

PRACTICE DIRECTION FIRST HOME OWNER GRANT – 2.2

INSTALMENT CONTRACTS

PRACTICE DIRECTION HISTORY

Practice Direction	Issued	Dates of effect	
		From	To
FHOG 2.1	31 October 2001	31 October 2001	Date of Issue of FHOG 2.2
FHOG 2.2	Date of Issue	Date of Issue	Current

BACKGROUND

- A. Under the *First Home Owner Grant Act 2000* (“FHOG Act”)¹ a grant is payable to applicants who enter an eligible transaction² that is completed if the applicants satisfy the eligibility criteria.³
- B. A contract for the purchase of a home is completed if the purchaser becomes entitled to possession and the purchaser’s title to the land is registered.⁴
- C. Instalment contracts for the sale of land are contracts under which the purchaser is bound to make a payment or payments (other than a deposit) without becoming entitled to a transfer of the title.⁵
- D. Usually, a purchaser under an instalment contract is not entitled to a transfer of title until either:
- (a) the final instalment is paid;
 - (b) one third of the purchase price has been paid and one of the parties to the contract requires a transfer to the purchaser with a mortgage back to the vendor as security for the unpaid purchase price; or
 - (c) the purchaser pays the balance of the purchase price at some other time (eg using funds borrowed from a financial institution).
- E. The Commissioner may authorise payment of the grant before the completion of the eligible transaction if satisfied that it is appropriate in the circumstances.⁶
- F. Also, the Commissioner may attach conditions to the payment of the grant.⁷

¹ Section 10(1) of the FHOG Act

² Section 5 of the FHOG Act

³ See s.4 of the FHOG

⁴ Definition of “completed” in Schedule to the FHOG Act

⁵ Section 71 of the *Property Law Act 1974*

⁶ Section 19(2) of the FHOG Act

⁷ Section 23 of the FHOG Act

- G. This Practice Direction clarifies when the grant will be paid to purchasers prior to completion of an instalment contract, assuming other conditions of payment of the grant are satisfied.

PRACTICE DIRECTION

Conditional payment prior to completion

1. The Commissioner will exercise his discretion⁸ to pay the grant to purchasers under instalment contracts prior to completion of the contract if all of the following circumstances exist.
 - (a) The contract has been in existence for at least one (1) year.
 - (b) The purchaser is not in default under the contract so that the vendor has no right to cancel the contract.
 - (c) The purchaser has occupied the home as their principal place of residence under the contract.
 - (d) The purchaser has paid to the vendor an amount of not less than \$7,000 or an amount which is equal to at least ten per cent (10%) of the purchase price, whichever is the greater. In calculating the amount paid to the vendor, any of the following can be taken into account:
 - (i) any deposit paid by the purchaser to the vendor;
 - (ii) any interest paid by the purchaser to the vendor; and
 - (iii) any other amounts which have been paid and deducted from the balance of the purchase price.

Conditions of payment

2. A grant paid prior to completion of an instalment contract will be paid subject to the following conditions.
 - (a) That the contract will be completed and will not be cancelled or terminated.
 - (b) That, following payment of the grant, the purchaser will meet the residence conditions.
 - (i) For contracts entered into before 1 January 2004, the residence condition is that the purchaser will remain in possession of the home as their principal place of residence and will continue in possession following completion of the contract⁹.
 - (ii) For contracts entered into on or after 1 January 2004, the residence conditions are that the purchaser will remain in possession of the home as their principal place of residence and will continue in possession following completion of the contract for a continuous period of at least 6 months.¹⁰

⁸ Section 19(2) of the FHOG Act

⁹ Section 15 of the FHOG Act prior to being amended by the *First Home Owner Grant Amendment Act 2003*.

¹⁰ Section 15 of the FHOG Act after being amended by the *First Home Owner Grant Amendment Act 2003*. The Commissioner

- (c) That, within fourteen (14) days of non-compliance with conditions (a) or (b), the purchaser will notify the Commissioner of non-compliance and will repay the grant.

Procedure

3. Where a purchaser under an instalment contract claims payment of the grant under the terms of this Practice Direction, the application must be supported by a statutory declaration by the purchasers as to the matters referred to in paragraph 1 and stating their intention in relation to paragraphs 2(a) and (b).
4. Where the Commissioner imposes the conditions in paragraph 2, the purchaser must agree in writing, before payment of the grant, to notify the Commissioner and repay the grant in accordance with paragraph 2(c).
5. Penalties apply under the FHOG Act for failure to comply with a condition of the grant¹¹, for providing the Commissioner with false and misleading statements and if the applicant knew a document given to the Commissioner was false or misleading in a material particular.¹²

DATE OF EFFECT

6. This Practice Direction takes effect from the date of issue.

James Green
Commissioner of State Revenue
Date of Issue: 18 October 2004

may, however, shorten the period of residence or exempt an applicant from the residence conditions if there are good reasons for doing so.

¹¹ Section 23(4) of the FHOG Act

¹² Section 47(2), 42 and 43 of the FHOG Act