.va.gov>.

Sincerely yours,

David M. Svirsky

David M. Svirsky
Veterans Service Center Manger

This letter has all three items clearly laid out:

- ✓ Service connected
- ✓ 100% rating
- ✓ Totally & permanently disabled due to service connected disability

Disabled Veteran Ratings Letter – 100% Service Connected Disabled and Permanent & Total Rating



Department of Veterans Affairs

210 FRANKLIN RD SW
ROANOKE VA 24011

March 15, 2017

Veteran's Name:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as housing entitlements, free or reduced state park annual memberships, state or local property or vehicle tax relief, civil service preference, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter replaces VA Form 20-5455, and is considered an official record of your VA entitlement.

--America is Grateful to You for Your Service--

Our records contain the following information:

Personal Claim Information:

Your VA claim number is:
You are the Veteran

Military Information:

Your character(s) of discharge and service date(s) include:
Army, Honorable, 09-Jan-1970 - 15-Aug-1971
(You may have additional periods of service not listed above)

VA Benefits Information:

Service-connected disability: Yes
Your combined service-connected evaluation is: 100 PERCENT
The effective date of the last change to your current award was: 01-DEC-2016
Your current monthly award amount is: \$2,915.55
Are you considered to be totally and permanently disabled due to your service-connected disabilities: Yes

**This is a 2nd format the VA will use.
This letter still has all three items
clearly laid out:**

- ✓ Service connected
- ✓ 100% rating
- ✓ Totally & permanently disabled due to service connected disability

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at <http://www.va.gov/statedva.htm>.

Need Additional Information or Verification?

If you have any questions about this letter or need additional verification of VA benefits, please call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the federal relay number is 711. Send electronic inquiries through the Internet at <https://iris.va.gov>.

Sincerely yours,

Regional Office Director

**Disabled Veteran Ratings Letter – Less than 100% Service Connected
Disabled BUT QUALIFIES –
Rated at 100% due to UI and Permanent & Total Rating**



**Department of
Veterans Affairs**

PO BOX 100021
DECATUR GA 30031-7021

April 18, 2011

Veteran's Name:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as housing entitlements, free or reduced state park annual memberships, state or local property or vehicle tax relief, civil service preference, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter replaces VA Form 20-5455, and is considered an official record of your VA entitlement.

--America is Grateful to You for Your Service--

Our records contain the following information:

Personal Claim Information:

Your VA claim number is:
You are the Veteran

Military Information:

Your character(s) of discharge and service date(s) include:

Air Force, Honorable, 18-Nov-1960 - 26-May-1961
Army, Honorable, 25-Feb-1963 - 09-Jul-1963

(You may have additional periods of service not listed above)

VA Benefits Information:

Service-connected disability: Yes

Your combined service-connected evaluation is: 80 PERCENT

The effective date of the last change to your current award was: 01-DEC-2008.

Your current monthly award amount is: \$2,823.00

Are you being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities: Yes

Are you considered to be totally and permanently disabled due to your service-connected disabilities: Yes

Have you received a Specially Adapted Housing (SAH) and/or Special Home Adaptation (SHA) grant: No

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at <http://www.va.gov/statedva.htm>.

This letter has all three qualifications:

- ✓ Service connected
- ✓ 100% rating – Due to UI
- ✓ Totally & permanently disabled due to service connected disability

Disabled Veteran Ratings Letter – Veteran Does Not Qualify



**Department of
Veterans Affairs**
210 FRANKLIN RD SW
ROANOKE VA 24011

April 18, 2011

Veteran's Name:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as housing entitlements, free or reduced state park annual memberships, state or local property or vehicle tax relief, civil service preference, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter replaces VA Form 20-5455, and is considered an official record of your VA entitlement.

--America is Grateful to You for Your Service--

Our records contain the following information:

Personal Claim Information:

Your VA claim number is:
You are the Veteran

Military Information:

Your character(s) of discharge and service date(s) include:
Army, Honorable, 02-Apr-1969 - 25-Mar-1971
(You may have additional periods of service not listed above)

VA Benefits Information:

Service-connected disability: Yes

Your combined service-connected evaluation is: 70 PERCENT

The effective date of the last change to your current award was: 01-DEC-2008

Your current monthly award amount is: \$1,333.00

Are you being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities: Not Indicated

Have you received a Specially Adapted Housing (SAH) and/or Special Home Adaptation (SHA) grant: No

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at <http://www.va.gov/statedva.htm>.

This letter has only one of three qualifications:

- ✓ Service connected
- ✓ **NOT** 100% rated
- ✓ **NOT** currently rated Totally & permanently disabled due to service connected disability (It can often take decades to get the T&P rating)
- ✓ **Veteran does not qualify**

Appendix D - Sample VA 21-4138

 Department of Veterans Affairs		STATEMENT IN SUPPORT OF CLAIM	
<p>PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.</p> <p>RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.whitehouse.gov/omb/library/OMBINV.html. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.</p>			
FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (<i>Type or print</i>)		SOCIAL SECURITY NO.	VA FILE NO. C/CSS -
<p>The following statement is made in connection with a claim for benefits in the case of the above-named veteran:</p> <p>I AM 100% SCD AND AM REQUESTING A LETTER STATING THAT I AM RATED 100% PERMANENTLY AND TOTALLY DISABLED BY THE U.S. DEPARTMENT OF VETERANS AFFAIRS.</p> <p>THIS LETTER WILL BE PROVIDED TO THE COMMISSIONER OF THE REVENUE FOR A REAL ESTATE TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS. I REQUEST YOU ISSUE A LETTER SIMILAR TO THE ATTACHED SAMPLE LETTER WHICH INCLUDES ALL REQUIRED INFORMATION.</p>			
I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.			
SIGNATURE		DATE SIGNED	
ADDRESS		TELEPHONE NUMBERS (<i>Include Area Code</i>)	
		DAYTIME	EVENING
PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.			
VA FORM AUG 2004	21-4138	EXISTING STOCKS OF VA FORM 21-4138, JUN 2000, WILL BE USED	CONTINUE ON REVERSE

Sample VA 21-4138 Con't

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

Appendix E – Attorney General Opinion regarding start date



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

March 2, 2011

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Ross A. Mugler
Commissioner of the Revenue
City of Hampton
Post Office Box 636
Hampton, Virginia 23669

Dear Commissioner Mugler:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire whether two bills exempting property for disabled veterans “for tax years beginning on or after January 1, 2011,” each containing an emergency enactment clause, would apply to the tax bill due in your locality on June 5, 2011, and which tax bill is assessed for the second half of the tax year that began on July 1, 2010.

