

ENFORCEMENT ACTION AGAINST
NORTH ATHENS CONCERNED
CITIZENS WITH RESPECT TO
NORTH ATHENS HOMES
(HOME FILE # 532340 / CMTS # 2707)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 6th day of December, 2018, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **NORTH ATHENS CONCERNED CITIZENS**, a Texas nonprofit corporation (“Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov’t Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov’t Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT (“FOF”)

Jurisdiction:

1. During 1995, Respondent was awarded an interest free HOME loan allocation by the Board, in an amount of \$646,519 to build and operate North Athens Homes (“Property”) (HTC file No. 532340 / CMTS No. 2707 / LDLD No. 519).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 22, 1995, and filed of record at Volume 1643, Page 673 of the Official Public Records of Real Property of Henderson County, Texas.

3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. Property has a history of violations and previously signed an Agreed Final Order on June 2, 2016, agreeing to an administrative penalty in the total amount of \$2,000, with \$500 due at signing and the remainder to be deferred and forgiven if fully acceptable corrections were received in accordance with the terms of that order. The order was violated and the full administrative penalty was paid.
5. An on-site monitoring review was conducted on October 18, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a May 1, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
 - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received on May 1, 2018, but it was incomplete and the violation remains unresolved.
 - b. Respondent failed to execute required lease provisions for 203 Broadmore, 208 St. Joseph, and 210 St. Joseph, a violation of 10 TAC §10.613(b) (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. A template lease was received, but signed leases for the above units have not been received and the violation remains unresolved.
 - c. Respondent failed to provide a Tenant Income Certification and related verifications for 207 Broadmore, a violation of 10 TAC §10.612(c) (Tenant File Requirements), which requires HOME properties to complete a recertification with verifications of each HOME unit every sixth year of the affordability period. In the intervening years, they must collect a self-certification using TDHCA's Income Certification form, by the anniversary of the effective date of the original Income Certification for the household. The self-certification due by October 1, 2017 was not present in the file. As corrective action, a full new tenant file was submitted, but it was incomplete and the Department was not able to determine eligibility for the household, a new violation that also remains unresolved.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

- d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 207 Broadmore and 209 Broadmore, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2.4 of the LURA, which require screening of tenants to ensure qualification for the program. Tenant files were submitted for both units, but verifications were incomplete and the Department was unable to determine eligibility. Both violations remain unresolved.
 - e. Respondent collected gross rents that exceeded income limits as a result of a utility allowance error for units 205 Broadmore and 210 St. Joseph. The monthly rents charged were \$1,018 and \$985, respectively, both exceeding the High HOME limit of \$941. TDHCA publishes maximum rent limits and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding the maximum rent is a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). Corrective documentation including evidence of rent reductions and refunds have not been received and the violations remain unresolved.
6. The following violations remain outstanding at the time of this order:
- a. Affirmative marketing violation described in FOF #5.a;
 - b. Lease language violations described in FOF #5.b;
 - c. Tenant Income Certification violation described in FOF #5.c;
 - d. Household income violations described in FOF #5.d; and
 - e. Gross rent violations described in FOF #5.e.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.617 in 2017, by failing to provide a complete affirmative marketing plan.
4. Respondent violated 10 TAC §10.10.613(b) in 2017, by failing to execute required lease language for 203 Broadmore, 208 St. Joseph, and 210 St. Joseph.
5. Respondent violated 10 TAC §10.612(c) in 2017, by failing to provide an annual Tenant Income Certification and related verifications for 207 Broadmore.
6. Respondent violated 10 TAC §10.611 and Section 2.4 of the LURA in 2017 and 2018, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 207 Broadmore and 209 Broadmore.

7. Respondent violated 10 TAC §10.622 in 2017 and 2018 by charging rents that exceeded income limits as a result of a utility allowance error for units 205 Broadmore and 210 St. Joseph, then failing to make timely corrections once the violations were discovered.
8. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
9. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
10. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
11. An administrative penalty of \$7,050 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$7,050, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$3,500 portion of the assessed administrative penalty by cashier's checks payable to the "Texas Department of Housing and Community Affairs", to be divided into two payments, with the first installment of \$1,750 due on or before January 25, 2019, and the second installment of \$1,750 due on or before February 22, 2019.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 4, 2019.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining administrative penalty in the amount of \$3,550 and that remaining amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$3,550 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 5, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

