

100-687, known as the 'Veterans' Judicial Review Act', see Tables for classification] shall take effect on September 1, 1989.

“(b) EFFECTIVE DATE FOR CERTAIN TRANSITION PROVISIONS.—The amendment made by section 201(a) [amending section 4001 [now 7101] of this title] shall take effect on February 1, 1989.

“(c) DATE OF ENACTMENT.—Sections 201 (other than subsection (a)), 208, 209, 302, and 303, and the amendments made by those sections [see Tables for classification], shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

“(d) BOARD OF VETERANS' APPEALS.—Sections 202, 203, 205, 206, and 207 [see Tables for classification] shall take effect as of January 1, 1989. Section 204 [amending section 4004 [now 7104] of this title] shall take effect on September 1, 1989.

“(e) COMMENCEMENT OF OPERATION OF COURT OF VETERANS APPEALS.—Notwithstanding subsection (a), the United States Court of Veterans Appeals [now United States Court of Appeals for Veterans Claims] established pursuant to chapter 72 of title 38, United States Code (as added by section 301) shall not begin to operate until at least three judges have been appointed to the court.”

CHAPTER APPLICABLE TO CLAIMS ALLEGING PREVIOUS DETERMINATION THE PRODUCT OF CLEAR AND UNMISTAKABLE ERROR

Pub. L. 105-111, §1(c)(2), Nov. 21, 1997, 111 Stat. 2272, provided that: “Notwithstanding section 402 of the Veterans Judicial Review Act (38 U.S.C. 7251 note), chapter 72 of title 38, United States Code, shall apply with respect to any decision of the Board of Veterans' Appeals on a claim alleging that a previous determination of the Board was the product of clear and unmistakable error if that claim is filed after, or was pending before the Department of Veterans Affairs, the Court of Veterans Appeals [now Court of Appeals for Veterans Claims], the Court of Appeals for the Federal Circuit, or the Supreme Court on the date of the enactment of this Act [Nov. 21, 1997].”

CHAPTER APPLICABLE TO CASES FILED ON OR AFTER NOVEMBER 18, 1988

Pub. L. 100-687, div. A, title IV, §402, Nov. 18, 1988, 102 Stat. 4122, as amended by Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239, which provided that this chapter applied to any case in which a notice of disagreement was filed under section 7105 of this title on or after Nov. 18, 1988, was repealed by Pub. L. 107-103, title VI, §603(a), Dec. 27, 2001, 115 Stat. 999.

§ 7252. Jurisdiction; finality of decisions

(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4113, §4052; renumbered §7252 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(e)(3), June 13, 1991, 105 Stat.

287; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

Editorial Notes

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4052 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “Court” for “court” in last sentence.

Subsec. (b). Pub. L. 102-83, §5(c)(1), substituted “1155” for “355”.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-40, §402(d)(1), substituted “7261” for “4061”.

Subsec. (c). Pub. L. 102-40, §402(d)(1), substituted “7292” for “4092”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7253. Composition

(a) COMPOSITION.—The Court of Appeals for Veterans Claims is composed of at least three and not more than seven judges, one of whom shall serve as chief judge in accordance with subsection (d).

(b) APPOINTMENT.—The judges of the Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. A person may not be appointed to the Court who is not a member in good standing of the bar of a Federal court or of the highest court of a State. Not more than the number equal to the next whole number greater than one-half of the number of judges of the Court may be members of the same political party.

(c) TERM OF OFFICE.—The term of office of the judges of the Court of Appeals for Veterans Claims shall be 15 years. A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.

(d) CHIEF JUDGE.—(1) The chief judge of the Court is the head of the Court. The chief judge of the Court shall be the judge of the Court in regular active service who is senior in commission among the judges of the Court who—

(A) have served for one or more years as judges of the Court;

(B) have at least 3 years remaining in term of office; and

(C) have not previously served as chief judge.

(2)(A) In any case in which there is no judge of the Court in regular active service who meets the requirements under paragraph (1), the judge

of the Court in regular active service who is senior in commission and meets subparagraph (A) or (B) and subparagraph (C) of paragraph (1) shall act as the chief judge.

(B) In any case under subparagraph (A) of this paragraph in which there is no judge of the Court in regular active service who meets subparagraph (A) or (B) and subparagraph (C) of paragraph (1), the judge of the Court in regular active service who is senior in commission and meets subparagraph (C) shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the Court shall serve as the chief judge under paragraph (1) for a term of five years or until the judge becomes age 70, whichever occurs first. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, that judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of the term prescribed by paragraph (3) if—

(i) the chief judge leaves regular active service as a judge of the Court; or

(ii) the chief judge notifies the other judges of the Court in writing that such judge desires to be relieved of the duties of chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform the duties of chief judge, those duties shall be performed by the judge of the Court in active service who is present, able and qualified to act, and is next in precedence.