Response

It is my opinion that, were it to become law, the exemption at issue would not apply to payments due for the tax year that began on July 1, 2010, including payments due for the second half of the tax year.

Background

House Bill 1645 and Senate Bill 987 would amend the Code of Virginia to exempt from taxation the real property of a veteran who has “a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.” The bills provide that the exemption would apply “for tax years beginning on or after January 1, 2011.” The proposed legislation contains an emergency enactment clause, meaning that the proposal would become law from the time of its passage.

Applicable Law and Discussion

Although the proposed legislation would go into effect immediately upon approval by the General Assembly and the Governor due to its emergency enactment clause, by its plain language the law would apply only to “tax years beginning on or after January 1, 2011.” The proposed legislation would not apply to a tax year that began before January 1, 2011. You relate that the tax year for the City of Hampton begins on July 1. Therefore, the current tax year began on July 1, 2010, and the proposals by their plain terms would not apply until the following tax year, *i.e.* a tax year that began “on or after

Honorable Ross A. Mugler
March 2, 2011
Page 2

January 1, 2011.” The fact that there are two payments made during the course of the tax year does not alter the fact that the tax year began before January 1, 2011. Therefore, I conclude that the second half of the bill for real property of disabled veterans that will come due on June 5, 2011 would not be subject to the exemption until the following tax year.

Conclusion

Accordingly, it is my opinion that, were it to become law, the exemption at issue would not apply to payments due for the tax year that began on July 1, 2010, including payments due for the second half of the tax year.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with "Ken" and "C" being the most prominent parts, and "II" written as two parallel horizontal lines.

Kenneth T. Cuccinelli, II
Attorney General

Appendix F – Attorney General Opinion July 15, 2011



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 15, 2011

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable John M. O'Bannon, III, M.D.
Member, House of Delegates
Post Office Box 70365
Richmond, Virginia 23255

The Honorable Linda T. Puller
Member, Senate of Virginia
Post Office Box 73
Mount Vernon, Virginia 22121

The Honorable L. Scott Lingamfelter
Member, House of Delegates
5420 Lomax Way
Woodbridge, Virginia 22193

The Honorable Stephen D. Newman
Member, Senate of Virginia
Post Office Box 480
Forest, Virginia 24551

Dear Delegate O'Bannon, Senators Puller and Newman, and Delegate Lingamfelter:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask several questions in connection with Article X, § 6-A of the Virginia Constitution and the legislation implementing that provision.

1. You ask what are the effective dates of Article X, § 6-A, as approved by the voters on November 2, 2010, and §§ 58.1-3219.5 and 58.1-3219.6, and whether the legal effect of these provisions may be applied retroactively;
2. You ask whether a surviving spouse who was married to an eligible veteran qualifies for the tax exemption when the veteran died before the effective date of the tax exemption;
3. You ask whether the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to otherwise qualifying veterans who die before the effective date of these provisions, and their spouses who have not remarried and continue to occupy the real property as their principal place of residence;
4. You ask whether the provisions of Article X, § 6-A, approved by the voters on November 2, 2010, and §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans rated by the U.S. Department of Veterans Affairs ("VA") with a total disability rating on the basis of individual unemployability due to service-connected disability;
5. You inquire regarding the identity of the correct official in the Commonwealth who has responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6;

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 2

6. You ask whether the General Assembly may enact legislation authorizing the Commissioner of the Virginia Department of Veterans Services ("VDVS") to promulgate rules and regulations governing the administration and/or implementation of this tax exemption;
7. You ask whether the General Assembly has the authority to enact the provision in § 58.1-3219.5 that restricts the tax exemption to land not exceeding one acre in size;
8. You ask for a definition of the term "real property" and whether such term includes just the dwelling on the land occupied by the veteran or includes both the dwelling and the land;
9. You ask whether the tax exemption is a "program" within the meaning of § 2.2-2001(A) and (C);
10. You ask whether a legal means exists to extend the tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service connected, permanent, and total disability but died before the exemption's effective date;
11. You ask whether the tax exemption applies to real property that the veteran occupies as his or her principal residence but that the veteran has chosen to place title in i) a revocable inter vivos trust with the spouse; ii) a revocable inter vivos trust with other(s) than the spouse; or iii) an irrevocable trust; and
12. You ask whether the tax exemption applies exclusively to the real property owned at the time of death by the veteran who qualified for the tax exemption or whether it follows the spouse if he or she decides to relocate.

Response

It is my opinion that:

1. The effective date of Article X, § 6-A as approved by the voters on November 2, 2010, is January 1, 2011. The effective date of §§ 58.1-3219.5 and 58.1-3219.6 is April 6, 2011, and the legal effect of the statutory provisions must be applied retroactively to January 1, 2011;
2. The surviving spouse of a veteran who dies before the January 1, 2011, effective date of the tax exemption does not qualify for this exemption;
3. The provisions of §§ 58.1-3219.5 and 58.1-3219.6 do not apply to either veterans who die before the effective date of these provisions or their spouses who have not remarried and continue to occupy the real property as their principal place of residence;
4. The tax exemption applies to veterans rated by the VA with a total disability rating on the basis of individual unemployability due to a service-connected disability which rating revolves around the inability to engage in substantially gainful employment;
5. The commissioner of the revenue has the responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6;

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 3

6. The General Assembly may enact legislation authorizing the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption;
7. The General Assembly has the authority to limit the tax break to land that does not exceed one acre;
8. Within the context of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6, the definition of "real property" includes both the dwelling and the land;
9. The tax exemption is not a "program" within the meaning of § 2.2-2001(A) and (C);
10. There is no legal authority to provide the real property tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service connected, permanent, and total disability but died before January 1,2011;
11. The tax relief under Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not available when the veteran has chosen to place title to the real estate in i) a revocable inter vivos trust with the spouse; ii) a revocable inter vivos trust with other(s) apart from the spouse; or iii) an irrevocable trust; and
12. The exemption is exclusive to the property for which the veteran qualified and occupied as his or her principal place of residence at the time of death, and does not follow the spouse if he or she relocates.

