

TAXATION: REAL PROPERTY TAX.

PROPERTY AND CONVEYANCES: VIRGINIA REAL ESTATE COOPERATIVE ACT.

Real estate cooperative association, and not proprietary lessee with possessory interest in individual cooperative unit, is owner of real estate subject to real estate tax assessment. Tax exemptions for elderly and handicapped are not available to individual proprietary lessee.

The Honorable Philip J. Kellam
Commissioner of the Revenue for the City of Virginia Beach
July 16, 1999

You ask whether the "owner of real estate," for purposes of real estate tax assessment pursuant to § 58.1-3281 of the *Code of Virginia* with respect to a real estate cooperative, is the real estate cooperative association or the person who owns a cooperative interest in the real estate cooperative coupled with a possessory interest in an individual cooperative unit ("proprietary lessee"). You also ask whether, if the association is the owner for purposes of § 58.1-3281, the proprietary lessee may be considered an owner for purposes of the § 58.1-3210 tax exemption for the elderly or disabled.

The creation and operation of real estate cooperatives is controlled by the Virginia Real Estate Cooperative Act, §§ 55-424 through 55-506 (the "Act").¹ Real estate cooperatives are a form of common ownership in which title to both the units and common areas lies with the association.² The Act defines a "cooperative" as "real estate *owned by an association*, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit."³ The Act defines "association" to mean "the proprietary lessees' association organized under § 55-458."⁴ A "cooperative interest" is "an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease."⁵ A "proprietary lease" is "an agreement with the [cooperative] association pursuant to which a proprietary lessee has a possessory interest in a unit," and a "unit" is "a physical portion of the cooperative designated for separate occupancy under a proprietary lease."⁶

Section 58.1-3281 provides that real estate taxes shall be assessed to the "owner of real estate" as of January 1 of the tax year.⁷ Section 55-426 defines a "cooperative" as "real estate owned by an association." Where the language of a statute is plain and unambiguous, the legislature should be assumed to have intended to mean what it plainly has expressed, and statutory construction is unnecessary.⁸ The definition of "cooperative" clearly contemplates that the owner of the subject real estate is the cooperative association. Accordingly, it is my opinion that the real estate cooperative association is the "owner of real estate" subject to real estate tax assessment under § 58.1-3281.

You next inquire whether, for purposes of § 58.1-3210, the proprietary lessee may be considered an "owner" within the meaning of the statute. Section 58.1-3210 provides for an exemption from or a deferral of real estate taxes for certain elderly or handicapped persons. Specifically, this statute requires that the real estate "be owned by, and be occupied as the sole dwelling of anyone at least sixty-five years of age or ... found to be permanently and totally disabled."⁹

Section 58.1-3210 uses the phrase "owned by" to describe those to whom tax relief may be granted.¹⁰ Exemptions under this statute must be strictly construed and, in doubtful cases, resolved against recognition of the exemption.¹¹ Accordingly, I am constrained to narrowly construe the application of the exemptions.¹² Because it is my opinion that the cooperative association owns the real estate in issue, I must conclude that the § 58.1-3210 exemptions are not available to an individual proprietary lessee.

¹1982-1983 Op. Va. Att'y Gen. 583, 584.

²1985-1986 Op. Va. Att'y Gen. 302, 303 n.1.

³Section 55-426 (emphasis added.).

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷See 1991 Op. Va. Att'y Gen. 272, 273.

⁸*Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941); see also 1996 Op. Va. Att'y Gen. 182, 183.

⁹Section 58.1-3210(A).

¹⁰*Compare* 1971-1972 Op. Va. Att'y Gen. 428, 428 (noting that § 58-760.1 (predecessor statute to § 58.1-3210) used words "owned by," "owners," and "owning title or partial title" to describe those to whom tax relief was granted).

¹¹*Forst v. Rockingham*, 222 Va. 270, 275, 279 S.E.2d 400, 403 (1981); 1982-1983 Op. Va. Att'y Gen. 579, 580 (citing § 58-760.1, predecessor statute to § 58.1-3210).

¹²1982-1983 Op. Va. Att'y Gen. 532, 533 (reiterating that exemptions under § 58-760.1, predecessor statute to § 58.1-3210, are to be narrowly construed).