

## 39-1-102. Definitions.

### Statute text

As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1) "Administrator" means the property tax administrator.

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

(1.3) "Agricultural equipment which is used on the farm or ranch in the production of agricultural products" means any personal property used on a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, for planting, growing, and harvesting agricultural products or for raising or breeding livestock for the primary purpose of obtaining a monetary profit and includes any mechanical system used on the farm or ranch for the conveyance and storage of animal products in a raw or unprocessed state, regardless of whether or not such mechanical system is affixed to real property.

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) includes land underlying any residential improvement located on such agricultural land and also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resource conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to

a period of ten crop years as if the land has been placed in such a conservation reserve program.

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or residential purposes.

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated ground water granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

(b) All other agricultural property that does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.

(c) An assessor must determine, based on sufficient evidence, that a parcel of land does not qualify as agricultural land, as defined in subparagraph (IV) of paragraph (a) of this subsection (1.6), before land may be changed from agricultural land to any other classification.

(2) "Assessor" means the elected assessor of a county, or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(2.5) "Bed and breakfast" means an overnight lodging establishment, whether owned by a natural person or any legal entity, that is a residential dwelling unit or an appurtenance thereto, in which the innkeeper resides, or that is a building designed but not necessarily occupied as a single family residence that is next to, or directly across the street from, the innkeeper's residence, and in either circumstance, in which:

(a) Lodging accommodations are provided for a fee;

(b) At least one meal per day is provided at no charge other than the fee for the lodging accommodations; and

(c) There are not more than thirteen sleeping rooms available for transient guests.

### Annotations

**Editor's note:** Subsection (2.5) is effective January 1, 2003.

### Statute text

(3) "Board" means the board of assessment appeals.

(3.1) "Commercial lodging area" means a guest room or a private or shared bathroom within a bed and breakfast that is offered for the exclusive use of paying guests on a nightly or weekly basis. Classification of a guest room or a bathroom as a "commercial lodging area" shall be based on whether at any time during a year such rooms are offered by an innkeeper as nightly or weekly lodging to guests for a fee. Classification shall not be based on the number of days that such rooms are actually occupied by paying guests.

### Annotations

**Editor's note:** Subsection (3.1) is effective January 1, 2003.

### **Statute text**

(3.2) "Conservation purpose" means any of the following purposes as set forth in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended:

(a) The preservation of land areas for outdoor recreation, the education of the public, or the protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems; or

(b) The preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the public or is pursuant to a clearly delineated federal, state, or local government conservation policy and where such preservation will yield a significant public benefit.

(3.5) "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(4) "Fixtures" means those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of such building. "Fixtures" does not include machinery, equipment, or other articles related to a commercial or industrial operation which are affixed to the real property for proper utilization of such articles. In addition, for property tax purposes only, "fixtures" does not include security devices and systems affixed to any residential improvements, including but not limited to security doors, security bars, and alarm systems.

(4.3) "Forest land" means land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide.

(4.4) "Forest management plan" means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the

Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fees collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly.

(4.5) "Forest management practices" means practices accepted by professional foresters which control forest establishment, composition, density, and growth for the purpose of producing forest products and associated amenities following sound business methods and technical forestry principles.

(4.6) "Forest trees" means woody plants which have a well-developed stem or stems, which are usually more than twelve feet in height at maturity, and which have a generally well-defined crown.

(5) Repealed.