Background

At the general election held on November 2, 2010, the voters of the Commonwealth were presented the following referendum question related to amending the Constitution of Virginia:

Shall the Constitution be amended to require the General Assembly to provide a real property tax exemption for the principal residence of a veteran, or his or her surviving spouse, if the veteran has a 100 percent service-connected, permanent, and total disability?^[1]

With 82.4 percent of the voters answering the question in the affirmative² Article X is now amended to include a new § 6-A, which provides that:

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected,

¹ See 2010 Va. Acts chs. 358, 588.

² See VIRGINIA STATE BOARD OF ELECTIONS, NOVEMBER 2, 2010 GENERAL AND SPECIAL ELECTIONS OFFICIAL RESULTS, available at https://www.voterinfo.sbe.virginia.gov/electioniDATA/2010/EB24720D-F5C6-4880-8DC512AE4DOC3772/officiaV9_s.shtml.

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 4

permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues the real property as his or her principal place of residence. ^[3]

As a result of the passage of this referendum question, the 2011 Session of the General Assembly enacted legislation to implement this real property tax exemption, adding in Chapter 32 of Title 58.1, a new Article 2.3, consisting of §§ 58.1-3219.5 and 58.1-3219.6.⁴

As detailed in the United States Department of Veterans Affairs ("VA") booklet "Federal Benefits for Veterans, Dependents and Survivors,"⁵ the VA pays monthly compensation benefits for disabilities incurred or aggravated during active military service. When the VA grants a veteran's claim, it awards a service-connected disability rating that determines the dollar amount of monthly compensation payments. When rating a service-connected disability, a VA adjudicator reviews the medical evidence, finds the appropriate diagnostic code, compares the clinical evidence of the severity of the veteran's current symptoms with the list of symptoms for that diagnostic code, and assigns the rating percentage that corresponds to the selected severity of symptoms. The VA pays the same dollar amount for each percentage level regardless of the nature of the veteran's disability. For example, the monthly payment for a ten percent rating will be the same for a psychiatric disorder, diabetes, heart condition, etc. The same applies to 20 to 100 percent ratings.

The VA uses a schedule of rating disabilities when it determines the level of a veteran's service connected disability. The rating schedule is essentially a listing of diseases and disorders, categorized by body systems, that includes symptoms for each disease or disorder in an increasing order of severity. Percentages of disability are assigned to each level of symptoms from zero (non-compensable disabling) to one-hundred percent (totally disabling) in ten percent increments. The criteria for many VA 100 percent disability ratings includes a requirement that the veteran not be able to get or keep a job because of that disability.

In instances where the service-connected disability rating is not 100 percent, VA benefits nonetheless may be available to compensate the veteran at the 100 percent level if the veteran is unable to work because of his or her service-connected disability/disabilities. This benefit is called a total ("100 percent") rating on the basis of individual unemployability due to service-connected disability and is also referred to as total disability based upon individual unemployability (TDIU or IU). It revolves around to the inability to engage in "substantially gainful employment," which means the ability to earn at least an amount equal to the annual poverty level set by the federal government.

TDIU or IU is a part of the VA's disability compensation program that allows the VA to pay certain veterans compensation at the 100 percent rate, even though the VA has not rated their service-

³ See 2010 Va. Acts chs. 358, 588.

⁴ See 2011 Va. Acts chs. 769, 840.

⁵ See U.S. DEPT OF VETERANS AFFAIRS, FEDERAL BENEFITS FOR VETERANS, DEPENDANTS AND SURVIVORS (2011), available at www.va.gov/opa/publications/benefits_book.asp. The details of the administration of VA disability benefits can be found in the *Code of Federal Regulations*. See 38 C.F.R. Part 4.

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 5

connected disabilities at the 100 percent level. To qualify, a veteran must be "unable to secure or follow substantially gainful employment as a result of service-connected disabilities."⁶ A veteran also must have either 1) one service-connected disability ratable at sixty percent or more, or 2) two or more service connected disabilities, at least one disability ratable at forty percent or more with a combined rating of seventy percent or more.⁷

Notwithstanding these criteria, a veteran, upon special consideration of extra-scheduler factors, still may qualify as totally disabled when the veteran is considered unemployable due to a service connected disability(is), but fails to meet the minimum percentage standards.⁸

Applicable Law and Discussion

I. Effective Date and Retroactivity

You first inquire regarding the effective date of Article X, § 6-A as approved by the voters on November 2, 2010, and of chapters 769 and 840 of the 2011 Acts of Assembly that added §§ 58.1-3219.5 and 58.1-3219.6. You ask when each of these provisions became the law of the Commonwealth and whether the legal effect of these provisions applies retroactively.

Article XII § 1 specifies the procedure for amending the Constitution of Virginia. When a proposed amendment to the Constitution is approved by a majority of those voting at the election designated by the General Assembly for approval of a proposed amendment, that amendment to the Constitution becomes effective on the date prescribed by the General Assembly.⁹

In its 2010 session, the General Assembly, through the passage of House Bill 149 and Senate Bill 31, directed that the proposed amendment adding § 6-A to Article X be submitted to the voters at the November 2, 2010, election.¹⁰ The General Assembly further directed that "[I]f a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011."¹¹ Because a majority of those voting on November 2, 2010 voted in favor of adding § 6-A to Article X of the Constitution, the provisions relating to a property tax exemption for certain veterans was a part of the Constitution on January 1, 2011.

Section 6-A required the General Assembly to exempt from taxation, by general law, "the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real

⁶38 C.F.R. 4.16(a) (2010).

⁷ *Id.*

⁸ *Id.* at § 4. 16(b).

⁹VA. CONST. art. XII, § 1. Note that strict compliance with the prerequisites of Article XII, § 1 is required in order to amend effectively the Constitution. *See* *Coleman v. Pross*, 219 Va. 143, 246 S.E.2d 613 (1978) (holding that where proposed amendments approved at 1978 Session of the General Assembly were not the same as the proposed amendments approved at 1977 session, there was not strict compliance with Article XII, § 1).

¹⁰ *See* 2010 Va. Acts chs. 358, 588.

¹¹*Id.*

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 6

property as his or her principal place of residence." The addition of § 6-A to Article X was not self-executing because the amendment required further legislation from the General Assembly to make its provisions operative.¹² Adding § 6-A to Article X required the General Assembly to enact a general law exempting such veterans from real property taxation.