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Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
Affirmative Marketing Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
 - i. Do not backdate any documents listed below.
 - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. Affirmative marketing plan –

Problems with prior submission(s) include but are not limited to:

- Section 3b of the plan was missing the “Not Hispanic” group as a least likely to apply population;
- The Athens Housing Authority was identified in Worksheet 3 as an outreach organization, but is not located in the applicable census tract and is not specifically associated with the identified target population persons with disabilities;
- South Place Rehabilitation and Nursing was identified in Worksheet 3 as an outreach organization for multiple least likely to apply populations. Specific organizations and community contacts chosen may not be used to satisfy more than one least likely to apply population; and
- A sample outreach letter was submitted that included required language, but it did not indicate to whom the letter had been sent.

Technical Support: First read the rule at 10 TAC §10.617, read the technical assistance guide at <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>, and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing.

Steps to complete an affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply and mark them in Section 3b of your plan. The Affirmative Marketing Web Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm> and a copy is included at *Exhibit 2*. The groups *currently* identified by the tool are Persons with Disabilities, White, and Not Hispanic. If you use this Tool and save a copy with your Plan, you may rely upon its results. Your last submission was missing “Other – Not Hispanic”.

Alternatively, if you do not use the Tool, you may perform your own analysis to determine groups that are least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified, you must always include persons with disabilities, and populations representing less than 1% of the total population of the County or MSA will not be required in your affirmative marketing. This analysis must be included with the plan.

When the “Not Hispanic” population is identified by the Web Tool as a group least likely to apply, that group would be marked in Section 3b of your plan as “Other” and you would write in “Not Hispanic”. Many owners assume that the “Not Hispanic” group identified by the Affirmative Marketing Web Tool means “White”. That is not necessarily the case. The Compliance Division explains the category like this: each household member has a Race *and* an Ethnicity. The Race could be White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander. The Ethnicity could be either Hispanic or Not Hispanic. In other words, a person could be Black/African American and Hispanic. Likewise, a person could be White and Hispanic. In other words, the “Not Hispanic” demographic is literally everyone who is “Not Hispanic.”

- c. In Worksheet 3 of your plan, identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply. You must have at least one organization per targeted population, and a single organization cannot meet the requirement for more than one targeted population. The Tool provides a link to a map that will show which Census tracts may be most beneficial for affirmative marketing. The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

Specific examples of how to find organizations associated with the least likely to apply groups:

- i. Least likely to apply population - People with disabilities:
 - A. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
 - B. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 - C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 - D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
 - E. Local non-profits in your area serving people with disabilities

- F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
- ii. Least likely to apply population - White:
 - A. Examples of acceptable community contacts might include community centers, places of worship, libraries, and grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- iii. Least likely to apply population – Not Hispanic:
 - A. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Ensure that Section 8 of your plan includes information considering how Limited English Proficiency may affect populations least likely to apply, and including ways you plan to mitigate language barriers related to advertising and community outreach. Such information should be included in the Plan as an additional consideration, or as an attachment to the Plan. Some sample information that may be useful for preparation is available at <http://www.tdhca.state.tx.us/pmcdocs/LAP-Guide.doc>;
- g. Send marketing outreach materials to all organizations identified in your updated Worksheet 3, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms "reasonable accommodation" and must be in English and Spanish for all of your marketing materials, even those targeting the Non-Hispanic population. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *"Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX."*
- h. Look over the "10.617 (affirmative marketing)" tab of the spreadsheet at the following link, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>
- i. Maintain all documentation in your files for future review.

What to submit: Submit the updated Affirmative Marketing plan *and* copies of outreach materials sent to each organization listed in Worksheet 3. Ensure that all are signed and dated.

[additional instructions follow on next page]

9. Lease violations for 203 Broadmore, 208 St. Joseph, and 210 St. Joseph:

Problem with prior submissions: 10 TAC §10.613(b) and the HOME Final Rule prohibit Owners from evicting low-income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007, must specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253). The files for the above units did not include this required lease language. A lease agreement template was received, but signed documents for the above units have not been submitted.

What to submit: Present each unit above with a lease addendum including the above language and submit copies of the executed lease addendum for each unit above to the Department for review. Alternatively, if a household listed above has moved out making it not possible for them to execute the lease addendum, complete the Owner Certification of Corrected Noncompliance at Exhibit 3 and submit the executed certification to the Department for review.

