Government of Western Australia
Department of Finance
Office of State Revenue

COMMISSIONER'S PRACTICE
FHOG 2.1

FIRST HOME OWNER GRANT – PRINCIPAL PLACE OF RESIDENCE

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

This Commissioner's practice details the factors the Commissioner will take into consideration when determining whether a home is a person's principal place of residence for the purposes of the first home owner grant.

Background

As a scheme to encourage and assist in the acquisition of a first home, the first home owner grant is intended for those persons who have not previously held a relevant interest in residential property who both intend to and will make the property for which the first home owner grant was received ('the FHOG property') their principal place of residence.

Eligibility under the *First Home Owner Grant Act 2000* ('FHOG Act') requires, in part, that the applicant occupies the home to which the grant applies as their principal place of residence[1] for a continuous period of at least six months[2] commencing within 12 months of completion of the eligible transaction[3], unless Commissioner's discretion has been applied to the applicant's residency requirements.

Under section 4 of the FHOG Act, a home is defined 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.

[1] FHOG Act section 13(1)
[2] FHOG Act section 13(2)
[3] FHOG Act sections 13(4) and 13(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. 'Occupy' means "to take or enter upon possession of"[4], while 'principal' has its ordinary meaning of "most important or considerable; highest on rank"[5].

Where there is uncertainty about whether the FHOG property is, or has been, used as the applicant's principal place of residence due to there being another property in which the applicant has resided concurrent to their occupation of the FHOG property, the Commissioner will apply a number of factors to determine whether the FHOG property will be considered the primary, or more important, residence.

Commissioner's Practice

1. When considering the applicant's occupation of the FHOG property, the Commissioner must be satisfied that, on balance, the applicant has occupied the FHOG property as their principal place of residence.

2. When making a determination regarding an applicant's principal place of residence, the Commissioner will consider each case on the basis of all of the relevant facts and circumstances.

3. For the purpose of determining the applicant's principal place of residence, the Commissioner will determine whether the applicant is occupying the FHOG property as their main residence, regardless of the length of their occupation[6].

    3.1 At any given point in time, a person may only have one principal place of residence for the purposes of the FHOG Act.

    3.2 In order for a property 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.

    3.3 The length of time that the applicant occupies a property is not necessarily determinative in itself, but must be considered in light of other factors. In practice it will be harder for an applicant to show that they occupied the home as their principal place of residence if they only resided there for a short period.

4. Whether an applicant has occupied a property as their principal place of residence is a matter of fact having regard to all of the circumstances. The intention of the applicant is relevant but it is neither determinative of the issue nor a dominant consideration[7].

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[4] Black's Law Dictionary [6th ed] (1990) West Publishing Co: St Paul, Minnesota.
[5] Black's Law Dictionary [6th ed] (1990) West Publishing Co: St Paul, Minnesota.
[6] Zakariya v. Chief Commissioner, Office of State Revenue [2003] NSWADT 26
[7] Deane v Commissioner of Stamp Duties [1996] 2 Qd R 557

5. Factors that will be considered in determining whether an applicant's residence is their principal place of residence include but are not limited to the following:

5.1 where the applicant sleeps;

5.2 where the applicant eats meals;

5.3 whether the applicant also resides in other premises and if so, the reasons for doing so;

5.4 the place of residence of the applicant's immediate family, especially a spouse, de facto partner or children;

5.5 whether there are other occupants of the property, and their rights to and control over the property. For example, an applicant can occupy a residence as their principal place of residence and have tenants also 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 property;

5.6 the connection of utilities such as the telephone, gas and electricity under the applicant's name;

5.7 whether the amount of electricity and/or gas used is consistent with the applicant occupying the residence as a home;

5.8 whether the applicant has moved their furniture and personal effects into the residence;

5.9 whether the residence is used as the applicant's mailing address or address for other purposes such as the electoral roll, driver's licence and motor vehicle registration. If another residence is used, the reasons for using that other residence;

> *Example: Use of mailing address*
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> Ms Smith received the first home owner grant for a property she purchased on Bond St. 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. Ms Smith's employment and university records indicated that she resided at her parents' house, and there was no indication that Ms Smith maintained any personal belongings at the FHOG property.
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> Based on the evidence provided, it can be determined that Ms Smith did not reside in the FHOG property and 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 FHOG property was her principal place of residence.

5.10 whether the applicant entertains friends and family at that residence;

5.11 the length of time of residence;

5.12 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;

5.13 the type of finance acquired by the applicant for the residence. For example, obtaining finance as an owner/occupier or under an investment loan; and

5.14 whether the applicant's purpose for occupying the residence is other than to make it their home.

