



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

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

The Honorable Robert S. Wertz, Jr.  
Commissioner of the Revenue, Loudoun County  
Post Office Box 8000  
Leesburg, Virginia 20177

Larry W. Davis, Esquire  
County Attorney for Albemarle County  
401 McIntire Road, Suite 325  
Charlottesville, Virginia 22902

Dear Ms. Bele and Messrs. Wertz and Davis:

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

## Issues Presented

You ask several questions relating to the exemption from, or deferral of, local real property taxes when title to the property is held in trust or in a life estate. You first ask whether the property tax exemption or deferral for persons not less than 65 years of age or disabled authorized in Article X, § 6(b) of the Constitution of Virginia extends to a person who has chosen to place title to the real property in any form of trust or holds property in a life estate. You also ask whether the property tax exemption for disabled veterans provided in Article X, § 6-A of the Constitution of Virginia extends to a veteran who has chosen to place title to the real property in a life estate.

## Response

It is my opinion that the exemption from, or deferral of, real property taxes authorized in Article X, § 6(b) for persons not less than 65 years of age or disabled does not extend to a person who has placed title to the real property in any form of trust, but does extend to a person who otherwise qualifies for the exemption and who holds a life estate in the real property. It is further my opinion that the exemption for disabled veterans provided in Article X, § 6-A does extend to a qualifying veteran who holds a life estate in the real property.

### Applicable Law and Discussion

Article X, § 1 of the Constitution of Virginia provides that “[a]ll property, except as hereinafter provided, shall be taxed.” Article X, § 6 authorizes limited exemptions from taxation. Included within such exemptions, Article X, § 6(b) empowers the General Assembly to authorize specified age or disability based exemptions:

The General Assembly may by general law authorize the governing body of any county, city, town, ... to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law. A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.

Additionally, effective for tax years beginning on or after January 1, 2011, Article X, § 6-A mandates a local real property tax exemption for totally disabled veterans. That section provides, in relevant part:

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 ... 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.

Pursuant to Article X, § 6(f) these and any other “[e]xemptions of property from taxation as established or authorized hereby shall be strictly construed.”

The General Assembly enacted § 58.1-3210 to authorize local governing bodies to provide for the exemption set forth in Article X, § 6(b). Section 58.1-3210(A) provides in relevant part that

The governing body of any county, city or town may, by ordinance, provide for the exemption from, deferral of, or a combination program of exemptions from and deferrals of taxation of real estate and manufactured homes as defined in § 36-85.3, or any portion thereof, and upon such conditions and in such amount as the ordinance may prescribe. Such real estate shall be owned by, and be occupied as the sole dwelling of anyone at least 65 years of age or if provided in the ordinance, anyone found to be permanently and totally disabled as defined in § 58.1-3217.<sup>(1)</sup>

The General Assembly implemented the exemption authorized in Article X, § 6-A through the enactment of § 58.1-3219.5, which provides in relevant part as follows:

Pursuant to Article X, Section 6-A of the Constitution of Virginia, and for tax years beginning on or after January 1, 2011, the General Assembly hereby exempts from taxation the real property, including joint real property of husband and wife, of any veteran who has been rated by the U.S. Department of Veterans Affairs ... to have a 100

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<sup>1</sup> VA. CODE ANN. § 58.1-3210(A) (2013).

percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.<sup>[2]</sup>

Sections 58.1-3213 and 58.1-3219.6 contain the statutory requirements for the application process for claiming the respective exemptions.

During the 1969 debates in the General Assembly pertaining to the revision the Constitution of Virginia, some members expressed confusion regarding the meaning of the phrase “owned by” as used in the property tax exemption for certain persons not less than 65 years of age to be authorized in proposed Article X, § 6(b).<sup>3</sup> In presenting the proposed § 6(b) to the House of Delegates on behalf of the Finance Committee, Delegate Theodore V. Morrison, Jr. indicated that the tax exemption would not be available for real property held in trust rather than owned directly by the person who in other respects qualifies for the exemption.<sup>4</sup>

Several prior opinions of this Office are relevant to the exemption qualification issues you raise.<sup>5</sup> In particular, a 2007 Opinion notes that the phrase “owned by” contained in § 58.1-3210 is not subject to an exact definition.<sup>6</sup> That Opinion explains that the facts of each exemption request must be carefully analyzed to determine whether the real estate involved actually is owned by a qualifying individual or individuals.<sup>7</sup> Furthermore, a 2011 Opinion addresses a number of questions regarding Article X, § 6-A and concludes, in part, that the property tax exemption authorized by that constitutional provision is not

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<sup>2</sup> Section 58.1-3219.5(A) (2013).

<sup>3</sup> See PROCEEDINGS AND DEBATES OF THE SENATE OF VIRGINIA PERTAINING TO AMENDMENT OF THE CONSTITUTION 157 (Ex. Sess. 1969). See also 2 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 1085 n.67 (1974). On November 2, 1976, the voters ratified an amendment to Article X, § 6(b), submitted to them by the General Assembly, to extend the authorized tax exemption to “persons permanently and totally disabled.” See 1976 Va. Acts chs. 751, 782.

