

ENFORCEMENT ACTION AGAINST
AVALON APARTMENTS, L.L.C. WITH
RESPECT TO
AVALON APARTMENTS
(LIHTC FILE # 91036 / CMTS # 954)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of July, 2016, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **AVALON APARTMENTS, L.L.C.**, a Texas limited liability 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

Jurisdiction:

1. During 1993, Texas Avalon, Ltd. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in the total amount of \$857,230 to build and operate Avalon Apartments (“Property”) (HTC file No. 91036 / CMTS No. 954 / LDLD No. 102).

2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective February 4, 1993, and filed of record at Volume 10941, Page 396 of the Official Public Records of Real Property of Tarrant County, Texas (“Records”). In accordance with Section 2(b) of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
3. Respondent took ownership of the Property on March 31, 2004 and is subject to the continuing requirements of the LURA.
4. Respondent is a Texas limited liability corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.
5. Respondent has entered into a contract to sell Property to Avalon Living LLC (“Buyer”), and that entity is incorporated into the terms of this Agreed Final Order as part of the sale.

Compliance Violations¹:

6. Respondent has a history of violations and previously signed two Agreed Final Orders:
 - a. The first was effective May 25, 2012, with Respondent agreeing to pay a \$5,000 administrative penalty which was to be fully forgivable provided that Respondent attended training and complied with the terms of the Agreed Final Order. Multiple violations were not resolved as required and a penalty demand letter was sent. Respondent failed to submit the required \$5,000 penalty payment on or before the February 21, 2013 payment deadline. The Department referred the file to the Office of the Attorney General and they negotiated a payment plan with Respondent. The full administrative penalty was paid under that plan, but all violations remain unresolved.
 - b. The second was effective July 17, 2014, with Respondent agreeing to comply with all requirements of the Order on or before August 6, 2015, and pay a \$10,000 administrative penalty, of which \$2,500 was forgivable provided that Respondent complied with terms of the Agreed Final Order. No corrections were submitted and a penalty demand letter was sent. Respondent failed to submit the required \$10,000 penalty payment on or before the December 18, 2014 payment deadline. The Department referred the file to the Office of the Attorney General and they negotiated a payment plan with Respondent. Payments are continuing in the amount of \$416 per month, but all violations remain unresolved.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 Tex. Admin. Code, Chapters 10 and 60 refer 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.

7. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on June 10, 2015. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a September 21, 2015, corrective action deadline was set. One violation was resolved during the inspection and no further corrections have been received. The list of violations is at ***Attachment 1***.
8. On May 8, 2015 and July 1, 2015, TDHCA sent notice that Respondent had failed to timely submit their 2014 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. All parts of that report remain outstanding.
9. On May 11, 2016, TDHCA sent notice that Respondent had failed to timely submit their 2015 Annual Owner's Compliance Report, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. All parts of that report remain outstanding.
10. An on-site monitoring review was attempted on July 16, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA staff was unable to complete a review because owner had no tenant files. Notifications of noncompliance were sent and a November 17, 2015, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. By failing to provide tenant files, Respondent failed to allow on-site monitoring, a violation of 10 TAC §10.618 (Onsite Monitoring), which requires owners to permit a review by the Department and provide records for review;
 - b. Respondent failed to submit pre-onsite documentation, including entrance questionnaire, unit status report, utility allowance, affirmative marketing plan, written leasing criteria (including required deposits and refund policies), written wait list policy, documents supporting application fees or charges; verification of contact information, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review;
 - c. The following prior file monitoring violations were to be rechecked during the on-site review. The violations were not resolved and are considered new violations:
 - i. Respondent failed to make Unit 234 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TAC § 10.621 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair.
 - ii. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 129, 132, 227, 115, 117, 110, 137, 237, and 241, a violation of 10 TAC §10.613 (Lease Requirements), which requires certain lease language;

- iii. Respondent failed to make Unit 121 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TAC §10.621 (Property Condition Standard) which requires units to be decent, safe, sanitary and in good repair;
 - iv. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 129, 132, 227, 115, and 110, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) which outlines how to properly determine household income.
 - v. Respondent failed to provide Annual Eligibility Certifications for units 122, 123, 124, 125, 126, 127, 130, 133, 224, 225, 226, 227, 228, 229, 230, 114, 115, 116, 118, 119, 120, 217, 104, 105, 107, 108, 109, 111, 112, 202, 204, 205, 207, 208, 209, 211, 212, 134, 135, 136, 139, 140, 141, 235, 236, 238, 239, 240, and 241, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
11. All of the violations indicated above remain outstanding at the time of this order.

