

Contents	Page
What this ruling is about	1
Ruling and explanation	2
Date of effect	4
References	4

Public Ruling First Home Owner Grant and Other Home Owner Grants Act: INSTALMENT CONTRACTS

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. This public ruling clarifies when the first home owner grant (the grant) under the *First Home Owner Grant and Other Home Owner Grants Act 2000* (Grants Act) will be paid to a purchaser before completion of an instalment contract, assuming other conditions of payment of the grant are satisfied.
2. The Grants Act provides that the grant is payable on application if the applicant (or if there are two or more applicants, each of the applicants) complies with the eligibility criteria and the transaction for which the grant is sought is an eligible transaction and has been completed.¹
3. 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.²
4. 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.³

¹ Section 10(1) of the Grants Act

² Definition of 'completed' in Schedule to the Grants Act

³ Section 71 of the *Property Law Act 1974*

5. Usually, a purchaser under an instalment contract is not entitled to a transfer of title until one of the following events occurs:
 - (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.
 - (c) The purchaser pays the balance of the purchase price at some other time (e.g. using funds borrowed from a financial institution).
6. The Commissioner may authorise payment of the grant before the completion of the eligible transaction if satisfied that it is appropriate in the circumstances.⁴
7. The Commissioner may also attach conditions to the payment of the grant.⁵

Ruling and explanation

Conditional payment prior to completion

8. The Commissioner will exercise the discretion⁶ to pay the grant to a purchaser under an instalment contract before completion of the contract if all the following circumstances exist:
 - (a) The contract has been in existence for at least one 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 the amount of the grant or an amount that is equal to at least 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
 - (iii) any other amounts that have been paid and deducted from the balance of the purchase price.

⁴ Section 19(2) of the Grants Act

⁵ Section 23 of the Grants Act

⁶ Section 19(2) of the Grants Act

Conditions of payment

9. A grant paid before completion of an instalment contract will be paid subject to the following conditions:
- (a) The contract will be completed and will not be cancelled or terminated.
 - (b) Following payment of the grant, the purchaser will meet the residence conditions:
 - (i) For contracts entered into before 1 January 2004, 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.⁷
 - (ii) For contracts entered into on or after 1 January 2004, 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 six months.⁸
 - (c) Within 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

10. Where a purchaser under an instalment contract claims payment of the grant under the terms of this public ruling, the application must be supported by a statutory declaration from the purchaser detailing compliance with the matters referred to in paragraph 8. This statutory declaration should also include a statement of the purchaser's intention in relation to the matters referred to in paragraphs 9(a) and (b).
11. Where the Commissioner imposes the conditions in paragraph 9, the purchaser must agree in writing, before payment of the grant, to notify the Commissioner and repay the grant in accordance with paragraph 9(c).
12. It is an offence under the Grants Act for a person not to comply, without reasonable excuse, with a condition imposed by the Commissioner under the Grants Act.⁹
13. Where the person fails to repay the grant under the conditions of the grant, the Commissioner may—as an alternative to prosecution—impose a penalty of up to 100% of the amount of the grant.¹⁰

⁷ Section 15 of the Grants Act before being amended by the *First Home Owner Grant Amendment Act 2003*

⁸ Section 15 of the Grants Act after being amended by the *First Home Owner Grant Amendment Act 2003*; the Commissioner may, however, shorten the period of residence or exempt an applicant from the residence conditions if there are good reasons for doing so.

⁹ Section 23(4) of the Grants Act

¹⁰ Sections 47(3) and 51 of the Grants Act

14. It is also an offence under the Grants Act for a person to:
- (a) give to the Commissioner or an authorised officer under the Grants Act a document containing information
 - (b) state anything to the Commissioner or an authorised officer under the Grants Act that the person knows is false or misleading in a material particular.¹¹
15. Where the grant is paid in error because of the provision of such false or misleading information in relation to the application for the grant, the Commissioner may:
- (a) require the grant to be repaid¹²
- and
- (b) impose a penalty of up to 100% of the amount of the grant paid in error, as an alternative to prosecution.¹³

Date of effect

16. This public ruling takes effect from the date of issue.

Mark Jackson
 Commissioner of State Revenue
 Date of issue: 3 November 2020

References

Public Ruling	Issued	Dates of effect	
		From	To
FHOGA019.1.3	3 November 2020	3 November 2020	Current
FHOGA019.1.2	25 September 2012	12 September 2012	2 November 2020
FHOGA019.1.1	24 February 2009	24 February 2009	11 September 2012
Supersedes Practice Direction FHOG 2.2	18 October 2004	18 October 2004	23 February 2009

¹¹ Sections 42 and 43 of the Grants Act

¹² Section 47(1) of the Grants Act

¹³ Sections 47(2) and 51 of the Grants Act