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Public Ruling

First Home Owner Grant Act: ELIGIBLE TRANSACTIONS UNDER THE FIRST HOME OWNER GRANT ACT 2000— ORAL CONTRACTS

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. Subject to paragraphs 3 and 4, an 'eligible transaction' includes:
 - (a) a contract made on or after 1 July 2000 for the purchase of a new home in Queensland or
 - (b) a comprehensive home building contract made on or after 1 July 2000 by a person who is, or will on completion of the contract be, the owner of land in Queensland, to have a new home built on the land or
 - (c) a contract made on or after 1 July 2000 but before 11 October 2012 for the purchase of a home, other than a new home, in Queensland or
 - (d) a comprehensive home building contract made on or after 1 July 2000 but before 11 October 2012 by a person who is, or will on completion of the contract be, the owner of land in Queensland, to have a home, other than a new home, built on the land.²

¹ Section 10(1) of the FHOG Act

² Sections 5(1)(a), 5(1)(b), 5(2)(a) and 5(2)(b) of the FHOG Act

3. For paragraphs (2)(a) and 2(c), a contract is a contract for the purchase of a new home or other home if the contract is a contract for the acquisition of a relevant interest in land-
 - (a) on which a new home or other home is built or
 - (b) on which a new home or other home is to be built, before completion of the contract, by or for the vendor and at the expense of the vendor.³
4. A transaction is not an eligible transaction if:
 - (a) the Commissioner is satisfied it forms part of an scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant⁴
 - (b) the consideration for the transaction is \$750,000 or more⁵
 - (c) in relation to a contract mentioned in paragraph 2(a) or 2(c), the total of the unencumbered value of the new home or other home and the unencumbered value of the relevant interest in the land on which the new home or other home is built or to be built at the commencement date for the contract is \$750,000 or more⁶
 - (d) in relation to a comprehensive home building contract mentioned in paragraph 2(b) or 2(d), the total of the consideration for the transaction and the unencumbered value of the land at the commencement date for the contract is \$750,000 or more⁷.
5. This Public Ruling clarifies the circumstances in which the Commissioner will be satisfied there is an eligible transaction which has been completed where there is no written contract in existence.

Ruling and explanation

Oral contracts in relation to land generally

6. Section 59 of the *Property Law Act 1974* (the Property Law Act) states that no action may be brought upon any contract for the sale or other disposition of land or any interest in land unless the contract upon which such action is brought, or some memorandum or note of the contract, is in writing, and signed by the party to be charged, or by some person by the party lawfully authorised.
7. Despite s.59 of the Property Law Act, an oral contract for the purchase of land will be enforceable under the doctrine of part performance, provided that sufficient proof exists.
8. In *Steadman v Steadman*⁸ (the Steadman decision), the House of Lords held that, on its own, payment of the whole or part of the purchase price of land is insufficient to amount to part performance of an oral contract for the sale of land, because such a payment alone is too equivocal to prove a contract. However, it was also held that the contract in question was proved because the payment of money was coupled with other acts, namely, an undertaking

³ Section 5(3) of the FHOG Act

⁴ Section 5(4) of the FHOG Act

⁵ Section 5(6) of the FHOG Act

⁶ Section 5(7) of the FHOG Act

⁷ Section 5(8) of the FHOG Act

⁸ [1976] AC 536

to a court and the preparation and submission of transfer documents by the plaintiff for the benefit of the party to be charged.

9. The Commissioner relies on the Steadman decision in determining when an enforceable oral contract may be taken to be in existence. This will depend on the particular circumstances of each case.

