

**TITLE 1. ADMINISTRATION**  
**DEPARTMENT OF VETERANS SERVICES**  
**Final Regulation**

REGISTRAR'S NOTICE: The Department of Veterans Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 25 of the Code of Virginia, which exempts the department when promulgating regulations pursuant to § 58.1-3219.7 of the Code of Virginia regarding an exemption from taxes on real property.

Title of Regulation: **1VAC80-20. Surviving Spouses of Service Members Killed in Action Real Property Tax Exemption (adding 1VAC80-20-10 through 1VAC80-20-100).**

Statutory Authority: § 58.1-3219.11 of the Code of Virginia.

Effective Date: August 29, 2018.

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Summary:

*The regulation establishes the requirements of the application process and implementation of the real property tax exemption for surviving spouses of active duty service members killed in action or who died of wounds sustained in action as designated by the U.S. Department of Defense.*

CHAPTER 20  
SURVIVING SPOUSES OF SERVICE MEMBERS KILLED IN ACTION REAL PROPERTY  
TAX EXEMPTION

**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" means 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" means 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 U.S. 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 are 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 in 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. Sections 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.

### **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 the qualified service member's death; and
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 § 58.1-3219.9 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 of § 58.1-3219.9 of the Code of Virginia, 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 of § 58.1-3219.9, and as a denominator, 100%.

#### **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.

#### **1VAC80-20-90. Application.**

A. A surviving spouse, pursuant to § 58.1-3219.9 of the Code of Virginia, claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in the surviving spouse's respective locality:

1. 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";
2. 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;
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; and
4. A certificate of marriage from the appropriate state office of records.

B. 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.

C. 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.

D. 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.

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

F. 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.

**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 answered 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:

1. Via email to [john.newby@dvs.virginia.gov](mailto:john.newby@dvs.virginia.gov); [carriann.alford@dvs.virginia.gov](mailto:carriann.alford@dvs.virginia.gov)

with a subject line that states ATTN: Tax Exemption – APPEAL; or

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

D. The commissioner may conduct hearings telephonically, by video conferencing means, or if the commissioner 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.

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