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Public Ruling

First Home Owner Grant Act: RESIDENCE REQUIREMENTS

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *First Home Owner Grant Act 2000* (the FHOG Act) provides that the first home owner grant (the grant) is payable on an application if the applicant (or if there are two or more applicants, each of the applicants) complies with the eligibility criteria and the transaction for which the grant is sought is an eligible transaction and has been completed.¹
2. An eligible transaction is taken to be completed² as follows:
 - (a) For an eligible transaction that is a contract for the purchase of a home:
 - (i) when the purchaser becomes entitled to possession of the home under the contract and
 - (ii) if the purchaser is to obtain a registered title to the land on which the home is built—the purchaser's title is registered.
 - (b) For an eligible transaction that is a contract to have a home built or the building of a home by an owner builder—when the building is ready for occupation as a home and any prescribed completion requirements are complied with.³
3. For eligible transactions entered into on or before 31 December 2003, the applicant must occupy the home to which the application relates (the relevant home) as their principal place of residence (PPR) within one year after completion of the eligible transaction or a longer period approved by the Commissioner.⁴

¹ Section 10(1) of the FHOG Act

² Definition of 'completed' in the Schedule of the FHOG Act

³ Under section 7 of the First Home Owner Grant Regulation 2010, it is a prescribed completion requirement that a final inspection certificate under the *Building Act 1975* has been issued for the building.

⁴ Section 15 of the FHOG Act prior to being amended by the *First Home Owner Grant Amendment Act 2003*

4. For eligible transactions entered into on or after 1 January 2004, the applicant must occupy the relevant home as their PPR for a continuous period of at least six months.⁵ This period of occupation must start within one year after the completion of the eligible transaction or a longer period approved by the Commissioner.⁶
5. If the Commissioner is satisfied the residence requirement will be met, the Commissioner may authorise the early payment of the grant in anticipation of the applicant's compliance.⁷
6. In some cases, the Commissioner may require evidence⁸ which supports that the applicant complied with the residence requirements.
7. This Public Ruling clarifies what evidence the Commissioner will consider when making a decision about whether an applicant occupied the relevant home as their PPR.

Ruling and explanation

8. The issue of whether the relevant home is the applicant's PPR is a question of fact and must be determined with regard to the individual circumstances of each case.
9. The Commissioner may take into account a number of relevant factors, which include but are not limited to the following:
 - (a) whether the applicant has moved their personal belongings into the home
 - (b) the place of residence of the applicant's family
 - (c) the length of time the applicant was in occupation of the home
 - (d) the date occupation of the home commenced
 - (e) the address to which the applicant has their mail delivered
 - (f) the name of the person liable to account for the payment of utilities (e.g. electricity, gas and telephone) connected to the home and
 - (g) the address of the applicant on electoral rolls.
10. The relevance and weight of each factor will depend on the circumstances of each particular case.
11. The Commissioner may request the production of written information or documents relevant to whether or not the applicant occupied the relevant home as their PPR. For example, documents could include gas or electricity accounts, or a statutory declaration by a person who is not a party to the application setting out facts which prove that the applicant lived in the home as their PPR by the relevant date.

⁵ If there are good reasons, however, the Commissioner may shorten this period or exempt an applicant from this requirement (s.15(2) of the FHOG Act).

⁶ Section 15 of the FHOG Act as amended by the *First Home Owner Grant Amendment Act 2003*

⁷ Section 22 of the FHOG Act

⁸ Section 32 of the FHOG Act

Date of effect

12. This Public Ruling takes effect from 1 July 2014.

Elizabeth Goli
 Commissioner of State Revenue
 Date of issue: 1 July 2014

References

Public Ruling	Issued	Dates of effect	
		From	To
FHOGA015.1.2	1 July 2014	1 July 2014	2 November 2020
FHOGA015.1.1	24 February 2009	24 February 2009	30 June 2014
Supersedes Practice Direction FHOG 10.2	12 October 2004	12 October 2004	23 February 2009