(6) Judges who have the same seniority in commission shall be eligible for service as chief judge in accordance with their relative precedence.

(e) SALARY.—Each judge of the Court shall receive a salary at the same rate as is received by judges of the United States district courts.

(f) REMOVAL.—(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, engaging in the practice of law, or violating section 7255(c) of this title. A judge of the Court may not be removed from office by the President on any other ground.

(2) Before a judge may be removed from office under this subsection, the judge shall be provided with a full specification of the reasons for the removal and an opportunity to be heard.

(g) RULES.—(1) The Court shall prescribe rules, consistent with the provisions of chapter 16 of title 28, establishing procedures for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under such chapter.

(2) The provisions of sections 354(b) through 360 of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the

powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to section 354(b) or 355 of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

(B) The Court shall have the power provided under section 361 of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.

(h) TEMPORARY EXPANSION OF COURT.—(1) During the period from January 1, 2002, through August 15, 2005, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2)(A) Of the two additional judges authorized by this subsection—

(i) only one may be appointed pursuant to a nomination made in 2002; and

(ii) only one may be appointed pursuant to a nomination made in 2003.

(B) If a judge is not appointed under this subsection pursuant to a nomination made in 2002, a judge may be appointed under this subsection pursuant to a nomination made in 2004. If a judge is not appointed under this subsection pursuant to a nomination made in 2003, a judge may be appointed under this subsection pursuant to a nomination made in 2004. In either case, such an appointment may be made only pursuant to a nomination made before October 1, 2004.

(3) The term of office and the eligibility for retirement of a judge appointed under this subsection, other than a judge described in paragraph (4), are governed by the provisions of section 1012 of the Court of Appeals for Veterans Claims Amendments of 1999 (title X of Public Law 106-117; 113 Stat. 1590; 38 U.S.C. 7296 note) if the judge is one of the first two judges appointed to the Court after November 30, 1999.

(4) A judge of the Court as of December 27, 2001, who was appointed to the Court before January 1, 1991, may accept appointment as a judge of the Court under this subsection notwithstanding that the term of office of the judge on the Court has not yet expired under this section. The term of office of an incumbent judge who receives an appointment as described in the preceding sentence shall be 15 years, which includes any period remaining in the unexpired term of the judge. Any service following an appointment under this subsection shall be treated as though served as part of the original term of office of that judge on the Court.

(5) Notwithstanding paragraph (1), an appointment may not be made to the Court if the appointment would result in there being more than seven judges on the Court who were appointed after January 1, 1997. For the purposes of this paragraph, a judge serving in recall status under section 7257 of this title shall be disregarded in counting the number of judges appointed to the Court after such date.

(i) ADDITIONAL TEMPORARY EXPANSION OF COURT.—(1)(A) Subject to paragraph (2), effective during the period beginning on December 31, 2009, and ending on the date of the enactment of the Veterans Benefits Improvement Act of 2024, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(B) Subject to paragraph (2), effective as of the date of the enactment of the Veterans Benefits Improvement Act of 2024, the authorized number of judges of the Court specified in subsection (a) is increased by three.

(2) Effective as of January 1, 2028, an appointment may not be made to the Court if the appointment would result in there being more judges of the Court than the authorized number of judges of the Court specified in subsection (a).

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4114, §4053; amended Pub. L. 101-94, title I, §102(c), Aug. 16, 1989, 103 Stat. 626; renumbered §7253, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-82, §3, Aug. 6, 1991, 105 Stat. 375; Pub. L. 102-585, title VIII, §801, Nov. 4, 1992, 106 Stat. 4980; Pub. L. 105-368, title V, §§501, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106-117, title X, §§1031, 1032(a), 1033, Nov. 30, 1999, 113 Stat. 1594, 1595; Pub. L. 107-103, title VI, §601, Dec. 27, 2001, 115 Stat. 998; Pub. L. 107-273, div. C, title I, §11043(f), Nov. 2, 2002, 116 Stat. 1856; Pub. L. 108-454, title VIII, §802, Dec. 10, 2004, 118 Stat. 3625; Pub. L. 109-233, title V, §503(15), June 15, 2006, 120 Stat. 417; Pub. L. 110-389, title VI, §601, Oct. 10, 2008, 122 Stat. 4176; Pub. L. 112-260, title III, §302(b), Jan. 10, 2013, 126 Stat. 2425; Pub. L. 114-315, title II, §§201(a), 204(a), Dec. 16, 2016, 130 Stat. 1548, 1549; Pub. L. 116-159, div. E, title II, §5205, Oct. 1, 2020, 134 Stat. 750; Pub. L. 118-196, §7, Dec. 23, 2024, 138 Stat. 2675.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Veterans Benefits Improvement Act of 2024, referred to in subsec. (i)(1), is the date of enactment of Pub. L. 118-196, which was approved Dec. 23, 2024.