10. Gross Rent violations for 205 Broadmore and 210 St. Joseph:

TDHCA publishes maximum rent limits and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. The High HOME rent limit is \$941, but the documentation provided shows a total monthly rent of \$1,018 for 205 Broadmore (\$405 tenant paid rent + \$260 utility allowance + \$353 housing assistance = \$1,018) and \$985 for 210 St. Joseph (\$355 tenant paid rent + \$260 utility allowance + \$370 housing assistance = \$985).

What to submit if the affected household remains a resident: Rents must be reduced and the total overcharged amounts must be refunded. You may not apply the overcharged amount as a credit, it must be refunded. Submit the following documentation:

- a. Updated lease contracts showing reduced rent amounts;
- b. Current rent roll showing the reductions and refunds;
- c. Copies of the cancelled checks as evidence of the refunds.

What to submit if the affected household has moved out: Refund the overcharged amounts and submit a copy of the cancelled check as evidence of the refund. If you cannot locate the household, the overcharged amounts must be deposited into a trust account for the household and you must submit evidence of this account opening balance. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

[additional instructions follow on next page]

11. Tenant Income Certification / Household income above limit upon initial occupancy for 207 Broadmore and 209 Broadmore: Follow the instructions below and submit documentation.

What to submit for 207 Broadmore: If the unit remains occupied by the Alecia J. Sims household and that household qualifies for occupancy, but income and assets have not been properly verified. In order to verify income and assets, you must perform one of the following:

- a. In order to verify income and assets as of 7/23/2018: On 8/1/2018, an income certification with an effective date of 7/23/2018 was submitted, along with partial income and asset verifications. The pay stubs submitted on 8/1/2018 include 5 pay stubs that are within 120 days of the income certification, but 6 were requested and the remainder of the pay stubs submitted were outdated. Additionally, there was no social security award letter showing the amount of the monthly Social Security Income payment, and the pay stubs submitted indicate that wages are directly deposited into a bank account that was not disclosed or verified. In order to qualify the household as of the 7/23/2018 income certification, you must complete the income and asset verifications by submitting the following: (1) a Social Security award letter indicating the award amount for that period, (2) six pay stubs or a payroll printout history from the period of 120 days prior to the 7/23/2018 income certification (acceptable date range for the pay stubs is between 3/25/2018 and 7/23/2018), (3) copies of bank statements for the 6 months prior to 7/23/2018 (statements to include the period between 1/23/2018 and 7/23/2018), and (4) calculate the six month average balance from those statements and add that information to the Income Certification dated 7/23/2018. Ensure that Ms. Sims initials and dates beside the changes; - OR -
- b. In order to verify income and assets as of 2/10/2018: On 3/26/2018, an income certification with an effective date of 2/10/2018 was submitted, along with partial income and asset verifications. In order to qualify the household as of the 2/10/2018 income certification, you must complete the income and asset verifications by submitting the following: (1) a Social Security award letter indicating the award amount for that period (the letter dated 11/26/2016 is outdated), (2) six pay stubs or a payroll printout history from the period of 120 days prior to the 2/10/2018 income certification (acceptable date range for the pay stubs is between 10/13/2017 and 2/10/2018), (3) copies of bank statements for the 6 months prior to 2/10/2018 (statements to include the period between 8/10/2017 and 2/10/2018), and (4) calculate the six month average balance from those statements and add that information to the Income Certification dated 2/10/2018. Ensure that Ms. Sims initials and dates beside the changes; - OR -
- c. In order to certify the household under their current circumstances: Provide a new application, a new Income Certification, and new verifications of all sources of income and assets. Verifications of income and assets must include: (1) a new social security award letter, (2) six paystubs dated within the 120 days prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six pay stubs would need to be during the time period between August 3, 2018 and December 1, 2018*), (3) bank statements for the 6 months prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six months of bank statements would include the entire period between 6/1/2018 and 12/1/2018*), and (4) calculate the six month average balance from those statements and add that information to the new Income Certification. Ensure that Ms. Sims initials and dates beside the changes. If this option is chosen, you must provide first-hand documentation such as pay stubs and bank statements. Third-party verification forms will not be accepted; - OR -
- d. Alternatively, if the Sims household does not qualify for occupancy or no longer resides in the unit, follow the instructions in the table on the following page.

