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## Practice Direction

### First Home Owner Grant and Other Home Owner Grants Act: ELIGIBLE TRANSACTIONS—ORAL CONTRACTS

*A practice direction, 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 practice direction, the change in the law overrides the practice direction—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 direction is about

1. This practice direction clarifies the circumstances in which the Commissioner will be satisfied there is an eligible transaction under s.5 of the *First Home Owner Grant and Other Home Owner Grants Act 2000* (Grants Act) that has been completed where there is no written contract in existence.
2. The Grants Act provides that the first home owner grant (the grant) is payable on an application if the applicant (or if there are 2 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.<sup>1</sup>
3. Subject to paragraphs 4 and 5, an 'eligible transaction' includes:
  - (a) a contract made on or after 1 July 2000 for the purchase of a new home in Queensland
  - (b) a comprehensive home building contract made on or after 1 July 2000 by a person who is, or will on completion of the contract be, the owner of land in Queensland, to have a new home built on the land
  - (c) a contract made on or after 1 July 2000 but before 11 October 2012 for the purchase of a home other than a new home, in Queensland
  - (d) a comprehensive home building contract made on or after 1 July 2000 but before 11 October 2012 by a person who is, or will on completion of the contract be, the owner of land in Queensland, to have a home other than a new home built on the land.<sup>2</sup>

<sup>1</sup> Section 10(1) of the Grants Act

<sup>2</sup> Section 5(1)(a), 5(1)(b), 5(2)(a) and 5(2)(b) of the Grants Act

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4. For paragraphs 3(a) and 3(c), a contract is a contract for the purchase of a new home or other home if the contract is a contract for the acquisition of a relevant interest in land:
  - (a) on which a new home or other home is built  
or
  - (b) on which a new home or other home is to be built, before completion of the contract, by or for the vendor and at the expense of the vendor.<sup>3</sup>
5. A transaction is not an eligible transaction if:
  - (a) the Commissioner is satisfied it forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant<sup>4</sup>
  - (b) the consideration for the transaction is \$750,000 or more<sup>5</sup>
  - (c) in relation to a contract mentioned in paragraph 2(a) or 2(c), the total of the unencumbered value of the new home or other home and the unencumbered value of the relevant interest in the land on which the new home or other home is built or to be built at the commencement date for the contract is \$750,000 or more<sup>6</sup>
  - (d) in relation to a comprehensive home building contract mentioned in paragraph 2(b) or 2(d), the total of the consideration for the transaction and the unencumbered value of the land at the commencement date for the contract is \$750,000 or more.<sup>7</sup>

## Direction and explanation

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### Oral contracts in relation to land generally

6. Section 7 of the *Property Law Act 2023* (Property Law Act) states that a contract for the disposition of land is not enforceable by action in a proceeding unless:
  - (a) The contract is in writing, or some memorandum or note of the contract is recorded in writing.
  - (b) The contract or memorandum or note of the contract is signed by the party against whom the contract is sought to be enforced.
7. Section 10 of the Property Law Act confirms that s.7 of the Property Law Act does not affect the application of the law relating to part performance. Under the doctrine of part performance, an oral contract for the purchase of land will be enforceable, provided that sufficient proof exists.
8. In *Steadman v Steadman*<sup>8</sup> (the Steadman decision), the House of Lords held that, on its own, payment of the whole or part of the purchase price of land is insufficient to amount to part performance of an oral contract for the sale of land, because such a payment alone is too

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<sup>3</sup> Section 5(3) of the Grants Act

<sup>4</sup> Section 5(4) of the Grants Act

<sup>5</sup> Section 5(6) of the Grants Act

<sup>6</sup> Section 5(7) of the Grants Act

<sup>7</sup> Section 5(8) of the Grants Act

<sup>8</sup> [1976] AC 536

equivocal to prove a contract. However, it was also held that the contract in question was proved because the payment of money was coupled with other acts; namely, an undertaking to a court and the preparation and submission of transfer documents by the plaintiff for the benefit of the party to be charged.

9. The Commissioner relies on the Steadman decision in determining when an enforceable oral contract may be taken to be in existence. This will depend on the particular circumstances of each case.