The general law enacted by the 2011 Session of the General Assembly to implement the provisions of § 6-A to Article X providing for the property tax exemption for certain veterans is contained in Chapters 769 and 840 of the 2011 Acts of Assembly.¹³ Chapters 769 and 840 were signed into law by the Governor on April 6, 2011, and became effective immediately because both contained an emergency enactment clause.¹⁴

The Supreme Court of Virginia recognizes that "[r]etropective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest"¹⁵ The intent of the General Assembly is set forth in § 58.1-3219.5(A), which expressly provides that the exemption applies to tax years beginning on or after January 1, 2011. Furthermore, §§ 58.1-3219.5(B) and 58.1-3219.6 specify that a surviving spouse of such a veteran qualifies for this real property tax exemption "so long as the death of the veteran occurs on or after January 1, 2011," and the surviving spouse provides documentation that the veteran's death occurred on or after January 1, 2011.

I, therefore, conclude that January 1, 2011, is the effective date of Article X, § 6-A of the Constitution of Virginia as approved by the voters on November 2, 2010. Chapters 769 and 840 of the 2011 Acts of Assembly (enacting §§ 58.1-3219.5 and 58.1-3219.6) became the law of the Commonwealth on April 6, 2011. The provisions of §§ 58.1-3219.5 and 58.1-3219.6 clearly and plainly apply to tax years beginning on or after January 1, 2011, and require that the veteran's death occur on or after January 1, 2011, for a spouse to claim the exemption.¹⁶ Finally, the legal effect of these provisions applies retroactively to January 1, 2011.

¹²See *Gray v. Virginia Sec'y of Transp.*, 276 Va. 93, 103,662 S.E.2d 66, 71 (2008) ("If a constitutional provision is self-executing, no further legislation is required to make it operative"). See also *Robb v. Shockoe Slip Found.*, 228 Va. 678, 681-82, 324 S.E.2d 674,676 (1985) (explaining how to determine whether a constitutional provision is self-executing).

¹³ 2011 Va. Acts chs. 769, 840 (adding §§ 58.1-3219.5 and 58.1-3219.6 to Chapter 32 of Title 58.1, relating to real property tax).

¹⁴ "All laws enacted at a regular session ... shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted ... unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date." VA. CONST. art. IV, § 13.

¹⁵*Adams v. Alliant Techsystems, Inc.*, 261 Va. 594, 599, 544 S.E.2d 354,356 (2001) (quoting *Duffy v. Hartsock*, 187 Va. 406,419,46 S.E.2d 570,576 (1948)» (other citation omitted).

¹⁶ "When the language in a statute is clear and unambiguous, [courts] apply the statute according to its plain language." *Va. Polytechnic Inst. & State Univ. v. Interactive Return Serv.*, 271 Va. 304, 309, 262 S.E.2d 436, 438 (2008) (citing *HCA Health Servs. v. Levin*, 260 Va. 215,220,530 S.E. 2d 417, 419-20 (2000))

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 7

II. Legal Effect on Surviving Spouse when Veteran Dies Prior to Effective Date

Your next question asks whether the surviving spouse of a veteran, who otherwise qualifies for the real property tax exemption, would qualify for the exemption when the eligible veteran died before the effective date of the exemption and the surviving spouse has not remarried and continues to occupy the real property as his or her principal place of residence.

Section 58.1-3219.5(B) expressly provides that "[t]he surviving spouse of a veteran eligible for the exemption . . . shall also qualify for the exemption, *so long as the death of the veteran occurs on or after January 1, 2011*" (emphasis added). Because statutes are to be interpreted according to their plain language,¹⁷ I conclude that the exemption extends only to those spouses surviving a qualifying veteran who died on or after January 1, 2011, the effective date of the provision. Therefore, the surviving spouse of an otherwise qualifying veteran who dies before January 1, 2011 does not qualify for such an exemption, even when the surviving spouse has not remarried and continues to occupy the real property as his or her principal place of residence.

III Whether §§ 58.1-3219.5 and 58.1-3219.6 Apply Retroactively

You next ask whether the provisions of §§ 58.1-3219.5 and 58.1-3219.6 apply to all qualifying veterans who die before the effective date of these provisions and their spouses who have not remarried and continue to occupy the real property as their principal place of residence.

Sections 58.1-3219.5 and 58.1-3219.6 went into effect on April 6, 2011. As I have previously stated, "[r]etropective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest."¹⁸ Sections 58.1-3219.5(A), (C), and 58.1-3219.6 expressly provide for retroactive application of these statutory provisions to January 1, 2011, so I must conclude that these provisions do not apply to veterans who died before January 1, 2011, or to their spouses. It is, therefore, necessary for a veteran to qualify for the exemption in the first instance in order for his or her spouse *also* to qualify for the exemption. For the veteran to qualify for the exemption in the first instance, he or she must be rated by the VA pursuant to federal law to have a 100 percent service connected, permanent, and total disability, *and* occupy the real property as his or her principal place of residence. Obviously, a veteran cannot occupy real property as his or her principal place of residence if he or she dies before the effective date of the real property tax exemption.

IV. Meaning of "100 Service-connected, Permanent, and Total Disability"

You next ask whether Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6 apply to veterans rated by the VA with a total ("100 percent") disability rating on the basis of individual unemployability due to service-connected disability (TDIU or IU). This rating relates to the inability to engage in "substantially gainful employment," meaning a job that pays at least an amount equal to the annual poverty level set by the federal government.

¹⁷ See, e.g., *Signal Corp. v. Keane Fed. Sys., Inc.*, 265 Va. 38, 46-47; 574 S.E.2d 253, 257 (2003) (also noting that "[courts] are not are not free to add language, nor to ignore language, contained in statutes.")

¹⁸ *Duffy*, 187 Va. at 419, 46 S.E.2d at 576 (citing *Whitlock v. Hawkins*, 105 Va. 242, 249, 53 S.E. 401, 403 (1906))

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 8

The exemption is dependent on a rating by the VA, or its successor agency, indicating that, under federal law, a veteran has a 100 percent service-connected, permanent, and total disability. The constitutional amendment requires the General Assembly to grant the exemption from taxation on the real property "of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability." Section 58.1-3219.5 contains the same language. The tax exemption is tethered to the VA's rating system.