AMENDMENTS

2024—Subsec. (i)(1). Pub. L. 118-196, §7(1), designated existing provisions as subpar. (A), substituted “Subject to paragraph (2), effective during the period beginning on December 31, 2009, and ending on the date of the enactment of the Veterans Benefits Improvement Act of 2024” for “Subject to paragraph (2), effective as of December 31, 2009”, and added subpar. (B).

Subsec. (i)(2). Pub. L. 118-196, §7(2), substituted “January 1, 2028” for “January 1, 2026”.

2020—Subsec. (i)(2). Pub. L. 116-159 substituted “January 1, 2026” for “January 1, 2021”.

2016—Subsec. (d)(1)(B), (C). Pub. L. 114-315, §204(a)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(2). Pub. L. 114-315, §204(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In any case in which there is no judge of the Court in regular active service who has served as a judge of the Court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.”

Subsec. (i)(2). Pub. L. 114-315, §201(a), substituted “January 1, 2021” for “January 1, 2013”.

2013—Subsec. (f)(1). Pub. L. 112-260, which directed substitution of “engaging in the practice of law, or violating section 7255(c) of this title” for “or engaging in the practice of law” in section 7253(f)(1), without specifying the Code title to be amended, was executed to subsec. (f)(1) of this section, to reflect the probable intent of Congress.

2008—Subsec. (i). Pub. L. 110-389 added subsec. (i).

2006—Subsec. (d)(5). Pub. L. 109-233 substituted “Court” for “court”.

2004—Subsec. (d)(1). Pub. L. 108-454, §802(a), inserted “The chief judge of the Court is the head of the Court.” after “(1)”.

Subsec. (d)(4)(A). Pub. L. 108-454, §802(b), substituted “Court” for “court” in cls. (i) and (ii).

Subsec. (h)(4). Pub. L. 108-454, §802(c), substituted “December 27, 2001,” for “the date of the enactment of this subsection”.

2002—Subsec. (g)(1). Pub. L. 107-273, §11043(f)(1), substituted “chapter 16” for “section 372(c)” and “such chapter” for “such section”.

Subsec. (g)(2). Pub. L. 107-273, §11043(f)(2), substituted “sections 354(b) through 360” for “paragraphs (7) through (15) of section 372(c)” and “section 354(b) or 355” for “paragraph (7) or (8) of section 372(c)”.

Subsec. (g)(3)(B). Pub. L. 107-273, §11043(f)(3), substituted “361” for “372(c)(16)”.

2001—Subsecs. (b), (c), (f), (g). Pub. L. 107-103, §601(b), inserted subsec. headings.

Subsec. (h). Pub. L. 107-103, §601(a), added subsec. (h). 1999—Subsec. (a). Pub. L. 106-117, §1031, inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “The Court of Appeals for Veterans Claims shall be composed of a chief judge and at least two and not more than six associate judges.”

Subsec. (d). Pub. L. 106-117, §1032(a), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “The chief judge is the head of the Court”.

Subsec. (e). Pub. L. 106-117, §1033, inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows:

“(e)(1) The chief judge of the Court shall receive a salary at the same rate as is received by judges of the United States Courts of Appeals.

“(2) Each judge of the Court, other than the chief judge, shall receive a salary at the same rate as is received by judges of the United States district courts.”

1998—Subsec. (a). Pub. L. 105-368, §512(a)(1), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

Subsec. (c). Pub. L. 105-368, §512(a)(1), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

Pub. L. 105-368, §501, inserted at end “A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.”

1992—Subsec. (g). Pub. L. 102-585 designated existing provisions as par. (1) and added pars. (2) and (3).

1991—Pub. L. 102-40 renumbered section 4053 of this title as this section.

Subsec. (g). Pub. L. 102-82 added subsec. (g).