Contracts for the purchase of a new home or other home

10. Where an oral contract relates to the purchase of a new home or other home, the Commissioner will be satisfied for the purposes of the FHOG Act that there is an eligible transaction which has been completed if:
- (a) by the doctrine of part performance, there is an oral contract made:
 - (i) on or after 1 July 2000 in relation to a new home or
 - (ii) on or after 1 July 2000 but before 11 October 2012 in relation to a home, other than a new home and
 - (b) the oral contract is a contract for the acquisition of a relevant interest in land⁹ on which a new home or other home is built or on which a new home or other home is to be built, before completion of the oral contract, by or for the vendor and at the expense of the vendor¹⁰ and
 - (c) the oral contract has been completed.
11. In order to allow the Commissioner to consider whether the above three conditions have been satisfied, the following must be lodged with the application involving an oral contract:
- (a) a copy of the transfer document and Form 24 to be lodged with the Department of Natural Resources and Mines showing the terms of the oral contract and
 - (b) evidence of payment of the stated consideration (or, if the stated consideration has not been paid in full by the date of the application, evidence of the consideration which has been paid to that date and details as to the basis upon which the balance of the stated consideration will be paid) and
 - (c) the Registration Confirmation Statement issued by the Department of Natural Resources and Mines indicating that the estate in fee simple in the land the subject of the first home owner grant application has been registered in the name of the applicant(s) and
 - (d) any other relevant information evidencing performance of the contract.
12. In addition to the requirements in paragraph 11 of this Public Ruling, where the oral contract is a contract for the acquisition of a relevant interest in land on which a new home or other home is to be built, before completion of the oral contract, by or for the vendor and at the expense of the vendor, the following must be lodged with the application:
- (a) the written building contract for the new home or other home to be built¹¹ and

⁹ Section 8(1)(a) of the FHOG Act defines a 'relevant interest' in land as an estate in fee simple in the land.

¹⁰ See s.5(3) of the FHOG Act.

¹¹ As the building contract is regarded by the Commissioner as evidence of part performance of the oral contract, the building contract must have been made on or after 1 July 2000 in relation to a new home or made on or after 1 July 2000 but before 11 October 2012 in relation to a home, other than a new home, in order to be eligible for the grant.

- (b) a certificate under s.103F of the *Queensland Building Services Authority Act 1991* (QBSA Act), if the written building contract does not show on its face that the builder was licensed under the QBSA Act as at the date of the contract
 - (c) a copy of the Inspection Summary or Final Inspection Report indicating that the new home or other home is fit for occupation.
13. As evidence of payment of consideration, the Commissioner will accept bank statements provided in relation to the account of the applicant(s) and the vendor's account which evidence the transfer of the consideration from the applicant(s) to the vendor.
14. Alternatively, the Commissioner will accept bank statements provided by the applicant(s) which indicate that the consideration has been transferred from the account of the applicant(s) to the vendor or the vendor's account. A bank statement of the applicant(s) showing an outgoing of a monetary sum, without an indication as to where such money has been transferred, will be insufficient evidence of payment of consideration to the vendor.
15. Subject to review of relevant information lodged with the application in accordance with paragraphs 11 and 12 above, the Commissioner will be satisfied an enforceable oral contract exists on the date the transfer instrument is lodged with the Registrar of Titles.

Comprehensive home building contract must be in writing

16. Under the QBSA Act and the *Domestic Building Contracts Act 2000*, building contracts are generally required to be in writing.¹² Therefore, the Commissioner requires a comprehensive building contract to be in writing in order to qualify as an eligible transaction for the purposes of s.5(1)(b) and s.5(2)(b) of the FHOG Act.

Provision of false or misleading information

17. It is an offence under the FHOG Act for a person to:
- (a) give to the Commissioner or an authorised officer under the FHOG Act a document containing information or
 - (b) state anything to the Commissioner or an authorised officer under the FHOG Act that the person knows is false or misleading in a material particular.¹³
18. Where the grant is paid in error because of the provision of such false or misleading information in relation to the application for the grant, the Commissioner may:
- (a) require the grant to be repaid¹⁴ and
 - (b) as an alternative to prosecution, impose a penalty of up to 100% of the amount of the grant paid in error.¹⁵

¹² Under *Domestic Building Contracts Act 2000* all regulated building contracts are required to be writing. A regulated contract is one where the contract price is above \$3,300.

¹³ Sections 42 and 43 of the FHOG Act

¹⁴ Section 47(1) of the FHOG Act

¹⁵ Sections 47(2) and 51 of the FHOG Act

Date of effect

19. This Public Ruling takes effect from 11 October 2012.

David Smith
 Commissioner of State Revenue
 Date of issue 11 October 2012

References

Public Ruling	Issued	Dates of effect	
		From	To
FHOGA005.2.4	11 October 2012	11 October 2012	2 July 2014
FHOGA005.2.3	30 March 2010	31 March 2010	10 October 2012
FHOGA005.2.2	21 December 2009	1 January 2010	30 March 2010
FHOGA005.2.1	24 February 2009	24 February 2009	31 December 2009
Supersedes Revenue Ruling FHOG2.1	29 June 2001	29 June 2001	23 February 2009