

COMMISSIONER'S GUIDELINE

CG-HI-010:

Purchasing a home subject to an existing lease

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	28 August 2009	28 August 2009	3 May 2010
2	11 May 2010	4 May 2010	2 May 2011

Purpose

This Guideline explains a person's eligibility for the first home owner grant (FHOG), the stamp duty first home owner concession (FHOC); senior, pensioner and carer concession (SPCC); and the principal place of residence rebate (PPRR) (collectively 'the home incentives schemes') when purchasing a home subject to an existing lease.

What is a lease?

A lease is an agreement under which the owner gives up possession and use of their property for valuable consideration for a definite period. At the end of the term, the owner has an absolute right to take control and occupation of the property.

Objective of the home incentives schemes

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. For this purpose, it is a requirement that the home be occupied as the person's principal place of residence within a reasonable period after the purchase or construction of the home is completed.

Eligibility for the home incentives schemes

For the purchase of a home (including off-the-plan), applicants must:

- 1) have a right to take possession of the home within 12 months after the settlement date (ie the date the purchasers became the owner of the property); and
- 2) commence occupation of the home as their principal place of residence for a continuous period of at least six months within 12 months after that date.¹

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.

The Commissioner may extend the period for taking possession of the home or land, extend the period for commencing occupation of the home, shorten, but not waive entirely, the period for continuous occupation of the home or may exempt an applicant (but not all applicants) from the occupancy requirements. For further details, refer to Commissioner's Guideline [CG-HI-003](#): *Commissioner's discretion to exempt or vary compliance with the eligibility criteria.*²

Implications of acquiring a home subject to an existing lease

The purchase of a home subject to an existing lease can affect the eligibility of the purchaser for the home incentive schemes and the time for commencing occupation of the home as follows.

Lease for 12 months or more

If a home is purchased subject to an existing lease with an unexpired term of 12 months or more, the purchaser is not eligible for the home incentives schemes, as they do not have a right to take occupation of the home within the required 12 month period after the settlement date unless the lease is terminated earlier or the Commissioner extends the period for commencing occupation.

As the home incentive schemes contemplate purchasers occupying the home as their principal place of residence within a reasonable period after purchasing it, an extension to take possession of the home would only be granted in very limited circumstances where it is purchased subject to a lease of 12 months or more.

Example

Bill and Mary entered into a contract on 1 April 2010 to purchase a home that was subject to an existing lease that expires on 1 December 2011. Settlement (the date that Bill and Mary became the owners of the home) occurred on 1 July 2010.

Bill and Mary are not eligible for the home incentives schemes as they cannot commence occupation within the required 12 month period after the settlement date unless the lease is terminated earlier or the Commissioner extends the period for taking possession of the home.

Lease for less than 12 months

Where a home is purchased subject to an existing lease, with an unexpired term of less than 12 months after the settlement date, the purchaser must commence occupation of the home within 12 months after the date the lease expires or is terminated, unless the period for commencing occupation is extended by the Commissioner.

² See sections 5(3), 12(1A), 12(1B) and 12(2) of the FHOG Act and sections 89(11), 89A(11) and 90(8) of the SDA.

Example

Bill and Mary entered into a contract on 1 May 2010 to purchase a home that was subject to an existing lease that expires on 30 September 2010. Settlement occurred on 1 June 2010.

Bill and Mary are eligible for the relevant home incentive scheme provided they commence occupation of the home within 12 months after the expiry of the lease on 30 September 2010. They have a right to take possession of the home on 1 October 2010 and must commence occupation of the home as their principal place of residence before 1 October 2011 unless that date is extended by the Commissioner.

Home purchased with vacant possession

For completeness, if the property is purchased with vacant possession, the purchaser has until 12 months after the settlement date to commence occupation of the home.

Example

Bill and Mary entered into a contract on 1 May 2010 to purchase a home. Settlement occurred with vacant possession on 1 June 2010. Bill and Mary must commence occupation of the home as their principal place of residence by 1 June 2011 unless that date is extended by the Commissioner.

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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