What to submit for 209 Broadmore: In order to verify income and assets, you must perform one of the following if the unit remains occupied by the Elizabeth Johnson household and that household qualifies for occupancy.

- a. In order to verify income and assets as of 2/12/2018, you must submit the following: (1) bank statements for the period covering the six months prior to the 2/12/2018 Income Certification date (statements to include the period between 10/15/2017 and 2/12/2018), and (2) calculate the six month average balance from those statements and add that information to the Income Certification dated 2/12/2018. Ensure that Ms. Johnson initials and dates beside the changes; - OR -
- b. In order to certify the household under their current circumstances: Provide a new application, a new Income Certification, and new verifications of all sources of income and assets. Verifications of income and assets must include: (1) a new social security award letter, (2) six paystubs dated within the 120 days prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six pay stubs would need to be during the time period between August 3, 2018 and December 1, 2018*), (3) bank statements for the 6 months prior to the date of the new Income Certification (*for example, if your income certification is dated 12/1/2018, your six months of bank statements would include the entire period between 6/1/2018 and 12/1/2018*), and (4) calculate the six month average balance from those statements and add that information to the new Income Certification. Ensure that Ms. Johnson initials and dates beside the changes. If this option is chosen, you must provide first-hand documentation such as pay stubs and bank statements. Third-party verification forms will not be accepted; - OR -
- c. Alternatively, if the Johnson household does not qualify for occupancy or no longer resides in the unit, follow the instructions in the table below; - OR -

Alternate circumstance with respect to units 207 and 209 Broadmore	Instruction
I. If unit is occupied by a new qualified household	Submit the full tenant file*.
II. If unit is occupied by a nonqualified household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled.
III. If unit is occupied by a nonqualified household with a non-expired lease	A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. If the tenant is protected by another program such as Section 8 or USDA-RD and the property cannot issue a nonrenewal notice as a result, submit a letter stating which program protects the household and committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available; <i>continues on next page</i>

<p>III. If unit is occupied by a nonqualified household with a non-expired lease</p>	<p><i>Continued from prior page</i></p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>IV. If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying that the unit is ready for occupancy must be submitted to TDHCA on or before 2/4/2019.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>V. If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/4/2019 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>

*A full tenant file must include:

- A. Tenant application;
- B. Verifications of all sources of income and assets;
- C. Tenant income certification;
- D. Lease and lease addendum;
- E. Tenant Rights and Resources Guide Acknowledgment; and
- F. A copy of the tenant selection criteria under which the household was screened.

Remember that items A-C above must be dated within 120 days of one another. Bank statements must cover a 6 month period. Further technical support is provided at Exhibit 4.

** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)

Exhibit 2

Affirmative Marketing Web Tool

[Copy of web tool intentionally omitted from web version of this order because it is not in an accessible format]

Exhibit 3

[Copy of Owner Certification form intentionally omitted from web version of this order because it is not in an accessible format]

Exhibit 4

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application**²: Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
2. **Release and Consent**: Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income**³: Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
 - a. **Income Verification for Households with Section 8 Certificates**: This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. Since the necessary income and asset verifications were performed by the housing authority and were effective as of a specific date, this form must be signed within 120 days of that effective date, either at initial move-in or at recertification. This form must also be dated within 120 days of the application and Income Certification that you collect. If outside of that period, you must verify income and assets yourself.
 - b. **First hand verifications**: Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you collect 6 paystubs.
 - c. **Verification of non-employment income**: You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

² & ³ Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

- d. **Telephone Verifications:** these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;
 - e. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets**⁴: Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified.
- a. **First hand verifications** such as bank statements to verify a checking account. First hand verifications are required for the HOME Program. For savings accounts, use the current balance. For checking accounts, use the average balance for the last 6 months (include 6 months of statements and average the balance). For other account types, ensure that you use a consistent number of consecutive statements, as identified in your management plan.
5. **Tenant Income Certification Form**⁵: Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member. *Remember that it must be signed within 120 days of the application and the verifications of income and assets.*
6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(f) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated

^{4 & 5} Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

Per 10 TAC §10.613(m), a laminated copy of this guide must be posted in a common area of the leasing office, and you must provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Exhibit 5:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518