The VA Schedule for Rating Disabilities¹⁹ comprises ten grades of disability that are based on the average impairment of a veteran's occupational earning capacity.²⁰ Under the rating schedule, the highest grade of disability is 100 percent, which means that a veteran is totally disabled. Under the provisions of 38 C.F.R. § 4.16, however, a total disability rating may also be assigned by the VA where a person who fails to meet the schedular rating percentage is, nevertheless, unable to secure a substantially gainful occupation.²¹ TDIU ratings consider the effect that service-connected disabilities have on a particular veteran's ability to work. Therefore, a total rating based on TDIU is more individualized than a schedular rating, which is based on the average impairment of earnings. In the case of *Norris v. West*,²² the U.S. Court of Appeals for Veterans Claims found that a "claim for TDIU is based on an acknowledgement that even though a rating less than 100% under the rating schedule may be correct, objectively, there are subjective factors that may permit *assigning a 100% rating* to a particular veteran under particular facts."²³ Therefore, a determination of the veteran's entitlement to TDIU is considered in the context of the individual veteran's capabilities regardless of whether an average person would be rendered unemployable under the same circumstances.

Given the VA policy providing that "all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled[.]"²⁴ receiving a TDIU rating is simply "*an alternative way to obtain a total disability rating without being rated 100% disabled under the Rating Schedule.*"²⁵ Furthermore, the VA regulations provide that "[a]ll veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reasons of disabilities which are likely to be permanent shall be rated as permanently and totally disabled."²⁶ Accordingly, I conclude that the tax exemption extends to veterans rated by the VA with a total ("100 percent") disability rating on the basis of individual unemployability due to service-connected disability (TDIU or IU).

It could be argued that the provisions of 38 C.F.R. § 4.16 apply only to total disability determinations based on the rating schedule. Article X, § 6-A to the Constitution and §§ 58.1-3219.5 and 58.1-3219.6, however, do not indicate for what reasons the 100 percent disability rating must be incurred

¹⁹ See 38 C.F.R. pt. 4 (2010).

²⁰ See 38 C.F.R. §§ 4.15, 4.25 (2010).

²¹ See 38 C.F.R. § 4.16(a) (2010).

²² 12 Vet. App. 413 (1999).

²³ *Id.* at 421 (quoting *Parker v. Brown*, 7 Vet. App. 116, 118 (1994)) (emphasis added).

²⁴ 38 C.F.R. § 4.16(b).

²⁵ 12 Vet. App. at 420-21 (emphasis added).

²⁶ See 38 C.F.R. § 4.17 (2010).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 9

other than that it must be service connected. Therefore, if a veteran receives a 100 percent service connected, permanent, and total disability rating from the VA for any reason, the tax exemption will apply.²⁷

V. Responsibility for Interpretation and Implementation

You next ask which official in the Commonwealth is responsible for interpreting and implementing the provisions of §§ 58.1-3219.5 and 58.1-3219.6 that execute the provisions of Article X, § 6-A.

The duties of commissioners of the revenue are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2. Section 58.1-3107 provides that the local commissioner of the revenue "shall obtain ... tax returns from every taxpayer within his jurisdiction who is liable ... to file such return with him for all taxes assessed by his office." It is generally the duty of the commissioner of the revenue to assess property taxes.²⁸

I am, therefore, of the opinion that the commissioner of the revenue, or local official performing the duties of a commissioner of the revenue, is the correct official in the Commonwealth with responsibility for interpreting and implementing the provisions of §§ 58.1-3219.5 and 58.1-3219.6 that execute the provisions of Article X, § 6-A.

VI. Ability of General Assembly to Pass Legislation Regarding Administration of Tax Exemption

You next ask whether the General Assembly may enact legislation that authorizes the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption to include, but not be limited to, providing written guidance to the veterans residing in the Commonwealth, responding to requests for information regarding eligibility from veterans residing in the Commonwealth, and interpreting for the Commonwealth's veterans the provisions of Article X, § 6-A of the Constitution and §§ 58.1-3219.5 and 58.1-3219.6.

The Constitution does not grant power to the General Assembly; it only restricts power "otherwise practically unlimited."²⁹ Accordingly, "the General Assembly may enact any law not prohibited by the Constitution."³⁰ Because no constitutional provision precludes such legislation, I conclude that the General Assembly authorize the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption to include, but not be limited to, providing written guidance to the veterans residing in the Commonwealth, responding to requests for information regarding eligibility from veterans residing in the Commonwealth, and

²⁷ I note that other states' Attorneys General have come to the same conclusion with respect to similar statutes. See 1976 Op. Md. Att'y Gen. 836; 2009 Op. Ark. Att'y Gen. No. 2009-054.

²⁸A prior Opinion of this Office concludes that it is the duty of the commissioner of the revenue to assess property taxes. 1982-83 Op. Va. Att'y Gen. 518.

²⁹ Lewis Trucking Corp. v. Commonwealth, 207 Va. 23, 29, 147 S.E.2d 747, 751 (1966); see also Terry v. Mazur, 234 Va. 442, 449, 362 S.E.2d 904, 908 (1987).

³⁰*Id.* (citations omitted).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 10

interpreting the provisions of Article X, § 6-A of the Constitution and §§ 58.1-3219.5 and 58.1-3219.6 for the veterans of the Commonwealth.³¹

VII. The General Assembly's Authority to Restrict Tax Exemption to Land Not Exceeding One Acre in Size

You note that § 58.1-3219.5(C) provides, in part, that "[a] county, city, or town shall provide for the exemption from real property taxes the qualifying dwelling pursuant to this section, and shall provide for the exemption from real property taxes the land, not exceeding one acre, upon which it is situated." You inquire regarding the authority of the General Assembly to impose the one-acre restriction.

The General Assembly of Virginia has plenary powers and may enact any law not prohibited by the United States Constitution or the Virginia Constitution.³²

Article X, § 6-A requires the General Assembly to enact a general law exempting the real property used by a qualifying veteran and spouse "as his or her principal place of residence." The General Assembly did so by enacting § 58.1-3219.5(C) that requires a county, city or town to provide the real estate tax exemption for "the land, not exceeding one acre, upon which [the qualifying dwelling] is situated." The General Assembly further provided that, if a county, city, or town "provides for an exemption from or deferral of real property taxes of more than one acre of land [with regard to exemptions for the elderly or handicapped as authorized by Article 2 of Chapter 32], then the county, city, or town shall also provide an exemption for the same number of acres" pursuant to § 58.1-3219.5.³³ The General Assembly is clearly empowered to enact § 58.1-3219.5(C), and no provision of the Constitution prohibits enactment of an acreage limitation. In fact, Article X, § 6-A expressly grants to the General Assembly the authority to prescribe in general law the "restrictions and conditions" for the disabled veteran real property tax exemption. As noted above, Article X, § 6-A was not self-executing; the amendment required further action by the General Assembly to implement the exemption and to establish the restrictions and conditions for the same by general law.³⁴ Accordingly, it is my opinion that the General Assembly is authorized to limit the tax exemption for the land to one acre.