### **Contracts for the purchase of a new home or other home**

10. Where an oral contract relates to the purchase of a new home or other home, the Commissioner will be satisfied for the purposes of the Grants Act that there is an eligible transaction that has been completed if:

- (a) by the doctrine of part performance, there is an oral contract made
  - (i) on or after 1 July 2000 in relation to a new home
  - or
  - (ii) on or after 1 July 2000 but before 11 October 2012 in relation to a home other than a new home
- and
- (b) the oral contract is a contract for the acquisition of a relevant interest in land<sup>9</sup> on which a new home or other home is built or on which a new home or other home is to be built, before completion of the oral contract by or for the vendor and at the expense of the vendor<sup>10</sup>
- and
- (c) the oral contract has been completed.

11. To allow the Commissioner to consider whether the above 3 conditions have been satisfied, the following must be lodged with the application involving an oral contract:

- (a) a copy of the transfer document and Form 24 to be lodged with the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development showing the terms of the oral contract
- (b) evidence of payment of the stated consideration (or, if the stated consideration has not been paid in full by the date of the application, evidence of the consideration that has been paid to that date and details as to the basis upon which the balance of the stated consideration will be paid)
- (c) the registration confirmation statement issued by the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development indicating that the

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<sup>9</sup> Section 8(1)(a) of the Grants Act defines a 'relevant interest' in land as an estate in fee simple in the land.

<sup>10</sup> See s.5(3) of the Grants Act.

estate in fee simple in the land the subject of the first home owner grant application has been registered in the name of the applicant(s)

- (d) any other relevant information evidencing performance of the contract.
12. In addition to the requirements in paragraph 11 of this practice direction, where the oral contract is a contract for the acquisition of a relevant interest in land on which a new home or other home is to be built, before completion of the oral contract by or for the vendor and at the expense of the vendor, the following must be lodged with the application:
- (a) the written building contract for the new home or other home to be built<sup>11</sup>
  - (b) a certificate under s.103F of the *Queensland Building and Construction Commission Act 1991* (QBCC Act), if the written building contract does not show on its face that the builder was licensed under the QBCC Act as at the date of the contract
  - (c) a copy of the inspection summary or final inspection report indicating that the new home or other home is fit for occupation.
13. As evidence of payment of consideration, the Commissioner will accept bank statements provided in relation to the account of the applicant(s) and the vendor's account that evidence the transfer of the consideration from the applicant(s) to the vendor.
14. Alternatively, the Commissioner will accept bank statements provided by the applicant(s) that indicate that the consideration has been transferred from the account of the applicant(s) to the vendor or the vendor's account. A bank statement of the applicant(s) showing an outgoing of a monetary sum without an indication as to where such money has been transferred will be insufficient evidence of payment of consideration to the vendor.
15. Subject to review of relevant information lodged with the application in accordance with paragraphs 11 and 12 above, the Commissioner will be satisfied an enforceable oral contract exists on the date the transfer instrument is lodged with the Registrar of Titles.

### **Comprehensive home building contract must be in writing**

16. Under the QBCC Act and the *Domestic Building Contracts Act 2000*, building contracts are generally required to be in writing.<sup>12</sup> Therefore, the Commissioner requires a comprehensive home building contract to be in writing in order to qualify as an eligible transaction for the purposes of s.5(1)(b) and s.5(2)(b) of the Grants Act.

### **Provision of false or misleading information**

17. It is 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

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<sup>11</sup> Because the building contract is regarded by the Commissioner as evidence of part performance of the oral contract, the building contract must have been made on or after 1 July 2000 in relation to a new home—or made on or after 1 July 2000 but before 11 October 2012 in relation to a home other than a new home—in order to be eligible for the grant.

<sup>12</sup> Under the *Domestic Building Contracts Act 2000*, all regulated building contracts are required to be in writing. A regulated contract is one where the contract price is more than \$3,300.

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- (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.<sup>13</sup>
18. 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 repaid<sup>14</sup>
- (b) as an alternative to prosecution, impose a penalty of up to 100% of the amount of the grant paid in error.<sup>15</sup>

## Date of effect

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19. This practice direction takes effect from the date of issue.

Simon McKee  
Commissioner of State Revenue  
Date of issue: 1 August 2025

## References

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| Practice Direction                    | Issued          | Dates of effect |              |
|---------------------------------------|-----------------|-----------------|--------------|
|                                       |                 | From            | To           |
| FHOGA005.1.1                          | 1 August 2025   | 1 August 2025   | Current      |
| Supersedes Public Ruling FHOGA005.2.6 | 3 November 2020 | 3 November 2020 | 31 July 2025 |

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<sup>13</sup> Sections 42 and 43 of the Grants Act

<sup>14</sup> Section 47(1) of the Grants Act

<sup>15</sup> Sections 47(2) and 51 of the Grants Act