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Public Ruling

**First Home Owner Grant Act:
RENTAL PURCHASE AGREEMENTS**

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 includes a contract made on or after 1 July 2000 for the purchase of a home in Queensland.² A contract is a contract for the purchase of a home if it is for the acquisition of a relevant interest in land on which a home is built.³
3. An applicant will not satisfy the eligibility criteria if the applicant or the applicant's spouse has held a relevant interest in residential property before 1 July 2000 or a relevant interest in property that is used as their residence on or after 1 July 2000⁴.

¹ Section 10(1) of the FHOG Act

² Section 5(1)(a) of the FHOG Act. From 1 January 2010, a transaction is not an eligible transaction if the consideration for the transaction is \$1 million or more or the total of the unencumbered value of the home and the unencumbered value of the relevant interest in the land is \$1 million or more.

³ Section 5(2)(a) of the FHOG Act

⁴ Section 14 of the FHOG Act

4. A 'relevant interest' in land includes, among other things:
 - (a) an estate in fee simple in the land⁵ or
 - (b) an interest as purchaser under⁶
 - (i) a contract for the purchase from the Commonwealth or the State, or any Commonwealth or State instrumentality or authority, of an estate in fee simple in the land by instalments or
 - (ii) an instalment contract under the *Property Law Act 1974*, part 6, division 4 for the purchase of an estate in fee simple in the land or
 - (c) a licence or right of occupancy granted by the Commonwealth or the State, or any Commonwealth or State instrumentality or authority, that gives, in the Commissioner's opinion, the licensee or holder of the right reasonable security of tenure.⁷
5. To be eligible for the grant, a person must have acquired a relevant interest in the land the subject of the claim.
6. There has been some uncertainty as to whether, under a Rental Purchase Agreement (RPA) entered into between the Department of Communities—Housing and Homelessness Services (Housing) (previously the Department of Housing and the Queensland Housing Commission) and a client, the client has obtained a relevant interest in land.
7. The purpose of this Public Ruling is to clarify when a party to an RPA is considered to have acquired a relevant interest in the land the subject of the RPA.

Ruling and explanation

8. Under an RPA the client pays both rent to occupy the property and instalments towards the purchase of an interest in the property.
9. Rights given by an RPA do not constitute an estate in fee simple for the purposes of s.8(1)(a) of the FHOG Act.
10. An RPA is not an instalment contract for the purposes of s.8(1)(f)(i) and (ii) of the FHOG Act as it is not a contract for the purchase of an estate in fee simple in the land.
11. An RPA is not a licence or right of occupancy of the type referred to in s.8(1)(g) of the FHOG Act as, having regard to the terms of the RPA, it is the Commissioner's opinion that an RPA does not give reasonable security of tenure.
12. As the holding of an interest under an RPA is not considered to be a relevant interest, a party to an RPA will, subject to all other eligibility criteria being satisfied, be entitled to receive the grant upon purchasing the final share in the property when a relevant interest will be acquired.

⁵ Section 8(1)(a) of the FHOG Act

⁶ Section 8(1)(f) of the FHOG Act

⁷ Section 8(1)(g) of the FHOG Act

FHOGA008.2.2

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13. Being a party to an RPA that terminated prior to the purchase of the final share in the property will not, subject to all other eligibility criteria being satisfied, disqualify a person from receiving the grant when acquiring a relevant interest in another property.

Example 1

X entered into an RPA with Housing in 1996. However, X did not acquire the final share until 1 January 2002. In this case, the Commissioner would consider the applicant's circumstances as at 1 January 2002 to determine if the grant should be paid. It does not matter that the RPA was entered into prior to 1 July 2000 as there is no acquisition of a relevant interest until the purchase of the final share.

Example 2

Y entered into an RPA with Housing in July 1999 in respect of a home (the first home). The agreement was terminated in October 2001 and Y ceased to occupy the home. In January 2002, Y entered into a contract to purchase another home and applied for the grant. For the purposes of the grant, Y would not be considered to have held a relevant interest in the first home.

Date of effect

14. This Public Ruling takes effect from 1 January 2010.

David Smith
Commissioner of State Revenue
Date of Issue: 21 December 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
FHOGA008.2.2	21 December 2009	1 January 2010	30 March 2010
FHOGA008.2.1	24 February 2009	24 February 2009	31 December 2009
Supersedes Revenue Ruling FHOG 3.1	7 June 2002	7 June 2002	23 February 2009