

COMMISSIONER'S GUIDELINE

CG-HI-009:

Alignment of first home owner incentives residency requirements

Guideline History

| Version | Issued | Dates of effect | |
|---------|----------------|-----------------|---------|
| | | From: | To: |
| 1 | 28 August 2009 | 28 August 2009 | Current |

Purpose

This Guideline advises that in relation to a purchase of a home, the Territory Revenue Office (TRO) will generally extend the date for commencing occupation of the home for the purposes of the stamp duty first home owner concession (FHOC) to align it with the first home owner grant (FHOG) in situations where the applicant is otherwise eligible for both FHOC and FHOG and commences occupying the home within the 12-month period set out in the FHOG scheme.

Residency requirements

The residency requirements are central to the eligibility criteria of the FHOC and FHOG schemes. Applicants must:

- 1) occupy the home as their principal place of residence for a continuous period of at least six months; and
- 2) commence that occupation:
 - a. in the case of FHOG - within 12 months after the date that the purchaser becomes entitled to possession of the home under the contract.¹

This date varies depending on whether the home is purchased with vacant possession (in which case it is the settlement date) or subject to an existing lease (in which case it is when the lease ends, either at expiration or by termination of the lease). For further information on the implications of purchasing a home subject to an existing lease refer to Commissioner's Guideline CG-HI-010: *Purchasing a home subject to an existing lease*; and

¹ See sections 12(1), 12(1B) and 13(6) of the *First Home Owner Grant Act* (the FHOG Act).
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- b. in the case of FHOC:
- i. for an existing home - within 12 months after the date of execution of the contract; and
 - ii. for the purchase of a home off-the-plan - three years from execution of the contract or 12 months from completion of the building of the home (whichever expires first).²

Alignment of dates to commence occupation

In special circumstances, the Commissioner of Territory Revenue can extend the period for commencing occupation beyond the statutory 12-month period and/or reduce, but not waive entirely, the period for continuous occupation of the home.³ Further information on these discretions is set out in Commissioner's Guideline CG-HI-003: *Commissioner's discretion to exempt or vary compliance with the eligibility criteria*.

Because the relevant time for commencing occupation varies between FHOC and FHOG, a purchaser, may in certain circumstances be eligible for FHOG but not FHOC. Having regard to the policy intent of both FHOG and FHOC schemes, TRO will generally extend the period for commencing occupancy under FHOC where there is an ability to do so such that it aligns with FHOG, provided that the applicants commence occupying the home within the 12-month period set out for FHOG.⁴

For example, Jack and Jill signed an agreement to purchase a home on 1 July 2008 which was subject to a long settlement period and settlement did not occur until 1 January 2009. To be eligible for FHOC, Jack and Jill are required to commence occupation of the home as their principal place of residence by 1 July 2009 (12 months after the contract is executed), but in relation to FHOG are required to commence occupation of the home by 1 January 2010 (12 months after settlement when they become entitled to take possession of the home).

This means that if Jack and Jill commence occupying the home as their principal place of residence after 1 July 2009 but before 1 January 2010, they would be eligible for FHOG but not FHOC.

Under the general rule set out in this Guideline, TRO would extend the 12-month period under the FHOC scheme to match that of FHOG provided that Jack and Jill commenced occupying the home as their principal place of residence prior to 1 January 2010.

² See definition of 'period for occupancy' at section 88(1) of the SDA.

³ See section 12(1A) and 12(1B) of the FHOG Act and the definitions of 'prescribed period' and 'period for occupancy' at section 88(1) and section 89(11) of the SDA.

⁴ For the purchase of a home of the plan, construction of the home must be completed within 3 years from the execution of the purchase contract. The Commissioner does not have the discretion under the SDA to extend the time for completion of construction.

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 Guidelines are available from TRO's website.

Date of effect

This version of the Guideline takes effect from the date of issue.



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