VIII. Meaning of "Real Property"

Within the context of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6, you ask for a definition of the term "real property" and whether such term includes just the dwelling on the land occupied by the veteran, or includes both the dwelling and the land.

³¹ I note, however, that the General Assembly may not authorize the VDVS to expand the scope of the exemption beyond the limits established by the constitutional amendment.

³² *City of Portsmouth v. City of Chesapeake*, 205 Va. 259, 264, 136 S.E.2d 817, 822 (1964); *Ry. Express Agency, Inc. v. Commonwealth*, 199 Va. 589, 593, 100 S.E.2d 785, 788 (1957), *aff'd*, 358 U.S. 434 (1959); *Sprvrs. Of Cumberland Cnty. v. Randolph*, 89 Va. 614,619, 16 S.E. 722, 723 (1893).

³³ As stated in the case of *Pettus v. Hendricks*, 113 Va. 326, 330, 74 S.B. 191, 193 (1912), while the word "shall" is primarily mandatory in effect, and "may" is primarily permissive in effect, "courts, in endeavoring to arrive at the meaning of written language, whether used in a will, a contract, or a statute, will construe "may" and "shall" as permissive or mandatory in accordance with the subject matter and context."

³⁴ See *supra* note 12 and accompanying text.

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 11

The General Assembly did not define the term "real property" in §§ 58.1-3219.5 and 58.13219.6. Therefore, unless a contrary legislative intent is manifest, words used in a statute must be given their common, ordinary, and accepted meanings in use at the time of the statute.³⁵ The term "real property" is generally defined to mean: "Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements)."³⁶ It includes land and things permanently attached to the land, such as trees, buildings, and stationary mobile homes.³⁷

Therefore, I am of the opinion that the term "real property" in Article X, § 6-A and §§ 58.13219.5 and 58.1-3219.6 includes both the land and dwelling occupied by the veteran.

IX. Whether Tax Exemption is a "Program"

You next ask whether the tax exemption created by Article X, § 6-A, implemented by §§ 58.13219.5 and 58.1-3219.6, is a "program" within the meaning of § 2.2-2001 (A) and (C).

Chapter 20 of Title 2.2, §§ 2.2-2000 through 2.2-2004.1, details the statutory authority of the VDVS. Section 2.2-2001 contains all of the administrative authority of VDVS to act. Specifically, § 2.22001(A) provides that

The Department shall be responsible for the establishment, operation, administration, and maintenance of offices and programs related to services for Virginia-domiciled veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents. Such services shall include, but not be limited to, benefits claims processing and all medical care centers and cemeteries for veterans owned and operated by the Commonwealth.

Additionally, § 2.2-2001(C) provides:

The Department shall establish guidelines for the determination of eligibility for Virginia domiciled veterans and their spouses, orphans, and dependents for participation in programs and benefits administered by the Department.

³⁵See *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532,533-34 (1980) ("In the absence of a statutory definition ... , a statutory term is given its ordinary meaning, given the context in which it is used"); *Op. Va. Att'y Gen.*: 1995 at 289,290; 1991 at 296,298; 1990 at 233,234.

³⁶BLACK'S LAW DICTIONARY 1337 (9th ed. 2009).

³⁷I, however, wish to note that prior opinions of the Attorney General conclude that manufactured homes should be classified and taxed as real or personal property, depending on how the common law doctrine of fixtures applies to the facts and circumstances of each case. *See Op. Va. Att'y Gen.*: 2001 at 197, 198; 1987-88 at 576,577; 1985-86 at 300,301; 1981-82 at 368,369; 1977-78 at 427,428. The three tests applied by the Supreme Court of Virginia in determining whether an item of personal property placed upon realty becomes a fixture are: "(1) annexation of the property to the realty, (2) adaptation to the use or purpose to which that part of the realty with which the property is connected is appropriated, and (3) the intention of the parties." *Transcon. Gas Pipe Line Corp. v. Prince William Cnty.*, 210 Va. 550, 555, 172 S.E.2d 757, 761-62 (1970).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 12

The General Assembly does not define the term "programs" as it is used in § 2.2-2001(A). Therefore, the word must be accorded its ordinary meaning.³⁸ The word "program" is generally defined as "a plan of procedure: a schedule or system under which action may be taken toward a desired goal."³⁹

Neither the voter approval of Article X, § 6-A on November 2, 2010, nor the enactment of the legislation providing for the real property tax exemption constitutes a "program" as that word is used in § 2.2-2001(A). In addition, the amendment and subsequent legislation are clearly not programs or benefits under § 2.2-2001(C).

After the ballot question passed, the General Assembly enacted §§ 58.1-3219.5 and 58.1-3219.6, which do not direct or authorize the VDVS to interpret the provisions. Rather, § 58.1-3219.5(C) requires a county, city or town to provide for the exemption. Furthermore, § 58.1-3219.6 requires that one claiming the exemption file with the commissioner of the revenue of the county, city or town, forms supplied by the locality containing certain required information and documentation from the U.S. Department of Veterans Affairs reflecting that the veteran has a 100 percent service-connected, permanent, and total disability.

I am, therefore, of the opinion that the tax exemption created by Article X, § 6-A, implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not a "program" within the meaning of § 2.2-2001(A) and (C).

X. Whether a Legal Means Exists to Extend Tax Exemption to Surviving Spouse of Veteran who Died Prior to January 1, 2011

Another question you ask is whether a legal means exists by which to extend this tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service-connected, permanent, and total disability but died before the January 1, 2011, effective date of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6.

The Constitution of Virginia requires the taxation of all property, except as specifically excluded therein.⁴⁰ Therefore, although the General Assembly generally "possesses all legislative power not prohibited to it,"⁴¹ the legislature may not adopt a measure providing for tax exemptions unless expressly authorized to do so by the Constitution. In the absence of the amendment adding Article X, § 6-A, therefore, the General Assembly would have been precluded from providing the real estate tax exemption contained in § 58.1-3219.5. As such, Article X, § 6-A provides an exception to the requirement that all property be taxed.

