

First Home Owner Grant

Your obligations

Each applicant should read this information sheet before completing and submitting the application form.

Your obligations

If you apply for a First Home Owner Grant you must meet three important obligations. You must:

- provide the full and correct information necessary for the Commissioner of State Revenue ('commissioner') to determine your eligibility for the grant
- notify the commissioner if you do not satisfy the residence requirement for the grant
- repay the grant where the residence requirement is not met.

Consequences of not meeting your obligations

If you do not meet the eligibility requirements for the grant, you will be required to repay the grant to the commissioner. Penalties may also apply if you do not meet the obligations mentioned above.

Each case will be considered on its facts to determine:

- whether a penalty will apply
- the amount of any penalty.

Providing full and correct information

The application form and documentation checklist sets out the conditions for the grant and the information that you need to provide to the commissioner when making your application.

You are required to fully disclose material facts relating to:

- date of occupation of the property as your principal place of residence
- statements of intention to occupy the property as your principal place of residence
- prior ownership of a property (by you or your spouse)
- prior receipt of a First Home Owner Grant in Australia (by you or your spouse)
- Australian citizenship or residency
- details of the transaction (e.g. gift rather than sale)
- marital status or existence of a de facto relationship
- identity of owners of the property and applicants for the grant
- date of birth of you and your spouse
- whether or not you, as owner of the property, are a natural person (rather than a company or corporate trustee).

The following table indicates the consequences that may apply if you provide incomplete, inaccurate or misleading information to the commissioner. The table is not exhaustive and every case will be considered on its facts.

Circumstances	Consequences
Honest and reasonable mistake of fact as to the correctness of the material information provided.	Repay the grant + penalty ranging from 0% to 15% of the grant amount.
Applicant failed to take reasonable care to ensure the accuracy of the information provided.	Repay the grant + penalty ranging from 15% to 50% of the grant amount.
Applicant knew that the information provided was false or misleading.	Repay the grant + penalty ranging from 50% to 100% of the grant amount.

What is an ‘honest and reasonable mistake of fact’?

In some cases, a person may not be aware of facts that affect their eligibility for the grant. Circumstances beyond a person’s control can also change their eligibility for the grant.

Example 1

A’s grandfather died when A was 12, leaving a 1/3 interest in his Victorian home to A and a 2/3 interest to A’s mother. A’s mother sold the house when A was 15. A is unaware of having held a previous interest in residential property and incorrectly completes the application form for a First Home Owner Grant by stating that he has never previously held an interest in a residential property.

A initially receives the grant, but on investigation, the prior interest is identified and A is required to repay the grant because, under the First Home Owner Grant Act 2000, the home is not his first. However, no penalty is imposed because A did not know of his prior interest, having held it only as a child.

Example 2

C completes the application form for a First Home Owner Grant, specifying the date for occupation of the property as being immediately upon settlement. C does not actually move into the property until three months after settlement.

While the date for occupation is material in determining eligibility, C has moved in within the required 12 months. The inaccuracy of the information provided to the commissioner is therefore not material. No penalty is imposed because C remains entitled to the grant.

The commissioner will use the information requested to determine eligibility for the grant. Applicants must provide full facts to the commissioner, even though they may mistakenly believe that the facts will not influence their eligibility for the grant. If an applicant fails to do this, it will not be considered an honest and reasonable mistake of fact.

In determining the appropriateness of a penalty, the commissioner will also consider how the mistake was identified, e.g. whether the applicant voluntarily informs the commissioner of the mistake, immediately clarifies the facts when questioned by the commissioner or the commissioner identifies the mistake during an audit.

What is ‘failing to take reasonable care to ensure the accuracy of the information you provide’?

A person may suspect that information they provide is incorrect and choose not to make appropriate enquiries or to provide full information to the commissioner for determination.