Example: Property intended for a purpose other than a home

Immediately after purchasing a house in East Perth for which he received the first home owner grant, Mr Brown began the process of obtaining the relevant approvals to convert the property into a small restaurant. He obtained council approval and used the property as his residence while renovating it. Mr Brown resided in the property for the required six months and, as soon as the residency requirement had been fulfilled, he moved back into his parents' house and commenced using the FHOG property as a restaurant.

While he fulfilled the prescribed residency requirements, Mr Brown's actions in:

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

indicate that Mr Brown had no intention to make the FHOG property his principal place of residence. Had he commenced his application for the commercial rezoning approval for the FHOG property some time after moving into the property, it could be argued that, at the time of applying for the first home owner grant, he had intended to make it his principal place of residence.

Applicants with Two or More Residences

6. Whether a home is occupied as a principal place of residence is a matter of fact that is simple to determine when the FHOG property is the applicant's only residence. However, it is recognised that this will not always be the case. If an applicant occupies two or more residences, the question of which home the applicant uses as their principal place of residence cannot be determined solely by reference to the way in which the applicant divides their time between them, although that is a relevant factor.

6.1 Applicants who are required to temporarily reside elsewhere for work purposes may still satisfy the residency requirement as long as they can demonstrate that the grant 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 FHOG property during periods where it was reasonable to do so. In determining whether the FHOG property is considered to be the applicant's principal place of residence in these circumstances, the Commissioner would take into account such factors as:

6.1.1 whether the FHOG property is used as the applicant's residence during non-working periods;

6.1.2 whether the FHOG property is being used for any other purpose (i.e. as an investment property); and

6.1.3 whether the distance between the FHOG 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

Mr and Mrs Johnson, both teachers at a school in Geraldton, purchased a property in Perth for which they received the first home owner grant. Upon settlement, they moved some personal belongings into the FHOG property. They resided in the FHOG property during school holidays and on some weekends but at all other times they resided at a house in Geraldton that was provided for as part of their employment in the region. Their adult daughter lived in the FHOG property. Instead of paying rent, she paid for the use of the utilities which were connected in her name.

In spite of the applicants residing for the majority of the time at the Geraldton property, the FHOG property would be considered their principal place of residence based on the following factors:

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

6.2 Applicants who are travelling throughout the required residency period may still satisfy the residency requirement as long as they can demonstrate that the FHOG property is maintained as their principal place of residence rather than being used for another purpose. When determining whether the FHOG property could be considered the applicant's principal place of residence, the Commissioner would take into account the applicant's intent when applying for the first home owner grant with regard to the organisation of their travel plans.

Example: Applicant travelling throughout the residency period

Mr Clark received the first home owner grant for a house he purchased in Mandurah. He moved his personal belongings into the FHOG property and resided in the property for one night before he left on a 15 month trip around the world. Due to his impending trip, Mr Clark chose not to connect any utilities at the property. The FHOG property was not occupied while he was on holiday. When he returned, he moved into the FHOG property and used it as his principal place of residence.

Although Mr Clark's personal belongings were situated at the FHOG property and the property was otherwise unoccupied, the fact that Mr Clark knew of his extended holiday and therefore his inability to physically reside in the home throughout the required residency period in advance of applying for the grant indicates that he had no intention to reside in the FHOG property as his principal place of residence during that time.

Had he organised the holiday after moving into the FHOG property, the Commissioner's consideration of factors including the location of his personal belongings, that the home was not used for any other purpose and that Mr Clark did not have another place of residence throughout that time, may have led to the conclusion that the FHOG property was intended to be used as Mr Clark's principal place of residence at the time at which he applied for the grant.

Further Information

Details about how the Commissioner will exercise discretion when considering an application for a variation to the prescribed residency requirements are outlined in Commissioner's Practice FHOG 1.0 which is accessible from the FHOG Forms and Publications section of the Office of State Revenue website.

Legislative Status of this Practice

Commissioner's practices regarding the FHOG Act are provided to give an indication of how the Commissioner would exercise discretions under the FHOG Act.

There is no legislative requirement to publish Commissioner's practices or procedures in relation to the exercise of discretionary powers under the FHOG Act. However, to ensure that applicants are able to understand the basis by which a decision regarding a variation to the prescribed residence requirements will be made, this document is made available to the public.

Date of Effect

This Commissioner's practice takes effect from 28 June 2013.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

28 June 2013