



ACT Revenue Office

Department of Treasury

Revenue Circular FHOG002.1 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FHOG002	24 December 2008	24 December 2008	16 February 2010	Superseded
FHOG002.1	17 February 2010	17 February 2010	15 March 2012	Superseded

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 at least one applicant 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>. This circular incorporates changes made to the FHOG Act by *Revenue Legislation Amendment Act 2009*.
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. At least one applicant must occupy the home as their principal place of residence for a continuous period of at least 6 months, however, the Commissioner may:
 - (a) exempt an applicant from the requirement to occupy the home; or
 - (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; or
 - (c) approve a longer period for the applicant to commence occupying the home than within 1 year after completion of the eligible transaction.

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 circumstances above must be made, and approval granted, within 18 months of completion of the eligible transaction.

10. An applicant who has not commenced occupation of the home within the 1 year statutory period is required to notify the Commissioner in writing that they cannot comply with the residency requirements by the earlier of:

- (a) the date by which they were required to take up residency; and
- (b) 14 days after it becomes apparent they cannot comply with the residency requirements.

11. However, the applicant can still apply to the Commissioner for exercise of the discretion within 18 months of the completion of the eligible transaction.

12. The application 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

13. The Commissioner's discretion may 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 involuntary 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

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

15. 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.

16. 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 statutory period to commence occupancy of the property — however, the Commissioner **cannot** approve an application outside the 18 month statutory period in section 12 (4) of the FHOG Act; 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

17. Where there are joint applicants and at least one applicant will comply with the residency requirements, the noncomplying applicant/s are exempted from the residency requirements. For applications made after 17 February 2010 there is no requirement for the Commissioner to exempt a noncomplying applicant.

Mandatory timeframes

18. The Commissioner's approval **must be sought in writing and granted** within the 18 month 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; and
- (d) a longer period for the applicant to commence occupying the home than within 1 year after completion of the eligible transaction.

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 and approved within the 18 month statutory period will not be considered.

SIGNED

David Read
 Commissioner for ACT Revenue
 17 February 2010

Revenue Office Contact Details

Telephone	(02) 6207 0028
Facsimile	(02) 6207 0026
Street address	Ground floor, Canberra Nara Centre Corner of London Circuit and Constitution Avenue Canberra City
Postal address	PO Box 293 Civic Square ACT 2608
Office hours	9:00 am to 5:00 pm Monday, Tuesday, Thursday and Friday 10:30 am to 5:00 pm Wednesday
Website	www.revenue.act.gov.au