



## ACT Revenue Office Department of Treasury

### Revenue Circular FHOG003.1 Principal Place of Residence

#### Circular history

Circular number	Issued date	Dates of effect		Status
		From	To	
FHOG003	24 December 2008	24 December 2008	16 February 2010	Superseded
FHOG003.1	17 February 2010	17 February 2010		Current

#### 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. For full details of the First Home Owner Grant (FHOG) Scheme, see the FHOG Application Form on the revenue website at <http://www.revenue.act.gov.au>.
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. The grant is paid prospectively in anticipation of compliance with these requirements. Compliance checks to establish whether applicants have met the residency requirements are generally undertaken retrospectively i.e. any time up to five years after payment of the grant.
3. This circular addresses the requirements in the *First Home Owner Grant Act 2000* (FHOG Act) for applicants to occupy the home the subject of the grant as the applicants' **principal place of residence**: s 12, 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*.

#### Circular

##### Meaning of 'occupy' and 'principal place of residence'

4. The terms **occupy** and **principal place of residence** are given their ordinary meaning having regard to the FHOG Act.
5. Mere residence is not sufficient, even if it is for the requisite continuous minimum 6 month period. Residence must be such that it objectively constitutes the applicant's **principal place of residence**.

##### Characteristics of a 'principal place of residence'

6. The most important characteristic of a person's principal place of residence is that the person is living in that residence on an ongoing and permanent basis as the person's settled or usual home. When the occupation is transient, temporary or of a passing nature, or the occupation is for some other purpose e.g. renovating the home for sale, this is not sufficient to establish occupation as a principal place of residence.

7. The relevant requirement is that an applicant 'will' or 'must' occupy the home to which the grant application relates as the applicant's **principal place of residence** starting within the 1 year statutory period. These words require actual occupation, not merely an intention to occupy.
8. Whether an applicant has occupied the home as the applicant's **principal place of residence** is a question of fact having regard to all the circumstances of the case. The intention of the applicant is relevant but not determinative of the issue. Nor is it a dominant consideration.
9. Consideration of each case will take into account the particular facts involved. Further, all matters of fact will be considered in determining whether an applicant's residence has the requisite characteristics of permanency and of being their usual or settled home such that it is the applicant's **principal place of residence**.
10. The applicant bears the onus of proving residency to the Commissioner for ACT Revenue on the balance of probability. Mere assertion of residency is not sufficient and applicants may be required to substantiate a claim of residency by providing documentary evidence of occupancy for the whole of the relevant period.
11. The ACT Revenue Office conducts ongoing investigations under the FHOG Act, including to ensure that applicants comply with the residency requirements.
12. Applicants who do not comply with the residency requirements may, in addition to repaying the grant, be subject to an administrative penalty of up to the amount of the grant, and payment of interest.

SIGNED

David Read  
 Commissioner for ACT Revenue  
 17 February 2010

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