(5.5) (a) "Hotels and motels" means improvements and the land associated with such improvements that are used by a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public and that are predominantly used on an overnight or weekly basis; except that "hotels and motels" does not include:

(I) A residential unit, except for a residential unit that is a hotel unit;

(II) A residential unit that would otherwise be classified as a hotel unit if the residential unit is held as inventory by a developer primarily for sale to customers in the ordinary course of the developer's trade or business, is marketed for sale by the developer, and either has been held by the developer for less than two years since the certificate of occupancy for the residential unit has been issued or is not depreciated under the internal revenue code, as defined in section 39-22-103 (5.3), while owned by the developer;

(III) A residential unit that would otherwise be classified as a hotel unit if the residential unit has been acquired by a lender or an owners' association through

foreclosure, a deed in lieu of foreclosure, or a similar transaction, is marketed for sale by the lender or owners' association and is not depreciated under the internal revenue code, as defined in section 39-22-103 (5.3), while owned by the lender or owners' association; or

(IV) A residential improvement if a portion of the residential improvement is occupied by its owner or by one or more lessees of the owner as a primary residence and a portion of the residential improvement is offered to the general public for accommodations as a bed and breakfast or a similar operation. The actual value and valuation for assessment of such a residential improvement shall be determined as provided in section 39-1-103 (9) (a).

### Annotations

**Editor's note:** This version of subparagraph (IV) is effective until January 1, 2003.

### Statute text

(IV) Repealed.

### Annotations

**Editor's note:** This version of subparagraph (IV) is effective January 1, 2003.

### Statute text

(b) If any time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit is owned by any non-hotel unit owner, then, unless a declaration or other express agreement binding on the non-hotel unit owners and the hotel unit owners provides otherwise:

(I) The hotel unit owners shall pay the taxes on the hotel unit not required to be paid by the non-hotel unit owners pursuant to subparagraph (II) of this paragraph (b).

(II) Each non-hotel unit owner shall pay that portion of the taxes on the hotel unit equal to the non-hotel unit owner's ownership or usage percentage of the hotel unit multiplied by the property tax that would have been levied on the hotel unit if

the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit was residential real property.

(III) For purposes of determining the amount due from any hotel unit owner or non-hotel unit owner pursuant to subparagraph (II) of this paragraph (b), the assessor shall, upon the request of any hotel unit owner or non-hotel unit owner, calculate the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit were residential real property. A hotel unit owner or non-hotel unit owner may petition the county board of equalization for review of the assessor's calculation pursuant to the procedures set forth in section 39-10-114. Any appeal from the decision of the county board shall be governed by section 39-10-114.5.

(c) As used in this subsection (5.5):

(I) "Condominium unit" means a unit, as defined in section 38-33.3-103 (30), C.R.S., and also includes a time share unit.

(II) "Hotel unit owners" means any person or member of a group of related persons whose ownership and use of a residential unit cause the residential unit to be classified as a hotel unit.

(III) "Hotel units" means more than four residential unit ownership equivalents in a project that are owned, in whole or in part, directly, or indirectly through one or more intermediate entities, by one person or by a group of related persons if the person or group of related persons uses the residential units or parts thereof in connection with a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public predominantly on an overnight or weekly basis. "Hotel unit" means any residential unit included in hotel units. For purposes of this subparagraph (III):

(A) "Control" means the power to direct the business or affairs of an entity through direct or indirect ownership of stock, partnership interests, membership interests, or other forms of beneficial interests.

(B) "Related persons" means individuals who are members of the same family, including only spouses and minor children, or persons who control, are controlled by, or are under common control with each other. Persons are not related persons solely because they engage a common agent to manage or rent their residential units, they are members of an owners' association or similar group, they enter into a tenancy in common or a similar agreement with respect to undivided interests in a residential unit, or any combination of the foregoing.

(IV) "Project" means one or more improvements that contain residential units if the boundaries of the residential units are described in or determined by the same declaration, as defined in section 38-33.3-103 (13), C.R.S.

(V) "Residential unit" means a condominium unit, a single family residence, or a townhome.

(VI) "Non-hotel unit owner" means any owner of a time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit who is not a hotel unit owner with respect to the hotel unit.