<sup>4</sup> The House of Delegates debates in 1969 included the following exchange between Delegate M. Caldwell Butler (R-Roanoke) and Delegate Theodore V. Morrison, Jr. (D-Newport News) regarding proposed Article X, § 6(b):

MR. BUTLER: With reference to the same problem, frequently elderly people will occupy residences that are held in trust for their benefit, together with a modest amount of income-producing security. Is it your understanding that they would be owners within the meaning of this provision and, therefore, be entitled to the exemption?

MR. MORRISON: If there is no deed of ownership held by the person occupying the property, I would say he would not qualify.

PROCEEDINGS AND DEBATES OF THE VIRGINIA HOUSE OF DELEGATES PERTAINING TO AMENDMENT OF THE CONSTITUTION 358 (Ex. Sess. 1969).

<sup>5</sup> See 2011 Op. Va. Att’y Gen. 171, 182-84 (tax exemption authorized by Article X, § 6-A is not available for property held in trust, the beneficiary of which is an otherwise qualifying disabled veteran); 2007 Op. Va. Att’y Gen. 129, 132 (property owned jointly by qualifying and non-qualifying individuals is not exempt under § 58.1-3210); 2012 Op. Va. Att’y Gen. 134, 136 (exemption under Article X, § 6-A does not apply in favor of a veteran who is a proprietary lessee in a real estate cooperative); and 1999 Op. Va. Att’y Gen. 205, 206 (exemption under § 58.1-3210 is not available for proprietary lessee when real estate cooperative association owns property).

<sup>6</sup> 2007 Op. Va. Att’y Gen. at 131.

<sup>7</sup> *Id.* at 131-32.

available for a property held in trust for an otherwise qualifying disabled veteran.<sup>8</sup> The rationale for that conclusion, which follows below, yields the same result when the question is whether property held in trust is eligible for the exemption authorized by Article X, § 6(b) and § 58.1-3210.

In Title 58.1 of the Code, “taxpayer” is defined 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.”<sup>9</sup> By statute, January 1 is the beginning of the tax year for the assessment of taxes on real estate, “and the owner of real estate on that day shall be assessed for the taxes for the year beginning on that day.”<sup>10</sup> The Code provides that “[i]f property is owned by a person *sui juris*, it shall be taxed to him . . . [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.”<sup>11</sup>

The Supreme Court of Virginia has discussed the importance of adhering to the constitutionally mandated rule of strict construction in applying exemptions:

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 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.”<sup>12</sup>

Pursuant to the express terms of Article X, § 6(b) and § 58.1-3210, eligibility for the tax exemption or deferral authorized by those provisions requires the subject property to be “owned by” the person who occupies it as his or her sole dwelling and who otherwise qualifies for the exemption by reason of age or disability. When title to real property is held by a trust, the incidents of ownership are with the trust and the trustee rather than the grantor or the beneficiary.<sup>13</sup> Thus, if real property is held in

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<sup>8</sup> 2011 Op. Va. Att’y Gen. at 183. In 2012, the General Assembly sought by statute to extend to properties held in trust the exemption authorized by Article X, § 6-A. 2012 Va. Acts chs. 75, 263. Upon any legal challenge, it remains to be seen whether the courts will agree that the legislature has the authority to make such a change to this tax exemption without seeking voter approval of an amendment to Article X, § 6-A of the Virginia Constitution. *See, e.g., Southern Ry. Co. v. City of Richmond*, 175 Va. 308, 318-19, 8 S.E.2d 271, 275 (1940) (General Assembly can neither authorize nor ratify a local tax assessment made in conflict with a limitation set forth in the Constitution of Virginia).

<sup>9</sup> Section 58.1-1 (2013) (emphasis added).

<sup>10</sup> Section 58.1-3281 (2013).

<sup>11</sup> Section 58.1-3015 (2013).

<sup>12</sup> *Commonwealth v. Wellmore Coal Corp.*, 228 Va. 149, 153-54, 320 S.E.2d 509, 511 (1984) (alteration in original) (internal citations omitted).

<sup>13</sup> *See, e.g., Austin v. City of Alexandria*, 265 Va. 89, 95-97, 574 S.E.2d 289, 292-93 (2003) (when grantor conveyed title to property to a trust, grantor transferred the complete title in the property to himself as trustee and thereafter had no legal title in the property to convey in his individual capacity); *Air Power, Inc. v. Thompson*, 244

trust, an otherwise qualifying individual not less than 65 years of age or disabled will not meet the ownership requirement of Article X, § 6(b) and § 58.1-3210.<sup>14</sup>

