



ACT Revenue Office

Department of Treasury

Revenue Circular FHOG002 Commissioner's Discretions

Circular history

Circular number	Issued date	Dates of effect		Status
		From	To	
FHOG002	24 December 2008	24 December 2008	16 February 2010	Superseded by FHOG002.1

Preamble

1. The purpose of the First Home Owner Grant is to encourage home ownership by providing assistance to eligible persons for the purchase or construction of a home.
2. One of the conditions of the grant is that all applicants must occupy the home the subject of the grant as their **principal place of residence** for a continuous period of at least 6 months, with the period of occupation starting within 1 year after completion of the eligible transaction to which the application relates.
3. The residency requirements are structured to ensure they are not able to be exploited by people who would otherwise be ineligible or intend to use the residence for purposes other than as their home e.g. as an investment property. However, where genuine home buyers cannot satisfy the residency requirements, the *First Home Owner Grant Act 2000* (FHOG Act) enables the Commissioner for ACT Revenue (the Commissioner) to exercise various discretions, including to vary the residency requirements or to exempt an applicant or applicants from complying with them in whole or part: see s 12 of the FHOG Act at <http://www.legislation.act.gov.au/a/2000-23/default.asp>.
4. This circular sets out the relevant circumstances for the exercise of the Commissioner's discretions in relation to the residency requirements. For details of other discretions exercisable by the Commissioner under the FHOG Act, see Part C of the guide to the FHOG Application Form on the revenue website at www.revenue.act.gov.au.

Circular

5. While all applicants must occupy the home as their principal place of residence for a continuous period of at least 6 months, the Commissioner may:
 - (a) exempt an applicant from the requirement to occupy the home;
 - (b) approve a shorter period of occupation; however, the shorter period must start within 1 year after completion of the eligible transaction unless the Commissioner approves a longer period;
 - (c) approve a longer period for the applicant to commence occupying the home than within 1 year after completion of the eligible transaction; and
 - (d) exempt 1 of 2 or more joint applicants from the requirements in paragraphs (b) and (c) if at least 1 applicant complies with them and there are good reasons to do so in the Commissioner's opinion.

Evidentiary requirements

6. The Commissioner may exercise the discretion on a case-by-case basis where the Commissioner believes that:

- (a) the applicant intended to occupy the home as the applicant's principal place of residence for a continuous period of at least 6 months starting within 1 year after completion of the eligible transaction and the applicant was objectively capable of doing so; and
- (b) there are good reasons to approve the shorter period or exempt the applicant from the residency requirements.

7. The applicant bears the burden of establishing these matters.

8. In addition, the circumstances on which the applicant relies to seek a full or partial exemption from the residency requirements:

- (a) must not have been known to the applicant at the time of the application or commencement of the eligible transaction; and
- (b) must have arisen within 1 year after completion of the eligible transaction or within such longer period approved by the Commissioner.

9. An application to the Commissioner for the exercise of the discretion in the above circumstances must be accompanied by appropriate documentary evidence of all of the matters set out above. The application must also provide detailed reasons in support of the application.

Approve a shorter period or exempt the applicant from the residency requirements

10. The Commissioner's discretion will apply to the following circumstances providing appropriate documentary evidence is tendered in support of them.

A Incapacity of the applicant to live in the home because of:

- (a) the applicant's health e.g. hospitalisation, rehabilitation, nursing home care;
- (b) the health of a relative of the applicant where the applicant becomes the relative's carer; or
- (c) the death of a person who lives with the applicant in the home e.g. death of a child in the home such that the applicant is unable to continue in residence.

B The home becomes uninhabitable through no fault or wilful action of the applicant because:

- (a) the home has been damaged or destroyed such that it is uninhabitable e.g. natural disaster, fire; or
- (b) the home is deemed to be uninhabitable e.g. health issues, structurally unsafe.

