

ENFORCEMENT ACTION AGAINST
AVALON APARTMENTS, L.L.C.
(LIHTC FILE # 91036)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 10th day of May, 2012, the Governing Board of the Texas Department of Housing and Community Affairs (“Board”) considered the matter of whether enforcement action should be taken against **AVALON APARTMENTS, L.L.C.**, a Texas limited liability corporation (“Avalon” or “Respondent”). The **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (“TDHCA” or “Department”) alleges that Respondent violated 10 TEX. ADMIN. CODE, CHAPTER 60 by failing to timely correct tenant file and safety, sanitary and repair violations with respect to the following properties owned by respondent, Avalon Apartments (LIHTC File No. 91036 / CMTS No 954 / LDLD No. 102);

The Board has jurisdiction over this matter pursuant to TEX. GOV’T CODE § 2306.041-2306.0503 and TEX. GOV’T CODE §§ 2306.261-2306.273. The Board has the authority to dispose of this case pursuant to the provisions of TEX. GOV’T CODE § 2306.044. The Department alleges that Respondent engaged in acts or practices that violated the LURA and violated 10 TEX. ADMIN. CODE §§ 60.108 and 60.116¹. The Department alleges that such conduct constitutes grounds for the imposition of an administrative penalty pursuant to TEX. GOV’T CODE § 2306.042 and 10 TEX. ADMIN. CODE §§ 60.301-309². In a desire to conclude this matter without further delay and expense, the Board and Respondent, through their respective signatures hereto, announce that they have compromised and settled all claims and they agree to the entry of this Agreed Final 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.

¹ All references to 10 TEX. ADMIN. CODE §§ 60.108 and 60.116 refer to the version of the code in effect at the time of the compliance monitoring review that resulted in recording a violation. All past violations remain violations under the current code that became effective May 26, 2011 and all versions in the interim period.

² All references to 10 TEX. ADMIN. CODE §§ 60.301 – 60.309 refer to the version of the code in place at the time Respondent was initially warned that administrative penalties could be assessed for uncorrected violations.

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

FINDINGS OF FACT

Jurisdiction:

1. Avalon Apartments, a seventy-five unit apartment complex located in Arlington, Texas and currently owned by Avalon, is subject to a Land Use Restriction Agreement (“LURA”) dated to be effective February 4, 1993, filed of record at Volume 10941, Page 396 of the Official Public Records of Real Property of Tarrant County, Texas. The LURA was signed by a prior owner, Texas Avalon, Ltd, in consideration for an allocation of low income housing tax credits in the total amount of Eight Hundred Fifty Seven Thousand Two Hundred Thirty Dollars and No/100 Cents (\$857,230.00) awarded by TDHCA. In accordance with Section 2(b) of the LURA, the agreement is a restrictive covenant / deed restriction encumbering the land and binding on all successors and assigns for the full term of the agreement.

Compliance Violations:

2. An on-site monitoring review was conducted on August 27, 1998 to determine whether Avalon Apartments 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 the following violations were not corrected before the December 21, 1998 corrective action deadline and have not subsequently been corrected:
 - a. Texas Avalon, Ltd. failed to provide documentation that household incomes were within prescribed limits upon initial occupancy and/or failed to maintain and provide tenant income certifications and qualification documentation for units 117, 137, 234, 237 and 241, a violation of 10 TEX. ADMIN. CODE §60.108 and the LURA;
 - b. Texas Avalon, Ltd. failed to provide evidence that unit 237 had been vacated by Mission Arlington, a nonprofit faith organization that had been operating out of unit 237, a violation of the LURA which requires all 75 units to be rented to qualified tenants and does not permit alternative usage;

Although these violations were recorded while the property was owned by Texas Avalon, Ltd., the LURA for Avalon Apartments runs with the land and all past violations must be resolved in order for the property to be deemed in compliance with the LURA. Further, these violations were confirmed as remaining outstanding during subsequent on-site monitoring reviews and current owner has been unable to provide evidence upon request to prove that the units are now occupied by qualified tenants.