(VII) "Residential unit ownership equivalent" means:

(A) In the case of time share units, time share interests or time share use periods in one or more time share units that in the aggregate entitle the owner of such time share interests or time share use periods to three hundred sixty-five days of use in any calendar year or three hundred sixty-six days of use in any calendar year that is a leap year; and

(B) In the case of residential units other than time share units, undivided interests or other ownership interests in one or more such residential units that total one hundred percent. For purposes of this sub-subparagraph (B), any undivided interest or other ownership interest not stated in terms of a percentage of total ownership shall be converted to a percentage of total ownership based on the rights accorded to the holder of the undivided interest or other ownership interest.

(VIII) "Time share unit" means a condominium unit that is divided into time share estates as defined in section 38-33-110 (5), C.R.S., or that is subject to a time share use as defined in section 12-61-401 (4), C.R.S.

(5.6) "Hotels and motels" as defined in subsection (5.5) of this section shall not include bed and breakfasts.

## Annotations

**Editor's note:** Subsection (5.6) is effective January 1, 2003.

## Statute text

(6) "Household furnishings" means that personal property, other than fixtures, in residential structures and buildings which is not used for the production of income at any time.

(7) "Improvements" means all structures, buildings, fixtures, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.

(7.1) "Innkeeper" means the owner, operator, or manager of a bed and breakfast.

## Annotations

**Editor's note:** Subsection (7.1) is effective January 1, 2003.

## Statute text

(7.2) "Inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" means those classes of personal property which are held primarily for sale by a business, farm, or ranch, including components of personal property to be held for sale, or which are held for consumption by a business, farm, or ranch, or which are rented for thirty days or less. For the purposes of this subsection (7.2), "personal property rented for thirty days or less" means personal property rented for thirty days or less which can be returned at the option of the person renting the property, in a transaction on which the sales or use tax is actually collected before being finally sold, whether or not such personal property is subject to depreciation. It is the purpose of the general assembly to exempt "personal property rented for thirty days or less" from property tax because of the similarity of such property to inventories of merchandise held by retail stores. Further, the general assembly intends this exemption to encompass a transaction under a rental agreement in which the customer pays rent in order to use an item for a brief period of time; it is not intended to encompass an equipment lease contract covering a specific period of time and which includes financial penalties for early cancellation. Except for "personal property rented for thirty days or less", the term "inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" does not include personal property which is held for rent or lease or is subject to an allowance for depreciation. For property tax years commencing on or after January 1, 1984, the term does include inventory which is owned by and which is in the possession of the manufacturer of such inventory unless:

(a) Such inventory is in the possession of the manufacturer after having previously been leased by the manufacturer to a customer; and

(b) Such manufacturer has not designated such inventory for scrapping, substantial reconditioning, renovating, or remanufacturing in accordance with its

customary practices. For the purposes of this paragraph (b), normal maintenance shall not constitute substantial reconditioning, renovating, or remanufacturing.

(7.5) Repealed.

(7.8) "Livestock" includes all animals.

(7.9) "Minerals in place" means, without exception, metallic and nonmetallic mineral substances of every kind while in the ground.

(8) "Mobile home" means a manufactured home as defined in section 42-1-102 (106) (b), C.R.S.

(8.5) "Not for private gain or corporate profit" means the ownership and use of property whereby no person with any connection to the owner thereof shall receive any pecuniary benefit except for reasonable compensation for services rendered and any excess income over expenses derived from the operation or use of the property and all proceeds from the sale of the property of the owner shall be devoted to the furthering of any exempt purpose.

(8.7) "Perpetual conservation easement" means a conservation easement in gross, as described in article 30.5 of title 38, C.R.S., that qualifies as a perpetual conservation restriction pursuant to section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any regulations issued thereunder.

(9) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities which are or may become taxpayers by reason of the ownership of taxable real or personal property.

(10) "Personal effects" means such personal property as is or may be worn or carried on or about the person, and such personal property as is usually associated with the person or customarily used in personal hobby, sporting, or recreational activities and which is not used for the production of income at any time.

