

COMMISSIONER'S GUIDELINE

CG-HI-005: Principal place of residence

Version	Issued	Dates of Effect	
		From:	To: Current
1	28 Sept 2005	28 Sept 2005	30 June 2006
2	29 June 2006	1 July 2006	31 December 2007
3	2 January 2008	1 January 2008	3 May 2010
4	5 May 2010	4 May 2010	2 May 2011
5	3 May 2011	3 May 2011	Current

Purpose

1. This Guideline explains the requirement to occupy a home as a person's principal place of residence for the purposes of the first home owner grant (FHOG); the first home owner concession (FHOC); senior, pensioner and carer concession (SPCC); and principal place of residence rebate (PPRR), (collectively, 'the home incentive schemes').

The home incentive schemes

2. The object of the home incentive schemes is to encourage home ownership by providing assistance in the form of a grant for the purchase or construction of a home or a reduction of the stamp duty payable on the purchase of land on which there is or will be a home.
3. A central requirement of the home incentive schemes is that applicants must occupy the home as their principal place of residence for a continuous period of at least six months commencing:
 - (1) in the case of a purchase of a home (including off-the-plan), within 12 months after becoming entitled to possession of the home, which must occur within 12 months after the purchase was settled; and
 - (2) in the case of building a home:
 - (a) for the FHOG, within 12 months after the home is completed and is ready for occupation; and
 - (b) for the FHOC, SPCC and PPRR, the earlier of the following dates:
 - (i) five years after becoming entitled to possession of the land, which must occur within 12 months after the purchase of the land was settled; or
 - (ii) 12 months after the home is completed and is ready for occupation.¹
4. Where there are special reasons, the Commissioner may extend the period for taking possession of the home or land, extend the period for commencing occupation of the home, shorten the period for continuous occupation of the home or exempt an applicant from the

¹ Sections 5(3), 12 and 13(6) of the *First Home Owner Grant Act* (FHOG Act); sections 89(1)(i) and (k), 89A(1)(g) and (i) and 90(1)(f) and (g) of the *Stamp Duty Act* (SDA) and 'period of occupancy' and 'prescribed period' at section 88(1) of the SDA.

occupancy requirements.² For further details, refer to Commissioner's Guideline [CG-HI-003: Commissioner's discretion to exempt or vary compliance with the eligibility criteria.](#)

Meaning of 'occupy' and 'principal place of residence'

5. The terms 'occupy' and 'principal place of residence' are given their ordinary meaning having regard to the objects and purposes of the relevant legislation. In the context of the home incentive schemes, 'occupy' means to reside in the property. However, mere residence is insufficient, even where that residence is for the requisite continuous six month period. Instead, that residence must be such that it is the applicant's 'principal place of residence'.

Characteristics of a principal place of residence

6. The most important characteristic of a person's principal place of residence is that the person is living in that residence on an ongoing or permanent basis as the person's settled or usual abode. Where the occupation is transient, temporary or of a passing nature or the occupation is for some other purpose such as for the purpose of renovating the home for sale, then this is not sufficient to establish occupation as a principal place of residence.
7. The relevant requirement is that the applicant actually occupy the home to which the application relates as the applicant's principal place of residence within the required period, not merely intend to occupy.
8. Whether an applicant has occupied the property as his/her principal place of residence is a question of fact having regard to all the circumstances. The intention of the applicant is relevant but it is not determinative of the issue, or a dominant consideration.
9. In general terms, an applicant's settled abode or home is the place where the person ordinarily eats, morning and night, and where they sleep, and has the characteristics of permanency.
10. Factors that will be considered in determining whether an applicant's residence has the requisite characteristics of permanency and of being the person's usual or settled abode, such that it is the person's principal place of residence, include the following.
 - (1) where the applicant sleeps;
 - (2) where the applicant eats meals;
 - (3) whether the applicant also resides in other premises and if so, the reasons for doing so (see below as to having two or more residences);
 - (4) the place of residence of the applicant's immediate family, especially a spouse or children;
 - (5) whether there are other occupants of the property, and their rights to and control over the property. For example, an applicant can occupy a residence as their principal place of residence and have tenants also living with them in order to defray their costs of living in or financing the home, but the applicant must retain the right to possession and the right of control over the property;
 - (6) the connection of utilities such as the telephone, gas and electricity;
 - (7) whether the amount of electricity and/or gas used substantiates the person occupying the residence as a home;
 - (8) whether the applicant has moved their furniture and personal effects in to the residence, especially important or essential items such as beds, whitegoods and televisions;
 - (9) whether the residence is used as the applicant's mailing address or address for other purposes such as the electoral roll, driver's licence, motor vehicle registration, phone book, utility bills and if another residence is used, the reasons for using that other