3. An on-site monitoring review was conducted on February 22, 2002 to determine whether Avalon Apartments 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 but all new violations were resolved within the corrective period allowed by TDHCA. The previously identified violations remained uncorrected.
4. An on-site monitoring review was conducted on October 1, 2004 to determine whether Avalon Apartments was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found that the property had been sold to Avalon Apartments LLC on March 31, 2004 and the new owners told TDHCA that they did not want to participate in the program. TDHCA submitted form 8823 to the Internal Revenue Service, reporting that the property was “no longer in compliance nor participating in the Section 42 program.” The LURA was not released and monitoring has continued.
5. An on-site monitoring review was conducted on March 21, 2006 to determine whether Avalon Apartments was in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found that the property was in fair condition considering its age, but that tenant files remained out of compliance.
6. An on-site monitoring review was conducted on March 19, 2009 to determine whether Avalon Apartments was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found numerous violations of the LURA and TDHCA rules and verified that violations identified during previous onsite monitoring reviews remained uncorrected. Notifications of noncompliance were sent and the following violations were not corrected before the July 21, 2009 corrective action deadline:
 - a. Avalon failed to provide evidence that they were maintaining the minimum records needed to establish that any units were leased to eligible households, resulting in the continued identification of the property as being no longer in compliance and no longer participating in the low-income housing tax credit program, a violation of the LURA which requires all 75 units to be rented to qualified tenants for the full term of the agreement.
 - b. Avalon failed to provide documentation that any household incomes were within prescribed limits upon initial occupancy, including the previously cited violations for units 117, 137, 234, 237 and 241, a violation of 10 TEX. ADMIN. CODE §60.108 and the LURA;
 - c. Avalon failed to provide evidence that unit 237 had been vacated by Mission Arlington, a nonprofit faith organization that had been operating out of unit 237, a violation of the LURA which requires all 75 units to be rented to qualified tenants and does not permit alternative usage;

7. A property inspection was conducted on July 23, 2009, to determine whether Avalon Apartments was in compliance with LURA requirements to keep the property in good physical condition. The inspection found violations of the LURA and 10 TEX. ADMIN. CODE §60.116 as indicated in Attachment 1, hereto. Notifications of noncompliance were sent and none of the violations were resolved before the November 12, 2009 corrective action deadline.
8. Between March 31, 2004 and February 28, 2012, fourteen notices of noncompliance and reminder notices were sent regarding the above violations but only partial compliance was achieved.

CONCLUSIONS OF LAW

1. Pursuant to TEX. GOV'T CODE §2306.041, the board has personal and subject matter jurisdiction over Avalon;
2. Pursuant to TEX. GOV'T CODE §2306.267, the Board may order Avalon to bring the Properties into compliance with the law, Department rules and the LURA encumbering the property;
3. Avalon violated 10 TEX. ADMIN. CODE § 60.108 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy and by failing to provide tenant income certifications;
4. Avalon violated 10 TEX. ADMIN. CODE § 60.116 by failing to comply with HUD's Uniform Physical Condition Standards;
5. Avalon violated 10 TEX. ADMIN. CODE § 60.108 and paragraph 3(g) of the LURA by failing to maintain minimum records needed to establish that any units were leased to eligible households.
6. Avalon violated the LURA by not making all apartment units available to the public;

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IT IS HEREBY ORDERED that Avalon shall correct all outstanding violations indicated above and bring Avalon Apartments into compliance with all laws, Department rules and provisions of the LURA;

IT IS FURTHER ORDERED that Avalon shall pay, and is hereby directed to pay, an administrative penalty of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00), which penalty is fully probated provided that Avalon fully complies with the terms and conditions of this Agreed Final Order. Provided that the violations are corrected as required below, the full amount of the administrative penalty will be forgiven;