Example 3

J and K have been living together as a de facto couple for eight years. K owns several investment properties and the house that K and J currently occupy. J purchases a house in which K and J plan to live together. The application form and related information clearly define spouse to include a de facto couple who have lived together as a couple for at least two years. J spoke to some friends who agree with his view that a de facto is only a spouse if you own a house together. J completed the application form for the grant, declaring that he has no spouse. J initially received the grant but it is later identified through investigation that he was not entitled to it. J must repay the grant and penalties of up to 50 per cent may apply because J failed to take reasonable care, e.g. by making proper enquiries to the commissioner, or providing information to the commissioner that would explain his circumstances and answers in the application form.

When does someone provide information that they know is ‘false or misleading’?

A person may provide information that they know is false, where they have a mistaken belief about the legal consequences. The mistake about the legal consequences does not change the fact that the person knew the information was false.

Example 4

F purchased a home unit in Sydney in 1990 as an investment property. F sold the unit in 1995. F believes this does not disqualify her from the grant and states in her application form that she has never previously owned residential property. F does not advise the commissioner of her prior ownership, or seek advice on how this affects her entitlement to the grant. F has knowingly provided false information to the commissioner which results in her obtaining the grant. F's prior interest is identified through investigation activity and F is required to repay the grant. In addition, a penalty of between 50 and 100 per cent may be applied. If F had provided the information about her investment property with her application, no penalty would apply.

Evidence may also show that an applicant was dishonest in providing information to the commissioner. Full penalties are likely to apply in such circumstances. Alternatively, the commissioner may consider prosecution for the provision of false information, particularly where the grant has been rejected and penalties are not applicable.

Example 5

G applies for a grant using her maiden name. G completes the application form and states that she has never previously received a grant. G and her spouse have previously received the grant, in their married names, in relation to another property. G receives the grant but her false statement is identified through routine investigations. G is required to repay the grant and a 100 per cent penalty may apply because G has been dishonest about the information she provided in her application.

Example 6

H applies for the grant and specifies a date immediately upon settlement for occupation of the property as his principal place of residence. H lists the property with a real estate agent prior to settlement and has tenants signed up for a 15 month lease from settlement. H has rented another property to live in for that period. H's false statements are identified through investigation and H is required to repay the grant. A 100 per cent penalty may also apply because H has been dishonest in claiming the grant.

Example 7

K is a university student living in Brisbane with his parents. While he has three years of study remaining, and a part-time night job in Brisbane, K purchases a unit at the Gold Coast and rents it to his sister. K receives the grant up-front and makes arrangements so that it is difficult to identify the rental arrangement or to identify that he has not moved into the property. Nevertheless, K's scheme is identified through investigation and he is required to repay the grant. A 100 per cent penalty may apply because of his dishonesty.

Notification requirements

If you fail to meet the residency requirement for the grant, you are required to notify the commissioner and to repay the grant. Failure to do so may result in prosecution. The commissioner will consider whether prosecution is appropriate, depending on the facts of your case and your reasons for not providing notification.

Requirement to repay the grant

If you have received a grant for which you are not eligible, you are required to repay the grant to the commissioner. If you are having difficulties repaying the grant amount in full, you need to contact the commissioner as soon as possible, as an instalment arrangement may be available. However, if you enter into an instalment arrangement, you will generally be required to pay interest on the amount that you owe the commissioner.

If you do not repay the grant or enter into an instalment arrangement, within the required time, penalties may apply. The amount of the penalty will depend on your circumstances and reasons for failing to repay the grant within the required time.

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Queensland Office of State Revenue locations:

Brisbane Upper Plaza 33 Charlotte St (GPO Box 953) Brisbane 4001	Rockhampton Ground floor 209 Bolsover St (PO Box 1276) Rockhampton 4700	Townsville Level 1 187-209 Stanley St (PO Box 988) Townsville 4810	Cairns Level 9 15 Lake Street (PO Box 2378) Cairns 4870
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For access to further information and forms relating to this and other State taxation subjects, visit the Queensland Office of State Revenue website:

www.osr.qld.gov.au