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**Attorney General Cuccinelli issues legal opinion that law allows
tax exemption for many disabled veterans**

RICHMOND (July 18, 2011) – Attorney General Ken Cuccinelli issued an official legal opinion on Friday stating that certain disabled Virginia veterans were eligible for a recently enacted real estate tax exemption. Some localities had denied the exemption because of their interpretation of the new law, on the basis that the veterans did not meet the criteria for being “100 percent totally disabled.”

Cuccinelli was asked by senators Stephen Newman and Linda Puller and delegates Scott Lingamfelter and John O’Bannon whether the new tax exemption listed in Article X, § 6-A of the Virginia Constitution, which was approved by Virginia voters on November 2, 2010, applied to veterans rated by the U.S. Department of Veterans Affairs (VA) with a “total disability rating,” that is, any veteran with a service-related injury or mental disability who is unable to engage in “substantially gainful employment.”

The constitutional amendment provides 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.”

The VA uses a schedule of rating various disabilities when it determines the level of a veteran’s service-connected disability. In an instance where the service-connected disability rating is not 100 percent, the VA can rate the veteran at the 100 percent level if the veteran is unable to work because of his or her disability/ disabilities.

It is in cases where veterans did not reach the 100 percent disability rating until their unemployability was factored in that some localities were claiming the veterans did not meet the 100 percent totally disabled criteria in the new constitutional amendment.

In his official opinion, which is based on a reading of the law and the Virginia Constitution, Cuccinelli found that the tax exemption does in fact apply to these veterans rated by the VA as 100 percent disabled, regardless of how the VA arrived at that rating.

The legislators requesting the opinion also asked if the exemption was available for real estate that was put into a trust by a veteran. Because such property is owned by a trust and not by an individual veteran, and because there was no provision in the amendment allowing for a trust to benefit from the exemption, the attorney general determined the exemption is not available to trusts under Article X, § 6-A.

The requesters also asked whether the surviving spouse of a totally disabled veteran who died before the enactment of the new constitutional amendment would qualify for the tax exemption. Cuccinelli concluded that the surviving spouse of a veteran who died before January 1, 2011 – the effective date of the amendment – cannot qualify for this exemption, based on the plain language of the amendment: “[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.*” (Section 58.1-3219.5(B), emphasis added.)

“In private practice, I worked with veterans on their benefits appeals through the Pro Bono Veterans Consortium, so I am very familiar with the veterans’ benefits system,” said Cuccinelli. “While the laws may not be perfect, it is paramount that our veterans understand the statutes that apply to them. It is also important that they receive the tax exemptions they are entitled to under the law.”

“Coming to some of these conclusions when issuing legal opinions is never easy, as was the case with the surviving spouse question” said Cuccinelli, “But the General Assembly amended the Constitution to provide a specific kind of relief to veterans. We are duty bound to follow the letter of the law, regardless of whether we wish some provisions of the law to be otherwise.”

Several other questions were addressed in the legal opinion, a copy of which can be found on the attorney general’s web site [here](#).

About official opinions

Official opinions do not create new law. Instead, the opinions represent the attorney general’s analysis of the current state of the law based on his thorough review of existing law and relevant prior court decisions. The opinions are not binding either on the requester or on the courts.

The official opinions issued by the attorney general are part of the duties of the office. A person authorized by statute, such as a member of the General Assembly or state agency, can ask the attorney general for an official opinion on the law (members of the general public are not empowered to ask for opinions).

A copy of this news release may be found on the website of the Attorney General of Virginia at http://www.vaag.com/Media%20and%20News%20Releases/News_Releases/index.html.

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