IT IS FURTHER ORDERED that a representative of Avalon must attend First Thursday Training as soon as possible, but no later than June 30, 2012, and submit proof of attendance. TDHCA will make arrangements for a file monitor to meet with the Avalon representative after class to provide one-on-one assistance regarding up to three tenant files. If Avalon does not attend training and submit proof of attendance, the administrative penalty will immediately come due and payable;

IT IS FURTHER ORDERED that Avalon must submit work orders to TDHCA for the UPCS violations outlined in Attachment 1 on or before May 31, 2012. If Avalon does not timely submit work orders or the work orders are insufficient, the administrative penalty will immediately become due and payable. See Attachment 2 for guidelines regarding work orders;

IT IS FURTHER ORDERED that Avalon must submit to TDHCA a certification indicating that unit 237 is ready for occupancy on or before May 31, 2012. If Avalon does not submit the certification and/or unit 237 is not ready for occupancy, the administrative penalty will immediately become due and payable;

IT IS FURTHER ORDERED that Avalon must update all tenant files and ensure that each file includes completed tenant applications, verifications of all sources of income and assets, tenant income certifications, leases and lease addenda on or before June 31, 2012.

IT IS FURTHER ORDERED that a TDHCA file monitor will perform an onsite monitoring review on or after July 1, 2012 to verify eligibility for tenants in units 117, 137, 234, 237 and 241. The monitor will also review a selection of other tenant files to determine eligibility. Any violations found will be treated as follows:

1. If units 117, 137, 234, 237 or 241 are occupied and the monitor is unable to verify eligibility of all current tenants in those units, no further extensions will be allowed and the administrative penalty will immediately become due and payable;
2. If units 117, 137, 234, 237 or 241 are vacant, the file monitor will verify that the unit(s) are ready for occupancy. If the unit is not ready for occupancy, the administrative penalty will immediately become due and payable;

3. If the monitor finds violations relating to other tenant files that are reviewed, a subsequent deadline for correcting any new violations will be set. If Avalon does not submit corrective documentation on or before the deadline set by the file monitor, TDHCA reserves the right to assess additional administrative penalties outside of this Agreed Order. You will receive notice of any additional assessment and have the right to a hearing before an administrative law judge.

IT IS FURTHER ORDERED if Avalon violates any provision of this order, then the full administrative penalty in the amount of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) is 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" within thirty days of the date of the written notice to Avalon from the Department that it has violated a provision of this order.

IT IS FURTHER ORDERED that all correspondence, including corrective documentation and administrative penalty payments, 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

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Approved by the Governing Board of TDHCA on May 10, 2012.

By: /s/ J. Paul Oxer
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: /s/ Brooke Boston
Name: Brooke Boston
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 10th day of May, 2012, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Ysella Kaseman
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 10th day of May, 2012, personally appeared Brooke Boston, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Ysella Kaseman
Notary Public, State of Texas

Attachment 1

UPCS Violations

List has been omitted from the version of this Agreed Final Order posted on the TDHCA website.

Contact Ysella Kaseman at 281-798-2499 or ysella.kaseman@tdhca.state.tx.us for a copy

Attachment 2

Work Order Guidelines

In order to correct the physical violations listed on the attached pages, you must submit work orders and/or invoices that include all of the following information:

1. The location of the deficiency (ex: “apartment # 1 in building 4”);
2. The deficiency (ex: “broken window in bedroom of unit 1”);
3. Action taken or repairs made to correct the deficiency (ex: “replaced window pane.” “removed broken glass.” “sheetrock repair, taped, floated and painted.” Work orders that simply state, “repaired” “done” “complete” are insufficient and will be rejected);
4. Date the corrective action took place; and
5. Signature of the person responsible for the correction.

If you wish, you may submit photos, but only in support of a work order. They must be labeled with the unit number and the violation that was repaired.

If repairs such as pest control, concrete repairs, roofing etc are performed by a vendor rather than onsite staff, you must include the scope of work and the dated invoice of the contractor who performed the work. The invoice should include all of the information listed above.

Please submit work orders and invoices in the same order they appear on the “list of deficiencies found.” This will facilitate faster processing of your submission by our inspectors.