



COMMISSIONER'S PRACTICE FHOG / DA 40.2

PRINCIPAL PLACE OF RESIDENCE: FIRST HOME OWNER GRANT AND FIRST HOME OWNER RATE OF DUTY

This Commissioner's practice details the factors the Commissioner of State Revenue ('Commissioner') will consider when determining whether a *home*¹ is a person's principal place of residence for the purposes of the first home owner grant ('grant'), and/or first home owner rate of duty ('FHOR'), in respect of an eligible transaction² that commenced on or after 3 October 2015.

For the purposes of this Commissioner's practice, an *applicant* is a person applying for, or having applied for, the grant and/or FHOR.

Background

The grant is intended for those persons who have not previously held a relevant interest³ in residential property who both intend to and will make the property for which the grant was received ('the property') their principal place of residence.⁴

Eligibility under the *First Home Owner Grant Act 2000* ('FHOG Act') requires, in part, that the applicant occupies⁵ the property as their principal place of residence for a continuous period of at least six months⁶ commencing within 12 months of completion of the eligible transaction,⁷ unless the Commissioner has applied discretion to vary these requirements.⁸

Section 142A of the *Duties Act 2008* ('Duties Act') provides an applicant for the FHOR includes a person who is eligible for the grant, or who would have been eligible except that the transaction is a contract for the purchase of an established home. A person applying for the FHOR is required to satisfy the eligibility criteria for the grant regardless of whether or not they are eligible to receive the grant.

¹ Section 4 of the FHOG Act defines a *home* as a building, affixed to land, that may lawfully be used as a place of residence and is, in the Commissioner's opinion, a suitable building for use as a place of residence.

² An *eligible transaction* is defined in section 14 of the FHOG Act, or is a *first home owner concessional transaction* as defined in section 142(1) of the Duties Act.

³ FHOG Act section 6(1).

⁴ FHOG Act section 13(1).

⁵ The terms *occupy* and *principal place of residence* are given their ordinary meaning with regard to the objects and purposes of the FHOG Act, where *occupy* means "to take or enter upon possession of", while *principal* means "most important or considerable; highest on rank". Black's Law Dictionary [6th ed] (1990) West Publishing Co: St Paul, Minnesota.

⁶ FHOG Act section 13(2).

⁷ FHOG Act sections 13(4) and 13(5).

⁸ See [Commissioner's Practice FHOG/DA 39 'Variations to Prescribed Residence Requirements'](#) accessible from the [Office of State Revenue website](#).

Commissioner's Practice

1. The Commissioner will consider each case on the basis of all relevant facts and circumstances in relation to the applicant's occupation of the property in order to be satisfied, on balance, the applicant has occupied the property as their principal place of residence.⁹
 - 1.1 At any given point in time, an applicant may only have one principal place of residence.
 - 1.2 To be considered the applicant's principal place of residence, the occupation of the property as a residence must show a degree of permanence, continuity and regularity.
 - 1.3 The length of time the applicant occupies the property is not necessarily determinative in itself,¹⁰ but must be considered in light of other factors. In practice it will be harder for an applicant to show they occupied the property as their principal place of residence if they only resided there for a short period.
2. Factors that will be considered in determining whether the property is the applicant's principal place of residence include:
 - 2.1 where the applicant sleeps and eats meals;
 - 2.2 whether the applicant also resides in other premises and if so, the reasons for doing so;
 - 2.3 the place of residence of the applicant's immediate family, especially a spouse, de facto partner or children;
 - 2.4 where the applicant's furniture and personal effects are located;
 - 2.5 where the applicant entertains friends and family;
 - 2.6 if there are other occupants, the applicant's rights to and control over the property. For example, an applicant can occupy a home as their principal place of residence and have tenants living with them in order to defray their costs of living in or financing the home, but the applicant must retain the right to possession and the right of control over the home;
 - 2.7 the connection of utilities, such as telephone, gas and electricity, under the applicant's name, and usage of the utilities as consistent with the applicant occupying the property as a home;
 - 2.8 whether the property is used as the applicant's mailing address or address for other purposes such as the electoral roll, driver's licence or motor vehicle registration. If another residence is used, the reasons for using that other residence;

⁹ While the intention of the applicant to occupy the home as their principal place of residence is relevant, it is neither determinative of the issue nor a dominant consideration. *Deane v Commissioner of Stamp Duties* [1996] 2 Qd R 557.

¹⁰ *Zakariya v Chief Commissioner, Office of State Revenue* [2003] NSWADT 26.

- 2.9 whether the applicant has taken out home insurance for the building and/or contents, and whether the insurance is a landlord or owner occupier policy;
- 2.10 whether the applicant acquired finance for the property as an owner occupier or under an investment loan; and
- 2.11 whether the applicant's purpose for occupying the property is other than to make it their home.