C Employment-related circumstances that make the applicant unable to live in the home, being a change in the place of employment or loss of employment by the applicant e.g. closure of the local office or factory, posting of defence force personnel or police, forced transfer by the employer, promotion, redundancy, moving from unemployment to

employment, employee-initiated change of employment or voluntary job change/change of career requiring a change in location.

- D Any other circumstance the Commissioner considers provides good reasons to approve the shorter period or exempt the applicant from the residency requirements.

Approve a longer period for the applicant to commence occupying the home

11. The Commissioner's discretion will apply to the following circumstances providing appropriate documentary evidence is tendered in support of them.

12. Applicants who intend to make a property their home but who experience temporary circumstances preventing them from commencing occupation within the 1 year statutory period must be able to:

- (a) demonstrate that they are genuinely purchasing a residence to use as a home; and
- (b) identify the temporary circumstances that prevent them from commencing occupation within the 1 year statutory period.

13. The Commissioner will consider all of the following factors in deciding whether to approve a longer period for the applicant to commence occupying the home:

- (a) the intention of the applicant at the relevant time;
- (b) the nature of the circumstances that prevent the applicant from occupying the home within the 1 year statutory period, including:
 - (i) whether a voluntary course of action by the applicant prevented occupation within the statutory period e.g. renting the property rather than taking occupation of it or accepting an offer for a transfer in employment;
 - (ii) if the circumstances are beyond the control of the applicant e.g. an existing tenancy in place in the home;
 - (iii) if the applicant knew at the relevant time that circumstances existed that would prevent the applicant commencing occupation within the 1 year statutory period; and
 - (iv) if the circumstances arose subsequent to the relevant time,
- (c) the length of time that the applicants will be prevented from commencing occupation of the home as their principal place of residence;
- (d) if the applicant applied for the extension of time before the expiry of the 1 year period—however, the Commissioner **cannot** approve an application outside the 1 year period; and
- (e) how the residence is to be used when the applicant is not occupying it as their principal place of residence.

Exempt 1 of 2 or more joint applicants from the residency requirements

14. One of 2 or more joint applicants may be exempted from the residency requirements where there are special reasons to do so, providing that at least 1 applicant will comply with them. The Commissioner must be satisfied that there are good reasons for approving an

exemption in these circumstances. The exempt applicant must still satisfy all of the other relevant criteria.

15. The Commissioner's discretion will apply to the following circumstances providing appropriate documentary evidence is tendered in support of them.

16. The applicants must demonstrate that they are genuinely purchasing a residence to use as their home and demonstrate the special circumstances that prevent 1 or more of them from complying with the residency requirements.

17. The Commissioner will consider all of the following factors in deciding whether to exempt an applicant or applicants from the residency requirements:

- (a) the number of applicants seeking an exemption from the residency requirements compared to the number who will meet the residency requirements;
- (b) whether the members of an applicant's immediate family will occupy the home as their principal place of residence regardless of whether the family members are applicants e.g. where the applicant's children occupy the home;
- (c) whether the applicants intend to occupy the residence as their principal place of residence in the future; and
- (d) the nature of the circumstances that prevent the applicants from meeting the residency requirements.

Mandatory timeframes

18. The Commissioner's approval **must be sought in writing and granted** within the 1 year statutory period for each of the following:

- (a) a full or partial exemption from the requirement for the applicant to occupy the home;
- (b) a period of residence shorter than a continuous period of at least 6 months; starting within 1 year after completion of the eligible transaction unless the Commissioner approves a longer period;
- (c) such longer period as may be sought in relation to paragraph (b) above;
- (d) a longer period for the applicant to commence occupying the home than within 1 year after completion of the eligible transaction; and
- (e) an exemption for 1 of 2 or more joint applicants from the residency requirements where at least 1 applicant complies with them.

19. Applications for an exercise of the Commissioner's discretion in relation to the residency requirements that are not received by the ACT Revenue Office within the 1 year statutory period **will not be considered**.

SIGNED

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