

# COMMISSIONER'S GUIDELINE

## CG-HI-006:

### Meaning of a 'home'

#### Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	9 March 2006	9 March 2006	31 December 2007
2	2 January 2008	1 January 2008	17 June 2010

#### Purpose

This Guideline explains whether a building qualifies as a 'home' for the purposes of the first home owner grant (FHOG), the stamp duty first home owner concession (FHOC) and the stamp duty principal place of residence rebate (PPRR).

#### The home incentives schemes

The purpose of FHOG, FHOC and PPRR (collectively, '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.

#### Meaning of 'home'

For the purpose of the home incentive schemes a 'home' is defined as a building that is affixed to land that must be:

- 1) able to be lawfully used as a place of residence; and
- 2) in the opinion of the Commissioner of Territory Revenue, suitable for use as a place of residence.<sup>1</sup>

This definition does not include structures that are not permanently affixed to the land such as freestanding demountables or vehicles such as caravans.

In determining whether a building is suitable for use as a 'place of residence', the term is given its ordinary meaning having regard to the purpose of the relevant home incentive scheme. This means a building that is in a structural condition suitable for residential occupation and has the usual utilities and facilities expected of a person's usual place of abode. For specific requirements, see below.

<sup>1</sup> Section 4 of the *First Home Owner Grant Act* and sections 88(1) ('home') of the *Stamp Duty Act*.  
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## Buildings in a Building Area

The *Building Act* governs the technical standards for buildings, the regulation of building matters and the grant of building and occupancy permits, but only in relation to buildings in certain proclaimed areas ('Building Areas').<sup>2</sup>

These Building Areas currently cover Darwin, most townships in the Territory and their surrounding rural areas. Maps of the Building Areas are available on the website of the Northern Territory Department Planning and Infrastructure (NT Lands Group) at <http://www.nt.gov.au/lands/building/regulations/areas/index.shtml>.

An occupancy permit indicates that a building is constructed to the appropriate standards for its intended use and that it may be lawfully occupied for that use.<sup>3</sup> Accordingly, a building will be presumed to be a home for the purpose of the home incentive schemes where an occupancy permit (or an equivalent approval under a previous scheme) for residential use has been issued in relation to the building, unless there are other circumstances that prevent lawful occupation of the building as a place of residence. These circumstances might include the building having been condemned or subject to a work order. In these circumstances, the building is not considered to be a home for the purpose of the home incentive schemes.

Where a building permit<sup>4</sup> has been issued in relation to the construction of a building intended for residential use, the building will be presumed to be, on the completion of construction a home for the purpose of the home incentive schemes. In these circumstances, it will be presumed that the building will be issued a residential occupancy permit in the future. Where this is not the case, the building is not a home for the purpose of the home incentive schemes.

## Buildings outside of the Building Areas

A building outside of the Building Areas may lawfully be used as a place of residence unless there is a law that prohibits residential occupation of that building or the land on which the building is affixed. However, the Territory Revenue Office (TRO) must still be satisfied that the building is suitable for use as a place of residence. In making such a determination, TRO will consider whether the following minimum requirements have been met.

- 1) The building has the requisite structural integrity. That is, it has the necessary walls, roof, doors, windows and similar that are in a sound condition.
- 2) The building contains essential facilities, in reasonable working order, necessary for permanent residential occupation. These include a toilet, bath or shower, sinks/laundry and kitchen including facilities for preparing and cooking food.
- 3) The building has or is connected in a permanent, proper and safe manner to essential utilities such as mains or self generated electricity and/or gas,

<sup>2</sup> Section 4 ('Building Area'), section 6(2) and Parts 4 to 13 of the *Building Act*.

<sup>3</sup> Section 4 ('occupancy permit'), section 65(1) and Part 8 of the *Building Act*.

<sup>4</sup> Section 4 ('building permit') and Part 6 of the *Building Act*.

permanent water supply from the mains, a catchment, tank, bore or similar and sewerage or reasonable waste disposal facilities.

- 4) The building has reasonable living and sleeping areas.

### Evidence required

Where it is clear from the application, supporting information such as the sale agreement or building contract, building permit, plans and specifications and other available information, that the building is or will be a residential building such as a house, home unit, town house or flat that is built to the appropriate standards, the building will be presumed to be a 'home' for the purpose of the home incentive schemes.

However, where it is not clear that the building is a home (for example, where the title to land indicates that the only improvement on the land is a shed), the applicant must provide the following information in support of their application.

- 1) For a building that is or will be constructed in a Building Area a copy of the occupancy permit (or an equivalent certificate or approval under a previous scheme) confirming authority to use the building as a place of residence.
- 2) For an existing building that is outside of a Building Area:
  - a. a written statement from a registered building certifier certifying that the building satisfies, or will satisfy, the standards required under the *Building Act* for the issue of an occupancy permit for residential use; or
  - b. a copy of any plans and specifications relating to the building and photographic evidence that the building satisfies the minimum requirements described above in relation to structural integrity, essential facilities and utilities.
- 3) For a building that will be constructed outside of a Building Area a copy of the plans, specifications and where applicable, a copy of the building contract.

### Buildings that become homes

Where there is a building on land that is not a home because:

- 1) there are circumstances that prevent it being lawfully occupied as a place of residence (for example, it may have been condemned or subject to a work order); or
- 2) it is not suitable for use as a place of residence (for example, it does not have the facilities or utilities expected in a home as it was previously used for a different purpose such as a commercial building or shed),

the making of the necessary improvements, repairs or renovations to the building including, where necessary, obtaining an occupancy permit, such that the building becomes a home will be assessed as qualifying as:

- 1) 'the building of a home in the Territory by an owner builder' for the purposes of the FHOG;<sup>5</sup> and
- 2) a home being built on the land for the purposes of the FHOC or PPRR.

For further information on the eligibility criteria, see Commissioner's Guideline CG-HI-001, the *Stamp Duty Act* and the *First Home Owner Grant Act*.

**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.**

Refer to the *First Home Owner Grant Act* and the *Stamp Duty Act* for the legislative basis for the first home owner grant, first home owner concession and the principal place of residence rebate.

#### **Date of effect**

This Guideline takes effect from the date of issue.



Craig Vukman

#### **COMMISSIONER OF TERRITORY REVENUE**

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