1989—Subsec. (f)(1). Pub. L. 101-94 inserted “or” before “engaging” and substituted “law” for “law, or physical or mental disability which, in the opinion of the President, prevents the proper execution of the judge’s duties”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-315, title II, §204(b), Dec. 16, 2016, 130 Stat. 1550, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to the selection of a chief judge occurring on or after January 1, 2020.”

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-260 effective on the date that is 180 days after Jan. 10, 2013, see section 302(c)(1) of Pub. L. 112-260, set out as a note under section 7255 of this title.

Pub. L. 112-260, title III, §302(c)(2), Jan. 10, 2013, 126 Stat. 2426, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to judges confirmed on or after January 1, 2012."

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-117, title X, §1036, Nov. 30, 1999, 113 Stat. 1595, provided that:

"(a) EFFECTIVE DATE.—The amendments made by this subtitle [subtitle C (§§1031-1036) of title X of Pub. L. 106-117, amending this section and sections 7254, 7281, 7296, and 7297 of this title] shall take effect on the date of the enactment of this Act [Nov. 30, 1999].

"(b) SAVINGS PROVISION FOR INCUMBENT CHIEF JUDGE.—The amendments made by this subtitle shall not apply while the individual who is chief judge of the Court [United States Court of Appeals for Veterans Claims] on the date of the enactment of this Act [Nov. 30, 1999] continues to serve as chief judge. If that individual, upon termination of service as chief judge, provides notice under section 7257 of title 38, United States Code, of availability for service in a recalled status, the rate of pay applicable to that individual under section 7296(c)(1)(A) of such title while serving in a recalled status shall be at the rate of pay applicable to that individual at the time of retirement, if greater than the rate otherwise applicable under that section."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 512(a)(1) of Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

INITIAL APPOINTMENT OF JUDGES TO COURT OF VETERANS APPEALS

Section 302 of Pub. L. 100-687 prohibited President from appointing associate judges of the United States Court of Veterans Appeals under subsec. (b) of this section, until the chief judge of such Court has been appointed and that judges could be appointed after Feb. 1, 1989.

§ 7254. Organization

(a) The Court of Appeals for Veterans Claims shall have a seal which shall be judicially noticed.

(b) The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court. Any such panel shall have not less than three judges. The Court shall establish procedures for the assignment of the judges of the Court to such panels and for the designation of the chief of each such panel.

(c)(1) A majority of the judges of the Court shall constitute a quorum for the transaction of the business of the Court. A vacancy in the Court shall not impair the powers or affect the duties of the Court or of the remaining judges of the Court.

(2) A majority of the judges of a panel of the Court shall constitute a quorum for the transaction of the business of the panel. A vacancy in a panel of the Court shall not impair the powers or affect the duties of the panel or of the remaining judges of the panel.

(d) PRECEDENCE OF JUDGES.—The chief judge of the Court shall have precedence and preside at

any session that the chief judge attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(e) Judges of the Court shall have the authority to administer oaths.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4114, §4054; amended Pub. L. 101-94, title IV, §402, Aug. 16, 1989, 103 Stat. 628; Pub. L. 101-237, title VI, §602(b), Dec. 18, 1989, 103 Stat. 2095; renumbered §7254, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(e)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102-82, §8(3), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106-117, title X, §1034, Nov. 30, 1999, 113 Stat. 1595.)

Editorial Notes

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-117 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: "In the event of a vacancy in the position of chief judge of the Court, the associate judge senior in service on the Court shall serve as acting chief judge unless the President designates one of the other associate judges to serve as acting chief judge, in which case the judge so designated shall serve as acting chief judge."

1998—Subsec. (a). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40 renumbered section 4054 of this title as this section.

Subsecs. (d), (e). Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40, and Pub. L. 102-82 amended section, identically, by redesignating the second subsec. (d), relating to authority to administer oaths as, (e).

1989—Subsec. (d). Pub. L. 101-237 added subsec. (d) relating to authority to administer oaths.

Pub. L. 101-94 added subsec. (d) relating to acting chief judge in event of vacancy.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-117 effective Nov. 30, 1999, with savings provision for incumbent chief judge, see section 1036 of Pub. L. 106-117, set out as a note under section 7253 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

§ 7255. Offices, duty stations, and residences

(a) PRINCIPAL OFFICE.—The principal office of the Court of Appeals for Veterans Claims shall be in the Washington, D.C., metropolitan area, but the Court may sit at any place within the United States.

(b) OFFICIAL DUTY STATIONS.—(1) Except as provided in paragraph (2), the official duty station of each judge while in active service shall be the principal office of the Court of Appeals for Veterans Claims.

(2) The place where a recall-eligible retired judge maintains the actual abode in which such