CONCLUSIONS OF LAW

- 1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC § 1.14 and 10 TAC Chapter 60, both of which were replaced by 10 TAC §2 as of November 19, 2014.
- 2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
- 3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
- 4. Respondent violated 10 TAC §10.618 in 2015, by failing to comply with onsite monitoring requirements when files were requested and not provided.
- 5. Respondent violated 10 TAC §10.607 and 10.618 in 2015 by failing to provide required pre-onsite documentation.
- 6. Respondent violated 10 TAC §10.621 in 2015, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
- 7. Respondent violated 10 TAC §60.105 in 2015 by failing to submit Annual Owner's Compliance Report due for the year 2014;

8. Respondent violated Section 3(g) of the LURA and 10 TAC § 10.621 (Property Condition Standards), by failing to make two units suitable for occupancy and available for rent.
9. Respondent violated 10 TAC §10.613 in 2015 by failing to execute required lease provisions for 9 units.
10. Respondent violated representations made on page 1 of the LURA and 10 TAC §10.611 in 2015 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 5 units.
11. Respondent violated 10 TAC §10.612 by failing to annually collect Annual Eligibility Certification forms for 49 units.
12. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
13. 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.
14. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 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.
15. An administrative penalty of \$62,000 is an appropriate penalty in accordance with 10 TAC §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 Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that this Agreed Final Order is substituted for the Agreed Final Order previously approved and signed by the Board of the Texas Department of Housing and Community Affairs (the "Board") on April 28, 2016, but not signed by Respondent.

IT IS FURTHER ORDERED that Respondent is assessed an administrative penalty in the amount of \$62,000, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that in the event that the ownership transfer request submitted by Buyer is rejected by the Department, the Property is sold without approval, and/or the approved sale to Buyer is not completed on or before September 30, 2016:

1. Flaza Jasaroski shall attend HTC Compliance Training and 1st Thursday Income Eligibility Training, and submit completion certificates for each to TDHCA on or before August 26, 2016, as previously ordered by the Board on April 28, 2016.
2. Respondent shall repair all UPCS violations as indicated in *Attachment 1*, and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before August 26, 2016.
3. Respondent shall fully correct the file monitoring violations as indicated in *Attachments 2* and *3* and submit full documentation of the corrections to TDHCA on or before August 26, 2016.
4. Respondent shall follow the requirements of 10 TAC 10.406, a copy of which is included at *Attachment 4*, and obtain approval from the Department prior to consummating a sale of the Property.
5. If Respondent timely and fully complies with the above 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 a \$42,000 portion of the assessed administrative penalty and that amount will be deferred and forgiven. In that circumstance, only the remaining \$20,000 portion of the administrative penalty shall be 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.
6. If Respondent fails to satisfy any of the above conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$62,000 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. If Property is sold without permission, any administrative penalty payment due from Respondent shall be distributed to TDHCA at closing.

IT IS FURTHER ORDERED that if the ownership transfer request submitted by Buyer is approved by the Department and the property is sold on or before September 30, 2016:

1. Respondent shall transfer to Buyer copies of all tenant files and financial documentation responsive to the requirements in this Order at or before closing.
2. Respondent shall pay a \$20,000 portion of the administrative penalty at closing, to be distributed to TDHCA by the title company, Lawyers Title Company at 5950 Berkshire Lane, Ste 1050, Dallas, TX 75225, or their successor or replacement.
3. Buyer representatives shall attend HTC Compliance Training and 1st Thursday Income Eligibility Training, and submit completion certificates for each to TDHCA, within 180 days of closing.
4. Buyer shall repair all UPCS violations as indicated in *Attachment 1*, and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA within 180 days of closing.
5. Buyer shall fully correct the file monitoring violations as indicated in *Attachments 2 and 3* and submit full documentation of the corrections to TDHCA within 180 days of closing.
6. Buyer shall follow the requirements of 10 TAC 10.406, a copy of which is included at *Attachment 4*, and obtain approval from the Department prior to consummating its purchase of the Property, and prior to any subsequent sale of the Property.
7. If Buyer 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 a \$42,000 portion of the assessed administrative penalty and that amount will be deferred and forgiven.
8. If Respondent or Buyer fails to satisfy any conditions or otherwise violates any provision of this Order, then the remaining administrative penalty in the amount of \$42,000 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.