This exception, however, is confined to the express provisions of the amendment. Article X, § 6-A confers authority upon the General Assembly to extend the real estate tax provision to surviving spouses of eligible veterans. To be eligible, the veteran must "occup[y] the real property as his or her principal place of residence." Veterans who predecease the effective date of the statute are ineligible for

³⁸ See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

³⁹ See *Winborne v. Virginia Lottery*, 278 Va. 142, 148, 677 S.E.2d 304, 306 (2009) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1812 (1993)).

⁴⁰ VA. CONST. art. X, § 1.

⁴¹ *Sprvrs. Of Cumberland Cnty. v. Randolph*, 89 Va. 614, 619, 16 S.E. 722, 723 (1893).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 13

the tax relief because they cannot "occupy" the property, so in turn, their surviving spouses also are ineligible.

Article X, § 6-A does not permit the legislature to enact any additional legislation to further exempt surviving spouses of veterans who passed away prior to the effective date. Therefore, it is my opinion that there is no way, short of another constitutional amendment, to provide to the surviving spouse of such deceased veterans the real property tax exemption.

XI. Whether Tax Exemption Applies to Real Property Titled in a Trust

Another question relating to the tax exemption is whether these provisions apply to real property that is i) titled in a revocable inter vivos trust with the spouse; ii) titled in a revocable inter vivos trust with other(s) than the spouse; or iii) titled in an irrevocable trust.

Under Virginia law, a person (the settlor) may create a trust by transferring property to another person as trustee.⁴² When real property is involved, the transfer typically takes the form of a recorded deed of conveyance to the trustee. In the context of local property taxes, the Code provides that "[i]f the property is held in trust for the benefit of another, it shall be listed by and taxed to the trustee, if there is any in this Commonwealth, and if there is no trustee in this Commonwealth, it shall be listed by and taxed to the beneficiary."⁴³

Prior opinions of the Attorney General have strictly construed eligibility for the property tax exemption allowed under Article X, § 6(b) and § 58.1-3210 for certain persons who are at least sixty-five years of age or permanently and totally disabled when ownership of the property is not directly or solely held by the person who otherwise might qualify for the tax benefit.⁴⁴ It is worth noting that the tax exemption of Article X, § 6-A uses broader language than that found in Article X, § 6(b). The former applies the exemption to "the real property, including the joint real property of husband and wife, of any veteran" whereas the latter applies its exemption to "real estate and personal property ... *owned by*, and occupied as the sole dwelling of, persons not less than sixty-five years of age." [Emphasis added.] This distinction in language, however, at most leaves some ambiguity as to the question whether a property held in trust might qualify for the Article X, § 6-A exemption.

As the Supreme Court of Virginia has articulated, however:

The Constitution of Virginia, as revised in 1971, provides that "[e]xemptions of property from taxation ... shall be strictly construed." This rule of strict construction stems from the Commonwealth's announced policy "to distribute the tax burden uniformly and upon all property." Therefore, statutes granting tax exemptions are construed strictly against the taxpayer, and "[w]hen a tax statute is susceptible of two constructions, one granting an exemption and the other not granting it, courts adopt the construction which denies

⁴² See VA. CODE ANN. § 55-544.01 (Supp. 2011).

⁴³ VA. CODE ANN. § 58.1-3015 (2009).

⁴⁴ See 2007 Op. Va. Att'y Gen. 129, 132 (exemption not available when children, siblings or friends of a qualifying individual jointly own the real estate with the same but do not themselves qualify for the tax benefit); 1999 Op. Va. Att'y Gen. 205, 206 (exemption not available to individual proprietary lessee when a real estate cooperative association owns the real estate in question).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 14

the exemption." Indeed, "where there is any doubt, the doubt is resolved against the one claiming exemption," and "to doubt an exemption is to deny it."^{45]}

In light of this rule of strict construction, such an ambiguity will be resolved against eligibility, and the outcome is the same.

In pertinent part § 58.1-3219.5(A) provides:

[T]he General Assembly hereby exempts from taxation the real property, including the joint real property of husband and wife, of any veteran who has been rated ... pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.

Section 58.1-1 defines a "taxpayer" as "every person, corporation, partnership, organization, *trust* or estate subject to taxation under the laws of this Commonwealth, or under the ordinances, resolutions or orders of any county, city, town or other political subdivision of this Commonwealth." (Emphasis added.) Section 58.1-3281 makes it clear that the "taxpayer" assessed with real property taxes is the person or entity that owned the property on January 1 of the tax year.

Consequently, the specific exemption created by Article X, § 6-A and implemented by §§ 58.13219.5 and 58.1-3219.6 extends to the "taxpayer" assessed with real property taxes who is also the person or entity that owned the property on January 1 of the tax year. Article X, § 6-A includes in this exemption "joint real property of husband and wife." If this exemption had been intended to apply to situations where real property is owned by a revocable inter vivos trust with a spouse, a revocable inter vivos trust with other(s) than the spouse, or an irrevocable trust, the General Assembly would have so provided in the question submitted to the voters on November 2, 2010, just as it did for joint ownership by husbands and wives. The statutory maxim of *expressio unius est exclusio alterius* "provides that mention of a specific item in a statute implies that omitted terms were not intended to be included within the scope of the statute."⁴⁶

Therefore, I am of the opinion that the relief afforded pursuant to Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not available when the real estate is i) titled in a revocable inter vivos trust with the spouse; ii) titled in a revocable inter vivos trust with other(s) than the spouse; or iii) titled in an irrevocable trust. As with extending the exemption to spouses who survive veterans who died before the effective date, another constitutional amendment would be needed to provide tax relief for properties held in trust.

XII. Whether Tax Exemption is Exclusive to the Property Owned by the Qualifying Veteran or Whether Exemption Follows the Spouse if He or She Relocates

You relate a concern regarding a spouse's eligibility for the property tax exemption subsequent to the death of the veteran who qualified for the exemption. You specifically inquire whether the real property tax exemption created by Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6,

⁴⁵ Commonwealth v. Wellmore Coal Corp., 228 Va. 149, 153-54, 320 S.E.2d 509, 511 (1984) (alteration in original) (internal citations omitted).

⁴⁶ Turner v. Wexler, 244 Va. 124, 127,418 S.E.2d 886,887 (1992).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 15

is exclusive to the property the veteran occupied at the time of death or whether the exemption follows the spouse if he or she relocates.

You seek explanation of whether the word "property" in this context refers to the *specific* property which was initially granted the property tax exemption or is it defined as a general term used to describe any principal place of residence owned by the spouse. Section 58.1-3219.5(B) provides that a veteran's spouse remains eligible provided that "the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his principal place of residence.