(11) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation that are either affixed or not affixed to the real property for proper utilization of such articles. Except as otherwise specified in articles 1 to 13 of this title, any pipeline, telecommunications line, utility line, cable television line, or other similar business asset or article installed through an easement, right-of-way, or leasehold for the purpose of commercial or industrial operation and not for the enhancement of real property shall be deemed to be personal property, including, without limitation, oil and gas distribution and transmission pipelines, gathering system pipelines, flow lines, process lines, and related water pipeline

collection, transportation, and distribution systems. Structures and other buildings installed on an easement, right-of-way, or leasehold that are not specifically referenced in this subsection (11) shall be deemed to be improvements pursuant to subsection (7) of this section.

(12) "Political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

(12.1) Repealed.

(12.3) and (12.4) Repealed.

(12.5) "Professional forester" means any person who has received a bachelor's or higher degree from an accredited school of forestry.

(13) "Property" means both real and personal property.

(13.2) "Qualified organization" means a qualified organization as defined in section 170 (h) (3) of the federal "Internal Revenue Code of 1986", as amended.

(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

(14) "Real property" means:

(a) All lands or interests in lands to which title or the right of title has been acquired from the government of the United States or from sovereign authority ratified by treaties entered into by the United States, or from the state;

(b) All mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and

(c) Improvements.

(14.3) "Residential improvements" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights which are an integral part of the residential use. The term also includes mobile homes as defined in section 38-29-102 (8) C.R.S., and manufactured homes as defined in section 42-1-102 (106) (b), C.R.S.

(14.4) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and which is used as a unit in conjunction with the residential improvements located

thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term does not include any portion of the land which is used for any purpose which would cause the land to be otherwise classified. The term also does not include land underlying a residential improvement located on agricultural land.

### **Annotations**

**Editor's note:** This version of subsection (14.4) is effective until January 1, 2003.

### **Statute text**

(14.4) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5). The term also does not include land underlying a residential improvement located on agricultural land.

### **Annotations**

**Editor's note:** This version of subsection (14.4) is effective January 1, 2003.

### **Statute text**

(14.5) "Residential real property" means residential land and residential improvements but does not include hotels and motels as defined in subsection (5.5) of this section.

(15) Repealed.

(15.5) (a) "School" means:

(I) An educational institution having a curriculum comparable to that of a publicly supported elementary or secondary school or college, or any combination thereof, and requiring daily attendance; or

(II) An institution that is licensed as a child care center pursuant to article 6 of title 26, C.R.S., that is:

(A) Operated by and as an integral part of a not-for-profit educational institution that meets the requirements of subparagraph (I) of this paragraph (a); or

(B) A not-for-profit institution that offers an educational program for not more than six hours per day and that employs educators trained in preschool through eighth grade educational instruction and is licensed by the appropriate state agency and that is not otherwise qualified as a school under this paragraph (a) or as a religious institution.

(b) "School" includes any educational institution that meets the requirements set forth in subparagraph (I) or (II) of paragraph (a) of this subsection (15.5), even if such educational institution maintains hours of operation in excess of the minimum hour requirements of section 22-32-109 (1) (n) (I), C.R.S.

(16) "Taxable property" means all property, real and personal, not expressly exempted from taxation by law.

(17) "Treasurer" means the elected treasurer of a county or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(18) "Works of art" means those items of personal property that are original creations of visual art, including, but not limited to:

(a) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;

(b) Paintings or drawings;

(c) Mosaics;

(d) Photographs;

(e) Crafts made from clay, fiber and textiles, wood, metal, plastics, or any other material, or any combination thereof;

(f) Calligraphy;

- (g) Mixed media composed of any combination of forms or media; or
- (h) Unique architectural embellishments.