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. Any 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 the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Attachment 1

2009 UPCS Violations:

1. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
2. Units 122, 125, 230 – pest infestations (exterminator invoices required);
3. Units 217 and 230 - range hood filters missing;
4. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress.

2015 UPCS Violations:

[VIOLATION LIST OMITTED FROM WEB VERSION – NOT IN ACCESSIBLE FORMAT]

Instruction: Each 2009 and 2015 violation indicated above must be fixed and you must prepare and submit sufficient documentation of correction as indicated by the guidelines below via CMTS. Assistance regarding how to submit via CMTS is available at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

Guidelines: Ideally, a separate work order is created by Building or Unit for deficiencies found in each area. For example, the work order for a single unit may indicate all identified deficiencies listed for that unit if each correction is individually described. However, most developments generate a separate work order for each deficiency to ensure the response is adequately complete and the description of each corrective action is clearly detailed. Five pieces of information are needed on work orders or invoices:

1. The location of the deficiency, i.e. Bldg. 5 Unit 502 or Site- near outside gate, etc.
2. Description of the deficiency, i.e. Damaged Doors, Hardware, locks – Bedroom door won't latch properly. Site-Hazards Other- Broken Glass.
3. How the deficiency was corrected. Just a few quick words are sufficient, i.e. “replaced bedroom door latch” or “adjusted bedroom door latch”. “Removed broken glass.” “Sheetrock repair, taped, floated, and painted”. Conversely, words such as “fixed,” “done,” “complete” are inadequate and are NOT acceptable.
4. The date the deficiency was corrected. The department requires a correction date in order to accept the documentation. If there is no date of correction listed, the deficiency is not considered corrected.
5. The signature of the person who either performed the repair or acknowledges that the repair was performed satisfactorily. This is very important. Someone must certify that the correction was acceptably completed.

Please submit all of the work orders in the same order that they appear in the list above. This facilitates faster processing and increases the chances that all violations will be fully addressed.

For repairs such as concrete repairs, roofing, etc. where vendors are utilized instead of onsite maintenance staff, please include the scope of work with the dated invoice of the contractor that performed the work.

For pest control, the Structural Pest Control Act (Chapter 1951 of the Occupations Code) requires licensing of businesses and individuals that perform structural pest control for hire. Additionally, persons performing pest control at an apartment building must be licensed. As a result, you must submit a pest control invoice by a licensed contractor that includes a date, contractor signature, units treated and the type of pest treated.

Finally, you may submit photographs in support of the above if you wish. However, they are only necessary if the TDHCA asks for them as specific support for a deficiency still in question. If you do submit photographs, please make sure that they are labeled and supporting work orders and or invoices are attached. Photographs, by themselves, are not acceptable documentation of correction.

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Attachment 2

Tenant File Instructions

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)

Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

Technical support and training presentations are available at the following links:

Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

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>

Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>

You must submit the following fully acceptable file monitoring documentation via CMTS. The applicable deadline will depend upon the circumstances at pages 15 and 16 of this Agreed Final Order. Assistance regarding how to submit via CMTS is available at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

1. Part B of the 2011 and 2012 Annual Owner's Compliance Reports. Reports are submitted within CMTS at <https://pox.tdhca.state.tx.us/aims2/pox>. The system does not collect historical data for Part B, so you can input current occupancy data for both years. Technical support and training resources are available at: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>. If you have technical problems with the system, please contact Stephanie Naquin, Director of Multifamily Compliance, at 512.475.2330 or stephanie.naquin@tdhca.state.tx.us, but please do not contact her until you have reviewed the technical support. If completed by Buyer after the sale, please complete to the best of your ability using documentation provided by Respondent.
2. All parts of the 2014 and 2015 Annual Owner's Compliance Reports. See above for instructions and technical support. If completed by Buyer after the sale, please complete to the best of your ability using documentation provided by Respondent.
3. Unit 234:
 - (a) The conversion must be complete and you must submit related work orders regarding the make-ready process, along with a letter certifying that the unit is ready for occupancy and photographs of the unit. In addition:
 - i. If the unit is occupied as of the applicable deadline, you must submit copies of the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.
 - ii. If the unit is vacant as of the applicable deadline, you must submit a letter confirming that the unit is ready for occupancy, along with photographs of the unit. You must then submit the full tenant file as soon as the unit is occupied by a qualified household. A complete tenant file includes: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment. *Receipt of the tenant file after the applicable deadline is*

acceptable for this circumstance provided that a letter is received along with photographs, certifying that the unit is ready for occupancy as of the applicable deadline.