² See sections 5(3) and 12 of the FHOG Act and sections 89(11) and (12), 89A(11) and (11A) and 90(8) and (9) of the SDA.

residence. (However, the use of the residence as a mailing address may not be significant in the absence of other characteristics, especially where the applicant may be attempting to create the appearance that a residence is their principal place of residence);

- (10) whether the applicant entertains friends and family at that residence;
 - (11) the length of time of residence. Occupying a residence for a short period of time is relevant but not determinative, as an applicant's occupation can be short but have the requisite nature of permanence, continuity and regularity. However, in practice it will be harder for an applicant to show that the occupation was as his or her principal place of residence. Of note is that the relevant legislation requires a period of continuous occupation of at least six months;³
 - (12) whether the applicant has taken out insurance of residence and/or insurance of contents at that residence;
 - (13) the type of finance acquired by the applicant for the residence (for example, finance as an owner/occupier or an 'investment' loan); and
 - (14) whether the applicant has some purpose for occupying the residence other than to make it their home – for example, merely occupying the home in order to renovate it for sale.
11. Note that this list is by no means exhaustive as each case must be considered in the context of its own particular facts.

Applicants with two or more residences

12. The intention of the home incentive schemes is to promote home ownership, and it is easiest to demonstrate occupation of a home as a principal place of residence where it is the applicant's sole residence. However, the home incentive schemes recognise that this will not always be the case and the phrase 'principal place of residence' does not assume that an applicant need only live at one place, but rather that he or she may have two or more places of residence.
13. However, the home incentive schemes are only available in relation to the 'principal' residence. 'Principal' has its ordinary meaning of 'first in rank or importance; chief; leading'. That is, the home must be the 'primary' or 'more important' residence.
14. If the applicant resides in two residences, the question of which the applicant uses as the principal or the more important one cannot be determined solely by reference to the way in which the applicant divides their time between the two, but it is a relevant factor.
15. Other factors that are also relevant in deciding which residence is a person's principal place of residence include the following.
 - (1) whether there is an element of continuity of living arrangements. That is, a new residence is less likely to be an applicant's principal place of residence if the applicant divides their time between their former home and the alleged new principal place of residence;
 - (2) the use or purposes of the residences – for example, whether one residence is the 'holiday home';
 - (3) where the rest of the applicant's immediate family lives or, if the family divides its time between the residences, where the family spends more time; and
 - (4) the use to which the residence is put when the applicant is not occupying it – for example, whether it is leased or given to other persons to use as a residence.

³ Section 12 of the FHOG Act; sections 88(1) ('prescribed period'), 89(1)(i), 89A(1)(g) and 90(1)(f) of the SDA.

Further Information

16. Refer to the *First Home Owner Grant Act* and the *Stamp Duty Act* for the legislative basis for the FHOG, FHOC, SPCC and the PPRR.

Commissioner's Guidelines

17. Commissioner's Guideline [CG-GEN-001](#), which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

18. This version of the Guideline takes effect from 3 May 2011.



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Date of Issue: 3 May 2011

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