## History

**Source:** **L. 64:** R&RE, p. 674, § 1. **C.R.S. 1963:** § 137-1-1. **L. 65:** p. 1095, § 1. **L. 67:** p. 945, § 1. **L. 70:** p. 379, § 8. **L. 73:** p. 237, § 17. **L. 75:** (8) repealed, p. 1473, § 30, effective July 18. **L. 77:** (7.5), (12.3), and (12.4) added, p. 1728, § 1, effective June 20; (8) RC&RE, p. 1740, § 1, effective January 1, 1978. **L. 78:** (12.1) added, p. 467, § 1, effective July 1. **L. 79:** (12.1) amended, p. 1400, § 1, effective March 13; (12.1)(a) amended, p. 1059, § 9, effective June 20; (12.1) repealed, p. 1456, § 4, effective July 1, 1981. **L. 80:** (18) added, p. 711, § 1, effective April 16. **L. 81:** (12.1)(d) R&RE, p. 1872, § 4, effective June 29; (12.1)(a)(II) amended, § 5, effective July 1. **L. 83:** (15) repealed, p. 1485, § 11, effective April 22; (1.1), (1.3), (1.6), (3.5), (5.5), (7.2), (7.8), (13.5), and (14.3) to (14.5) added, (5) repealed, and (12.3)(b) amended, pp. 1486, 1488, § § 1, 6, 4, effective June 1. **L. 84:** (7.2) amended, p. 983, § 1, effective May 8. **L. 85:** IP(7.2) amended and (7.9) added, pp. 1215, 1210, § § 1, 2, effective May 9. **L. 87:** (1.3) amended, p. 1382, § 1, effective May 8; (7.5), (12.3), and (12.4) repealed, p. 1304, § 1, effective May 20. **L. 88:** (4) and (11) amended and (12.1) repealed, pp. 1269, 1275, § § 4, 14, effective May 29. **L. 89:** (15.5) added, p. 1482, § 3, effective April 23. **L. 90:** (1.6)(a) amended, (4.3) to (4.6) and (12.5) added, p. 1706, § 1, effective April 16; (9) amended, p. 450, § 26, effective April 18; (1.6)(a) and (13.5) amended and (8.5) added, pp. 1695, 1703, 1701, § § 16, 37, 33, effective June 9. **L. 91:** IP(7.2) amended, p. 1980, § 1, effective April 20; (8) amended, p. 1394, § 2, effective April 27. **L. 92:** (4) amended, p. 2216, § 3, effective June 2. **L. 94:** (8) and (14.3) amended, p. 2568, § 86, effective January 1, 1995. **L. 95:** IP(1.6)(a) amended and (1.6)(a)(III), (3.2), (8.7), and (13.2) added, pp. 173, 174, § § 1, 2, effective April 7. **L. 97:** (1.1) and (1.6) amended, p. 509, § 1, effective April 24. **L. 98:** (11) amended, p. 1276, § 1, effective June 1. **L. 99:** (15.5) amended, p. 1299, § 1, effective June 3. **L. 2000:** (15.5)(a)(II) amended, p. 1499, § 1, effective August 2. **L. 2001:** (2) and (17) amended, p. 268, § 14, effective November 15. **L. 2002:** (5.5) amended, p. 1939, § 1, effective August 7; (2.5), (3.1), (5.6), and (7.1) added, (5.5)(a)(IV) repealed, and (14.4) amended, pp. 1671, 1673, § § 1, 3, effective January 1, 2003.

## Annotations

**Editor's note:** (1) Amendments to subsection (12.1) by Senate Bill 79-48 harmonized with House Bill 79-1109.

(2) Section 38-29-102 (8), C.R.S., which is referenced in subsection (14.3), was repealed by L. 89, p. 731, § 40, effective July 1, 1989.

(3) Amendments to subsection (1.6)(a) by House Bill 90-1229 harmonized with House Bill 90-1018.

(4) Section 2 of chapter 347, Session Laws of Colorado 2002, provides that the act amending subsection (5.5) applies to the taxation of residential units for property tax years commencing on or after January 1, 2002. The act was passed without a safety clause. For an explanation concerning the effective date, see page vii of this volume.

(5) Subsections (2.5), (3.1), (5.5)(a)(IV), (5.6), (7.1), and (14.4) were contained in a 2002 act that was passed without a safety clause. The act establishes an effective date of January 1, 2003, for these provisions. For further explanation concerning the effective date, see page vii of this volume.