The words "continues to occupy the real property" must be strictly construed.⁴⁷ When the surviving spouse of a veteran who qualified for the tax exemption moves to a new property, she does not "continue[] to occupy the real property" that was exempt.

Therefore, I must also conclude that the real property tax exemption created by Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is exclusive to the property the veteran qualified for and occupied as his or her principal place of residence at the time of death, and does not follow the spouse if he or she decides to relocate.

Conclusion

Accordingly, it is my opinion that:

1. The effective date of Article X, § 6-A as approved by the voters on November 2, 2010, is January 1, 2011. The effective date of §§ 58.1-3219.5 and 58.1-3219.6 is April 6, 2011, and the legal effect of the statutory provisions must be applied retroactively to January 1, 2011;
2. The surviving spouse of a veteran who dies before the January 1, 2011, effective date of the tax exemption does not qualify for this exemption;
3. The provisions of §§ 58.1-3219.5 and 58.1-3219.6 do not apply to either veterans who die before the effective date of these provisions or their spouses who have not remarried and continue to occupy the real property as their principal place of residence;
4. The tax exemption applies to veterans rated by the VA with a total disability rating on the basis of individual unemployability due to a service-connected disability which rating revolves around the inability to engage in substantially gainful employment;
5. The commissioner of the revenue has the responsibility for interpreting and implementing §§ 58.1-3219.5 and 58.1-3219.6;
6. The General Assembly may enact legislation authorizing the Commissioner of VDVS to promulgate rules and regulations governing the administration and/or implementation of this tax exemption;
7. The General Assembly has the authority to limit the tax break to land that does not exceed one acre;

⁴⁷ VA. CONST. art. X, § 6(f).

Honorable John M. O'Bannon, III, M.D.
Honorable Linda T. Puller
Honorable Stephen D. Newman
Honorable L. Scott Lingamfelter
July 15, 2011
Page 16

8. Within the context of Article X, § 6-A and §§ 58.1-3219.5 and 58.1-3219.6, the definition of "real property" includes both the dwelling and the land;
9. The tax exemption is not a "program" within the meaning of § 2.2-2001(A) and (C);
10. There is no legal authority to provide the real property tax exemption to the surviving spouse of a veteran who was rated to have a 100 percent service connected, permanent, and total disability but died before January 1, 2011;
11. The tax relief under Article X, § 6-A, as implemented by §§ 58.1-3219.5 and 58.1-3219.6, is not available when the veteran has chosen to place title to the real estate in i) a revocable inter vivos trust with the spouse; ii) a revocable inter vivos trust with other(s) apart from the spouse; or iii) an irrevocable trust; and
12. The exemption is exclusive to the property for which the veteran qualified and occupied as his or her principal place of residence at the time of death, and does not follow the spouse if he or she relocates.

With kindest regards, I am

Very truly yours,

Kenneth T. Cuccinelli, II
Attorney General

Appendix G – Attorney General Opinion December 18, 2015



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

December 18, 2015

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The Honorable Priscilla S. Bele
Commissioner of the Revenue
City of Newport News
2400 Washington Avenue
Newport News, Virginia 23607

Dear Ms. Bele:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the real property tax exemption provided for in Article X, § 6-A(b) of the Virginia Constitution and § 58.1-3219.9 of the *Code of Virginia* applies to the surviving spouses of members of the armed forces killed in action prior to January 1, 2015.

Applicable Law and Discussion

In November 2014, citizens of the Commonwealth approved a constitutional amendment authorizing the General Assembly to provide by general law for a real property tax exemption for the surviving spouses of members of the armed forces who are killed in action.¹ In accord with this amendment, Article X, § 6-A(b) of the Virginia Constitution now provides as follows:

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. *This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date.* This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.²

¹ See VA. DEP'T OF ELECTIONS, *Historical Elections Results – Proposed Amendment to Art. X, § 6-A of the Virginia Constitution*, http://historical.elections.virginia.gov/ballot_questions/view/2754/ (last visited Oct. 21, 2015). See generally VA. CONST. art. XII, § 1 (providing that proposed amendments to the Constitution shall be submitted by the General Assembly to the qualified voters of the Commonwealth).

² Emphasis added.

As written, this provision makes clear that the exemption applies regardless of when the member of the armed forces was killed in action. “If a constitutional provision is plain and unambiguous, [courts] do not construe it, but apply it as written.”³ Moreover, “[i]f the intention is manifest from the language used and leads to no absurd conclusion, courts must give [the provision] the effect clearly intended.”⁴

On January 1, 2015, legislation implementing the tax exemption became effective.⁵ This legislation, which is codified at § 58.1-3219.9, details the exemption and provides in relevant part that:

Pursuant to subdivision (b) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2015, the General Assembly hereby exempts from taxation the real property described in subsection B of the surviving spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense and (ii) who occupies the real property as his principal place of residence. If such member of the armed forces of the United States is killed in action after January 1, 2015, and the surviving spouse has a qualified principal residence on the date that such member of the armed forces is killed in action, then the exemption for the surviving spouse shall begin on the date that such member . . . is killed in action.⁶

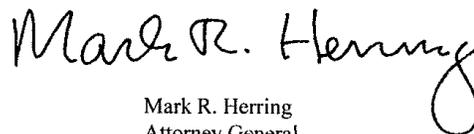
The language of this legislation is consistent with that of the constitutional provision authorizing the exemption.⁷ The significance of “January 1, 2015,” involves only the tax years to which the exemption applies. Nothing in § 58.1-3219.9 serves to bar the exemption based on the date of death of the military member.

Conclusion

Accordingly, it is my opinion that the real property tax exemption provided for in Article X, § 6-A(b) of the Virginia Constitution and § 58.1-3219.9 of the *Code of Virginia* is applicable to the surviving spouses of members of the armed forces who are killed in action at any time prior to, on, or after January 1, 2015, provided all other requirements for the exemption have been met. The exemption applies for tax years beginning on or after January 1, 2015.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

³ *Town of Madison v. Ford*, 255 Va. 429, 432 (1998).

⁴ *Hollywood Cemetery Co. v. Commonwealth*, 123 Va. 106, 110-11 (1918).

⁵ See 2014 Va. Acts ch. 757.

⁶ VA. CODE ANN. § 58.1-3219.9 (Supp. 2015) (emphasis added).

⁷ See generally *Terry v. Mazur*, 234 Va. 442, 449-50 (1987) (providing that statutes inconsistent with the Virginia Constitution are invalid).