4. Unit 121: Choose option (a) or (b):

- (a) If you choose to submit a material LURA amendment request in order to reduce the number of residential units and continue using the full unit as an office, you must:
 - i. Submit the \$2,500 processing fee;
 - ii. Follow the material LURA amendment instructions beginning at page 21 of <http://www.tdhca.state.tx.us/asset-management/docs/16-PostAwardActivitiesManual.pdf> and submit the required documentation to TDHCA.
- (b) If you choose to submit a material application amendment request in order to divide the unit into a fully separate 1-bedroom unit and an office, you must:
 - i. Submit the \$2,500 processing fee;
 - ii. Follow the material application amendment instructions beginning at page 18 of <http://www.tdhca.state.tx.us/asset-management/docs/16-PostAwardActivitiesManual.pdf> and submit the required documentation to TDHCA.
 - iii. Follow the same instructions in 4(c) below.
- (c) If you choose to convert unit 121 from an office to a residential unit instead of submitting a material LURA amendment request:
 - i. The conversion must be complete and you must submit related work orders regarding the make-ready process, along with a letter certifying that the unit is ready for occupancy and photographs of the unit.
 - ii. In addition:
 - 1. If the unit is occupied as of the applicable deadline, you must submit copies of the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.
 - 2. If the unit is vacant as of the applicable deadline, you must submit a letter confirming that the unit is ready for occupancy, along with photographs of the unit. You must then submit the full tenant file as soon as the unit is occupied by a qualified household. A complete tenant file includes: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment. *Receipt after the applicable deadline is acceptable for this circumstance provided that a letter is received along with photographs, certifying that the unit is ready for occupancy as of the applicable deadline.*

5. Lease violations for units 129, 132, 227, 115, 117, 110, 137, 237, and 241: 10 TAC §10.613 prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period and for 3 years after termination of a LURA in accordance with Revenue Ruling 2004-82. In addition, HTC developments are prohibited 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. These prohibitions must be included in the lease or a lease addendum. The Texas Apartment Association has an affordable lease addendum that has incorporated this required language and may be used if you are a TAA member.

Execute an appropriate lease addendum for all units in the Development, including the units listed above, and submit a sample lease addendum to TDHCA along with a letter indicating that the addendum has been signed by all households. If you do not use TAA forms and are uncertain whether your lease addendum form is acceptable, please submit a sample as soon as possible so that TDHCA staff can review and approve it in time for you to implement the form as required by this Order.

6. Pre-on-site documentation violation. Submit all of the following documentation for (a) through (h):
- (a) Entrance Interview Questionnaire (form is available via CMTS);
 - (b) Unit Status Report (USR) reporting current occupancy (report is available in CMTS);
 - (c) Copies of current Utility Allowance (Public Housing Authority schedule, letter from local provider or other Department approved documentation) and documentation of allowance used for the two years prior;
 - (d) Delinquent quarterly vacancy reports. Quarterly vacancy reports are due on the 10th of January, April, July, and October. Quarterly vacancy reports have not been submitted since 2010 and that data must be brought up to date before you use the Affirmative Marketing Web Tool discussed below. That tool uses the data entered in your quarterly vacancy report for its calculations. CMTS does not collect historical data for quarterly vacancy reports, so you do not need to collect past information to complete this requirement. Enter your current occupancy data into CMTS for the quarterly vacancy report that was due on 10/10/2010, then submit. Once submitted, the report for January 2011 will be released by the system. Submit the current occupancy data again. Continue submitting through the current report due.
 - (e) Current Affirmative Marketing Plan, along with evidence of special outreach to those identified as being least likely to apply and the disabled. 10 TAC A training webinar is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>.

Steps to complete Affirmative Marketing Plan requirements:

- Identify the appropriate housing market in which outreach efforts will be made.
- Determine the groups that are least likely to apply. 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>. Persons with disabilities must always be selected as a group least likely to apply.
- 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, including organizations that assist persons with disabilities. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing. The same is true for the Department Of Human Services, Texas Work Force Solutions, and Texas Neighborhood Service. A Hispanic Chamber of Commerce or Hispanic publication could be an avenue to market to the Hispanic population if that group is identified as one that is least likely to apply. Similarly, local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc, could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association.
- Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;

- Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617.
- Submit all documentation to the Department via CMTS for review.