### Annotations

**Cross references:** For the creation of the property tax administrator, see § 39-2-101.

### Annotations

#### I. PERSONAL PROPERTY.

**Membership or contract in Associated Press is "personal property".** Board of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).

#### II. PROPERTY.

**Bank deposits not "property" of bank** but are credits belonging to depositors. Murray v. Board of Comm'rs, 67 Colo. 14, 185 P. 262 (1919).

#### III. REAL PROPERTY.

**To determine the proper classification of land for assessment, the trial court must make findings of fact regarding conflicting evidence.** C.A. Staack v. Board of County Comm'rs, 802 P.2d 1191 (Colo. App. 1990).

Primary factor to be considered in determining proper classification of property for property tax purposes is the actual use of the property on the relevant assessment date. *Farny v. Board of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

**In determining a parcel's proper classification for the present assessment year, the board of assessment appeals may not reject a final decision previously rendered by an appropriate tribunal as to the parcel's use during a previous tax year and re-visit that issue.** However, a decision with respect to a previous tax year is not binding with respect to the issues presented in a protest of the assessment for a later year. *Von Hagen v. Board of Equaliz.*, 948 P.2d 92 (Colo. App. 1997).

**The taxpayer has the burden of proof to show any qualifying ranching or farming uses of land in support of a claim for agricultural classification.** *Palmer v. Board of Equaliz.*, 957 P.2d 348 (Colo. App. 1998).

**Definition of "agricultural land" does not require that the use of the residential improvements be related to the agricultural use of the land.** C.A. *Staack v. Board of County Comm'rs*, 802 P.2d 1191 (Colo. App. 1990).

**Definition of "agricultural land" does not differentiate between a lessee's primary purpose in using the land and the landowner's primary purpose in acquiring and maintaining ownership of the land,** nor does the landowner need to profit or intend to profit from agricultural operations on the land conducted by the owner's lessees. *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

**Lessees' use of property as a ranch for the primary purpose of making a profit was the determinative factor in qualifying property as agricultural land.** *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

**Subsections (1.6) and (13.5) require that, in order to qualify for agricultural tax treatment, the taxpayer must prove that actual grazing of the parcel took place in the applicable tax year** unless the reason the land was not grazed related to a conservation practice or unless the land in question is part of a larger agricultural unit on which grazing or conservation practices have occurred during the relevant tax years. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996).

**Whether a party's use constitutes agricultural use is primarily a factual question, but an interpretation of what the legislature intended when it required agricultural use in order for the property to be classified as agricultural for tax purposes is a question of law for the courts to decide.** *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996).

**Initial question that the board of assessment appeals must consider in reviewing a county assessor's classification of land as agricultural** is whether it is a segregated parcel that should be treated as a single unit or whether it is part of an integrated larger parcel. This is a factual determination, controlled by whether the land is sufficiently contiguous to and connected by use with other land to qualify it as part of a large unit or whether it is a parcel segregated by geography or type of use from the balance of the unit. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996).

**The plain meaning of the phrase "used for grazing" is that livestock actually graze on the land.** There must be actual grazing on the parcel during each relevant tax year to qualify for agricultural classification unless the land is subject to non-use for conservation purposes. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996).

**In order for land that is not used for grazing to qualify for conservation, the taxpayer must prove that the non-use was reasonably related to the overall grazing operation.** A professionally prepared conservation plan is not required. The non-use must be both purposeful and an integral part of the grazing operation. Neglect by the landowner or lessee or basic unsuitability of the land for grazing will not suffice. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996); *Johnston v. Park County Bd. of Equaliz.*, 979 P.2d 578 (Colo. App. 1999).