Examples

Use of property address

Sally received the grant and FHOR for a new property she purchased. Following settlement, she changed her address details on her driver's licence and the electoral roll, and organised for the utilities to be connected in her name. She entered into a private tenancy arrangement with a friend who agreed to reimburse her the cost of the utilities and forward any mail that arrived for Ms Smith to her parents' house. Sally's employment and university records indicated that she resided at her parents' house, and there was no indication that she maintained any personal belongings at the grant property.

Based on the evidence provided, it can be determined that Sally did not reside at the property. The actions she took in changing her address and connecting the utilities in her name were a deliberate attempt to create the appearance that the property was her principal place of residence.

Property intended for a purpose other than a home

Immediately after purchasing an established house in East Perth for which he received the FHOR, Fred began the process of obtaining the relevant approvals to convert the property into a small restaurant. He resided there for the required six months while renovating it and, as soon as the residence requirement had been fulfilled, he moved into a rented apartment and commenced using the property as a restaurant.

While he fulfilled the prescribed residence requirements, Fred's actions in:

- applying for commercial rezoning approval immediately upon purchasing the property;
- renovating the home for use as a restaurant whilst residing in it; and
- moving out of the home immediately upon completing the six month residence requirement,

demonstrate conduct inconsistent with an intention to make the property his principal place of residence. Had he commenced his commercial rezoning application some time after moving in, it could be argued that, at the time of applying for the FHOR, he had intended to make it his principal place of residence.

3. Where an applicant occupies two or more residences, the question of which is used as the principal place of residence cannot be determined solely by considering how the applicant divides time between them. The factors detailed in paragraph 2 will be used to determine which residence is the applicant's principal place of residence.
4. Applicants who are required to temporarily reside elsewhere for work purposes must demonstrate the property is their principal place of residence despite the constraints placed on them by their employer. The applicant may be required to provide documentation detailing their work schedule and evidencing that they resided at the property during periods where it was reasonable to do so. Factors that will be taken into account include:
 - 4.1 whether the property is used as the applicant's residence during non-working periods;
 - 4.2 whether the property is being used for any other purpose (such as an investment property); and
 - 4.3 whether the distance between the property and the applicant's place of employment is such that a daily commute between them would, in the Commissioner's opinion, place an unreasonable expectation on the applicant.

Example: Applicant employed in a different locality

Tom and Viv, both teachers at a school in Geraldton, purchased a new home in Perth for which they received the grant and FHOR. Upon settlement, they moved all of their furniture and some personal belongings to the property. They resided in the home during school holidays and at least one weekend each month, but at all other times they resided at a fully furnished house in Geraldton that was provided as part of their employment in the region. Their adult daughter lived in the Perth property and, instead of paying rent, she paid for the use of the utilities which were connected in her parents' names.

In spite of the applicants residing for the majority of the time in Geraldton, the Perth property would be considered their principal place of residence because:

- the applicants were required to reside in a different location for work purposes;
- the distance between the work location and the property was such that they could not reasonably commute each day;
- the applicants resided at the property during non-working periods and at regular times during working periods;
- the applicants were able to access the property at will; and
- the applicants were not deriving any income from the property.

5. Applicants who are travelling throughout the required residence period must demonstrate the property is maintained as their principal place of residence rather than being used for another purpose. The applicant's intent with regard to their travel plans when they applied for the grant and/or FHOR, and their actions when they return from travelling, will be taken into consideration.

Example: Applicant travelling throughout the residence period

Joe received the FHOR for an established house he purchased in Mandurah. Following settlement, he moved his personal belongings into the property and left the following day to go travelling. Joe rented the property fully furnished to a friend on an 18 month lease. When he returned, he renewed the lease for an additional six months and resided in his parents' house before moving into the property.

Joe's actions in renting out the property for a period that exceeded the 12 month take up period meant he was unable to meet the residence requirements.

Although he could have applied for a variation to extend the 12 month take up period, his failure to notify the Commissioner of his inability to reside in the property during the required residence period, as well as the fact that he derived income from the property during that time and chose not to reside in the property following his return, indicates he had no intention to reside in the home as his principal place of residence during that time.

Had he organised the holiday after moving in, leased the property for a shorter period, or moved into the home as soon as he returned from his holiday, it may have been argued that it was intended to be used as his principal place of residence at the time he made the application. Given the circumstances, however, Joe's purchase of the property did not qualify for the FHOR and was reassessed at the residential rate of duty.

Date of Effect

This Commissioner's practice takes effect from 1 November 2016.

Nicki Suchenia
 COMMISSIONER OF STATE REVENUE
 1 November 2016

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
FHOG 2.0	11 June 2013	11 June 2013	27 June 2013
FHOG 2.1	28 June 2013	28 June 2013	31 October 2016
FHOG / DA 40.2	1 November 2016	1 November 2016	Current