You also ask whether property that is held in a life estate can qualify for the exemption or deferral authorized in Article X, § 6(b). A prior opinion of this Office addressing this question concludes that a life tenant with a life estate in the subject property may qualify as the owner of the property for purposes of the tax exemption.<sup>15</sup> At common law, a life estate in land is a freehold estate of indeterminate duration, not held at the will of another, which terminates upon the death of the life tenant or another living person.<sup>16</sup> Although not possessed of the fee simple estate, a life tenant still has possession of the freehold with responsibilities of property ownership, including the duty to pay taxes.<sup>17</sup> The Supreme Court of Virginia, for purposes of determining who is the “owner” of real property properly responsible for paying taxes levied on the property, asks “who has the usufruct, control or occupation of the land, whether his interest in it is an absolute fee, or an estate less than a fee.”<sup>18</sup> In circumstances where the property is subject to a life estate, the court has consistently found that the life tenant, having sufficient present control over the property, is the “owner” of the property for tax purposes.<sup>19</sup>

Consistent with these precedents, a life tenant meets the ownership requirement for the exemption or deferral of taxes pursuant to Article X, § 6(b) and § 58.1-3210 and may be eligible for the grant of the same provided for in § 58.1-3215(A) to “the qualifying individual occupying such dwelling and *owning*

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Va. 534, 537-38, 422 S.E.2d 768, 770 (1992) (beneficiary is not a necessary party in a suit to enforce a mechanic’s lien, because a beneficiary in a land trust retains no interest, legal or equitable, in the property itself).

<sup>14</sup> This conclusion does not change in a circumstance where the otherwise qualifying individual also is (i) the trustee holding title to the subject property for a trust and (ii) a beneficiary of the trust. Exemptions of property from taxation must be strictly construed; “where there is any doubt, the doubt is resolved against the one claiming exemption.” *Wellmore Coal Corp.*, 228 Va. at 154, 320 S.E.2d at 511 (quoting *Golden Skillet Corp. v. Commonwealth*, 214 Va. 276, 278, 199 S.E.2d 511, 513 (1973)). A person who holds title to real property as a trustee does not have legal title to the same in his individual capacity. *Austin*, 265 Va. at 95-97, 574 S.E.2d at 292-93. The text of Article X, § 6(b) makes no reference to trusts in setting forth the specific requirement that the property be “owned by” the otherwise qualifying individual. This is no mere oversight as the 1969 debates on the Constitution of Virginia specifically considered whether trust-owned property should be eligible for the exemption to be authorized by the proposed Article X, § 6(b). *See supra* note 4 and accompanying text.

<sup>15</sup> *See* 1971-72 Op. Va. Att’y Gen. 427, 428.

<sup>16</sup> *See* I RALEIGH COLSTON MINOR, THE LAW OF REAL PROPERTY § 135 (the freehold) (“The common law recognized no interest in land to be ‘real property’ unless it were a freehold, and no one as the actual owner of *land* unless he were a *tenant of the freehold*.” (emphasis in original)), and § 191 (general nature of life estates) (F.D.G. Ribble 2d ed. 1928).

<sup>17</sup> *Id.* at §§ 136 (seisin), 143 (classification of estates of freehold and estates less than freehold), 157 (incidents of fee simple ownership), 215 (life tenant’s duty to pay taxes and local assessments).

<sup>18</sup> *See* *Banks v. County of Norfolk*, 191 Va. 463, 467, 62 S.E.2d 46, 48 (1950), quoting *Powers v. City of Richmond*, 122 Va. 328, 335, 94 S.E. 803, 805 (1918).

<sup>19</sup> *See* *City of Richmond v. McKenny*, 194 Va. 427, 430, 73 S.E.2d 414, 416 (1952); *Ceroli v. City of Clifton Forge*, 192 Va. 118, 125-26, 63 S.E.2d 781, 785 (1951); *Banks*, 191 Va. at 467, 62 S.E.2d at 47-48; *Stark v. City of Norfolk*, 183 Va. 282, 289, 32 S.E.2d 59, 61-62 (1944); *Commonwealth v. Wilson*, 141 Va. 116, 121, 126 S.E. 220, 222 (1925).

Honorable Priscilla S. Bele  
Honorable Robert S. Wertz, Jr.  
Larry W. Davis, Esq.  
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*title or partial title* thereto.”<sup>20</sup> For the same reasons, I also conclude that a veteran who possesses a life estate in his or her principal place of residence meets the ownership requirement for the exemption authorized in Article X, § 6-A and § 58.1-3219.5.

### Conclusion

Accordingly, it is my opinion that the exemption from, or deferral of, real property taxes for persons not less than 65 years of age or disabled authorized in Article X, § 6(b) of the Constitution of Virginia does not extend to a person who has placed title to the real property in any form of trust. It is further my opinion that the exemption or deferral authorized in Article X, § 6(b) does extend to a person who otherwise qualifies for the exemption and who holds a life estate in the real property. Finally, it is my opinion that the exemption for disabled veterans authorized in Article X, § 6-A of the Constitution of Virginia does extend to a qualifying veteran who holds a life estate in the real property.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>20</sup> Section 58.1-3215(A) (2013) (emphasis added). Because your inquiry does not ask about the eligibility of a remainderman, I do not herein address the issue. See 1976-77 Op. Va. Att’y Gen. 293, 294 (“As the holder of a life estate, the life tenant was the owner of ‘partial title,’ for purposes of the exemption . . . . Conversely, due to lack of control over the property, the remainderman, while also holding ‘partial title,’ would not be considered an ‘owner.’”).