**There is no indication in the text that the landowner must actually profit or intend to profit from agricultural operations on the land conducted by the owner's lessees.** *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

**Definition of "ranch" does not require that the owner of the land own the livestock grazing on his land** to classify the land as agricultural. The owner may lease the land for grazing, and, if such use is for the primary purpose of obtaining a monetary profit from the grazing activity, it constitutes an agricultural use. *C.A. Staack v. Board of County Comm'rs*, 802 P.2d 1191 (Colo. App. 1990); *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

**So long as a parcel of land is used for grazing livestock for profit, it qualifies as a "ranch"**, even if the owner of the property is not the one who is conducting the grazing operation. *Estes v. Board of Assessment Appeals*, 805 P.2d 1174 (Colo. App. 1990).

**"Trespass grazing" does not meet the statutory requirements for agricultural classification as a matter of law.** In interpreting subsections (1.6)(a)(I) and (13.5), a court must give appropriate deference to provisions of the property tax administrator's reference manuals that expressly provide that "trespass grazing" is an insufficient basis for finding that land is "agricultural

land". Besch v. Jefferson County Bd. of County Comm'rs, 20 P.3d 1195 (Colo. App. 2000).

**The 10-year requirement for agricultural land must be interpreted to mean that the land was classified, or eligible for classification, as agricultural land at some time during the preceding ten years,** not for the whole of that period. Hence, if a property's agricultural use ceases, that property may, nevertheless, be again classified as agricultural land if it is used for such purpose for three years within ten years from the date of the original abandonment of that use. Von Hagen v. Board of Equaliz., 948 P.2d 92 (Colo. App. 1997).

**Owner's intentions for future use of his land may not be considered in classifying the property as "agricultural land".** C.A. Staack v. Board of County Comm'rs, 802 P.2d 1191 (Colo. App. 1990).

**Focus of the statutory definition of agricultural land is clearly on present and past surface use of the land** without regard to any future intent on the part of the owner to develop the land for nonagricultural purposes. Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co., 830 P.2d 975 (Colo. 1992).

**Land was held not to be "agricultural land" because the primary use of the land during the three years in question was not for farming with the intent to obtain a profit.** Arapahoe Partnership v. Board of County Comm'rs, 813 P.2d 766 (Colo. App. 1990).

**Definition of "farm" does not include land used for greenhouses,** where the agricultural products produced in the greenhouses do not originate from the land's productivity. Accordingly, such land may not be classified and valued as agricultural land for property tax purposes. Welby Gardens Co. v. Adams County Bd. of Equaliz., \_\_\_ P.3d \_\_\_ (Colo. App. 2002).

**The grazing and boarding of "pleasure horses" does not qualify as a "ranching" use.** Only the grazing of "livestock" for the purpose of obtaining a monetary profit constitutes a "ranching" use, and horses may constitute "livestock" only if they are used for food or for human or animal consumption, breeding, draft, or profit. The taxpayer's profit motive alone in boarding and grazing horses on his land is insufficient. Palmer v. Board of Equaliz., 957 P.2d 348 (Colo. App. 1998).

**Production of eggs** in self-contained unit within which the livestock does not touch the ground where the eggs are sold for monetary profit as an agricultural product falls under the statutory definition of a farm, and the eggs fall under the definition of agricultural products. Morning Fresh Farms v. Board of Equaliz., 794 P.2d 1073 (Colo. 1990).

**Reservoir rights used upon land are taxable as real estate** like improvements upon the land on which they are applied. *Antero & Lost Park Reservoir Co. v. Board of Comm'rs*, 65 Colo. 375, 177 P. 148 (1918).

Water rights are included within and constitute a part of the real estate upon which the water is applied. *Kendrick v. Twin Lakes Reservoir Co.*, 58 Colo. 281, 144 P. 884 (1914).

**Mineral reservation not real property.** A right to prospect for and to remove minerals if found is not a reservation of an estate in the real property involved, but a mere license, subject to revocation before its exercise by the owner of the fee simple estate. *Radke v. Union P.R.R.*, 138 Colo. 189, 334 P.2d 1077 (1959).