Frequent Affirmative Marketing mistakes to avoid include, but are not limited to:

- Not using HUD Form 935.2A.
 - Not identifying populations that are “least likely to apply”. In general, populations that are least likely to apply *might* include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, families with children, and the disabled. You will use the Affirmative Marketing Web Tool to identify specific groups from the list above that are considered least likely to apply. Persons with disabilities must always be selected.
 - Not identifying organizations that are associated with groups that are least likely to apply. For example, putting ads in Craigslist. This is general marketing, not affirmative marketing, because Craigslist serves all persons living in the area.
 - Not including evidence of special outreach efforts to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live.
 - Not including reasonable accommodation language in English and Spanish. 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. 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.”*
- (f) Written leasing criteria, including required deposits and refund policy, and wait list policy. These criteria must meet all requirements of 10 TAC §10.610 (Written Policies and Procedures), which we recommend using as a checklist;
- (g) Documents supporting the costs charged to tenants for any application fees or charges; and
- (h) Verification that the contact information currently entered into CMTS is correct.

7. Household income above limit upon initial occupancy violations for units 110, 115, 129, 132, and 227. If units are occupied by a qualified household that occupied the unit as of the date of the last successful onsite review conducted on July 25, 2012, follow the instructions below.

[INSTRUCTIONS OMITTED FROM WEB VERSION – NOT IN ACCESSIBLE FORMAT]

[instruction continued from prior page] If units 110, 115, 129, 132, or 227 are not occupied by a qualified household or the residents have changed since July 25, 2012, follow instructions in the chart below.

8. Annual Eligibility Certification violations for units 122, 123, 124, 125, 126, 127, 130, 133, 224, 225, 226, 227, 228, 229, 230, 114, 115, 116, 118, 119, 120, 217, 104, 105, 107, 108, 109, 111, 112, 202, 204, 205, 207, 208, 209, 211, 212, 134, 135, 136, 139, 140, 141, 235, 236, 238, 239, 240, and 241. If unit is occupied by a qualified household that occupied the unit as of the date of the last successful onsite review conducted on July 25, 2012, complete an Annual Eligibility Certification for the current year and submit for review. If unit is not occupied by a qualified household or the residents have changed since July 25, 2012, follow instructions in the chart below.

Circumstance with respect to units listed above	Required Action
If unit is occupied by a new qualified household that occupied the unit after July 25, 2012	Submit the full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none"> 1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. <i>Receipt after the applicable deadline is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none"> 1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA. 2. As soon as the unit become available and is occupied by a qualified household, you must submit the full tenant file*. <i>Receipt after the applicable deadline is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>
If unit is vacant	<ol style="list-style-type: none"> 1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. <i>Receipt after the applicable deadline is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>

**A full tenant file must include, at a minimum, a tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Tenant Rights and Resources Guide Acknowledgment. See Attachment 3 for brief explanations of each if you are unfamiliar.*

Attachment 3

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. You are required to attend First Thursday Training, which will provide a fuller 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:** The Department does not have a required form to screen households, but we make this form available for that purpose. It is required that households 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.
2. **Verify Income:** 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. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - b. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
 - 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;
 - 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.

3. **Verify Assets:** 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. Format of verifications:
 - a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
 - b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
4. **Tenant Income Certification Form:** 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 (and be signed by) each adult household member.
5. **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(e) 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. The Texas Apartment Association has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

6. **Tenant Rights and Resources Guide:** Replaced Fair Housing Disclosure Notice and Notice of Amenities and Services per 10 Texas. Admin. Code §10.613, which became effective 1/9/2015. Customize Tenant Rights and Resources Guide available at this link <http://www.tdhca.state.tx.us/pmcomp/forms.htm> to fit your property (specifically, information regarding common amenities, unit amenities, and required services). Post a laminated copy of the customized guide in a common area of the leasing office. Customized guide must be provided to each household during the application process (but no more than 120 days prior to initial lease execution) and upon any subsequent changes to common amenities, unit amenities, and services. If you have a file violation that requires submission of a full tenant file, you will be expected to include this form unless the forms it replaced (the Fair Housing Disclosure Notice and Notice of Amenities and Services) were timely signed.

[remainder of page intentionally blank]

Attachment 4:

Texas Administrative Code

<u>TITLE 10</u>	COMMUNITY DEVELOPMENT
<u>PART 1</u>	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
<u>CHAPTER 10</u>	UNIFORM MULTIFAMILY RULES
<u>SUBCHAPTER E</u>	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