

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

Purpose

This Guideline explains a person's eligibility for the first home owner grant (FHOG), the stamp duty first home owner concession (FHOC) and the stamp duty principal place of residence rebate (PPRR) 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.

Eligibility for FHOG

To be eligible for FHOG, applicants must have a relevant interest in the land on which the home is built.¹ Excluded from the definition of a relevant interest is an interest in land where the holder will not have a right to occupy the land within 12 months (or longer period as allowed by the Commissioner) of becoming the owner of the property.²

As the FHOG scheme contemplates the first home buyer occupying the home as their principal place of residence within a reasonable period after acquiring it, an extension would only be granted in very limited circumstances where it is purchased subject to a lease of 12 months or more.

Applicants seeking an extension should make written application to the Territory Revenue Office (TRO) detailing the circumstances of the purchase and when they expect to take occupation of the property. They will need to satisfy TRO that it was a genuine lease that existed prior to entering into the purchase agreement and is not part of an arrangement with the seller to grant or extend the lease for the purposes of extending the period to take occupation of the property.

¹ Section 13(20) of the FHOG Act.

² See section 5(3) of the FHOG Act. A 'relevant interest' defines the form of tenure (e.g. an estate in fee simple, a perpetual lease issued by the Commonwealth or Territory etc.) and the nature of the interest (legal, equitable etc.) held by the applicant in the land.

Residency requirements

A central requirement of the FHOG, FHOC and PPRR schemes is that applicants must occupy the home as their principal place of residence for a continuous period of six months commencing within 12 months after the relevant date. For a contract for the purchase of a home, the relevant date is:

- 1) in the case of FHOG, the date that the purchaser becomes entitled to possession of the home under the contract;³ and
- 2) in the case of FHOC and PPRR:
 - a. for an existing home - within 12 months after the date of execution of the contract; and
 - b. 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).⁴

In special circumstances, the Commissioner of Territory Revenue can extend the period for commencing occupation and/or reduce, but not waive entirely, the period for continuous occupation of the home.⁵ For details on the circumstances when this discretion is exercised, refer to Commissioner's Guideline CG-HI-003: *Commissioner's discretion to exempt or vary compliance with the eligibility requirements* and in the case of FHOC and FHOG, Commissioner's Guideline CG-HI-010: *Alignment of first home owner incentives residency requirements*.

Implications of acquiring a home subject to an existing lease

The purchase of a home subject to an existing lease can affect the applicant's eligibility for FHOG, FHOC and PPRR.

Lease for 12 months or more

If the property is acquired subject to an existing lease that does not expire for at least 12 months after the settlement date, the purchaser is not eligible for **FHOG**, as they do not have a right to immediate occupation of the land within twelve months after acquiring ownership of the property unless the period for commencing occupation of the home is extended by the Commissioner.

Similarly, if the property is acquired subject to an existing lease that does not expire for at least 12 months after the date that the contract is executed, the purchaser is also not eligible for **FHOC or PPRR**, as they are unable to commence occupation of

³ See sections 12(1), 12(1B) and 13(6) of the *First Home Owner Grant Act* ('the FHOG Act').

⁴ See definition of 'period for occupancy' at section 88(1) of the SDA. Also note that building must be completed with 3 years of execution of the contract. The Commissioner does not have the discretion to extend this period.

⁵ 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.

the home as their principal place of residence within the requisite 12-month period unless the lease is terminated early or an extension to commence occupation is approved by the Commissioner.

Lease for less than 12 months

Where a home is purchased subject to an existing lease that expires in less than 12 months after the contract is executed, the purchaser will generally be eligible for FHOg and/or FHOc or PPRR, providing they commence occupation before the expiry of the relevant 12-month period and satisfy the six month continuous residency requirement.

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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