**Waterworks system deemed realty.** Water mains, pipes, and hydrants laid in the public streets and alleys of a city, and the machinery connected therewith and necessary to the operation of a waterworks plant, are realty for the purpose of taxation. *Colorado Fuel & Iron Co. v. Pueblo Water Co.*, 11 Colo. App. 352, 53 P. 232 (1898).

**In Colorado, all real property, except that which is expressly exempted by law, is subject to ad valorem taxation.** *Mesa Verde Co. v. Montezuma County Bd. of Equaliz.*, 898 P.2d 1 (Colo. 1995).

**Possessory interest of concessionaire on national park land** owned by the United States was an "interest in land" and thus constituted "real property" as defined in this section. *Mesa Verde Co. v. Montezuma County Bd. of Equaliz.*, 898 P.2d 1 (Colo. 1995).

**Possessory interests in land constitute real property** as defined in subsection (14) and therefore also constitute taxable property as defined in subsection (16). *Bd. of County Comm'rs v. Vail Assocs., Inc.*, 19 P.3d 1263 (Colo. 2001).

**Reservoir dam not "improvement".** A reservoir dam is not subject to taxation as realty as it is not an improvement upon the land on which it is situated. *Antero & Lost Park Reservoir Co. v. Board of Comm'rs*, 65 Colo. 375, 177 P. 148 (1918).

**Definition of "residential land" contains no prescribed limit on the amount of acreage which may be so classified.** Rather, the size of a residential tract must be determined on a case-by-case basis according to the amount of acreage which is being used as a unit in conjunction with the residential improvements on each particular property. *Gyurman v. Weld County Bd. of Equaliz.*, 851 P.2d 307 (Colo. App. 1993); *Farny v. Board of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

**A residential dwelling must be situated upon a lot zoned for residential use in order for the lot to qualify as "residential real property"** eligible for the

percentage ratio of valuation for assessment as determined in accordance with Colo. Const., art. X, § 3(1)(b). *Vail Associates, Inc. v. Board of Assessment Appeals*, 765 P.2d 593 (Colo. App. 1988).

**Definition of "residential improvement" requires that a structure be designed for use predominantly as a residence** rather than simply "actually used" as a residence. *Mission Viejo v. Douglas Cty. Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994).

For purposes of "residential improvements," the phrase "designed for use" means that the building at the relevant time is devoted to or intended for actual use predominantly as a place of residence. *Mission Viejo Co. v. Douglas County Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994); *Manor Vail Condominium Ass'n v. Board of Equaliz.*, 956 P.2d 654 (Colo. App. 1998); *Farny v. Board of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

Small structure built on 320-acre parcel qualified for residential classification since taxpayers actually used structure predominantly as a place of residence and it was at least minimally suitable for such residential purposes. *Farny v. Board of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

**Restaurant and meeting rooms were not residential improvements.** *Manor Vail Condominium Ass'n v. Board of Equaliz.*, 956 P.2d 654 (Colo. App. 1998).

**Building originally designed as a residence could be reclassified based on actual use.** Fact that building was originally designed as residence did not conclusively require classification as a residential property under this section. *Mission Viejo v. Douglas Cty. Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994).

**Plaintiff, a quasi-municipal corporation and political subdivision of the state, was not a "person"** under subsection (9) and did not have standing to seek damages pursuant to § 39-10-115 (3). *Bear Creek Water and Sanitation Dist. v. Board of County Comm'rs of Jefferson County*, 902 P.2d 904 (Colo. App. 1995).

**Vacant parcel of land did not qualify for residential classification** even though it was zoned for residential use, adjacent to the taxpayer's residence, and used in conjunction with the residence as part of the taxpayer's backyard because the adjacent residential parcel was owned by the taxpayer's wife, not the taxpayer, and the vacant parcel did not have a residential dwelling unit on it. *Sullivan v. Board of Equaliz.*, 971 P.2d 675 (Colo. App. 1998).

**Applied** in *Del Mesa Farms v. Board of Equaliz.*, 656 P.2d 661 (Colo. App. 1998).