

ENFORCEMENT ACTION AGAINST
SSH APARTMENTS, INC. WITH
RESPECT TO BAYOU VILLAGE
PLACE APARTMENTS
(LIHTC FILE # 91132 / CMTS # 997)

§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 16th day of April, 2015, 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 **SSH APARTMENTS, INC.**, a Texas 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. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.

2. During 1991, M.I.P. Texas Huntington Partnership (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$164,448.00 to rehabilitate Bayou Village Place Apartments (“Property”) (HTC file No. 91132 / CMTS No. 997 / LDLD No. 153).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective February 11, 1993, and filed of record at Document Number P230449 of the Official Public Records of Real Property of Harris County, Texas. In accordance with Section 2 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.
4. Respondent is a Texas 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.

Compliance Violations¹:

5. An on-site monitoring review was conducted on June 13, 2014, 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 an October 20, 2014, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent failed to submit pre-onsite documentation via CMTS as required, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires all owners to submit a Unit Status Report quarterly and also prior to an onsite monitoring visit, and a violation of 10 TEX. ADMIN. CODE §10.618, which requires all owners to provide information on low income units in a format designated by the Department and any additional aspects that the Department deems necessary or appropriate during an onsite monitoring review.

The finding was resolved on March 2, 2015, 133 days past the corrective deadline, after an administrative penalty informal conference notice was sent.
 - b. Respondent failed to provide written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires all owners to maintain written tenant selection criteria meeting certain TDHCA requirements outlined in the rule. A plan was later received in response to an administrative penalty informal conference notice, but the submission did not meet all requirements of the rule.

The finding remains unresolved.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 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.

- c. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), which requires developments to approve and distribute an affirmative marketing plan 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 later received in response to an administrative penalty informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to groups identified as least likely to apply and to the disabled.

The finding remains unresolved.

- d. Respondent failed to timely provide a Fair Housing Disclosure Notice for units 386, 352, 159, 331, 388, 294, 353, 372, 214, 176, 411, 336, 153, 185, 346, 405, 305 and 370, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a “Tenant Rights and Resources Guide.”

Partially acceptable corrective documentation was submitted March 7, 2015, 138 days past the corrective deadline, after an administrative penalty informal conference notice was sent. The finding remains unresolved for units 214, 370, 388, 336, 294 and 331 because the signed notices submitted on March 7, 2015 had not been signed during the appropriate time period. The finding is uncorrectable for units 153, 159, 185, 372, 405, 411, 352 and 353 because the households moved out without signing during the appropriate time period.

- e. Respondent failed to provide a Notice of Amenities and Services to units 411, 346, 185, 353, 214, 386, 352, 336 and 159, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a “Tenant Rights and Resources Guide.”

Partially acceptable corrective documentation was submitted on March 6, 2015, 137 days past the corrective deadline, after an administrative penalty informal conference notice was sent. The finding remains unresolved for units 214 and 336 because nothing was submitted. The finding is uncorrectable for units 159, 185, 411, 352 and 353 because the households moved out without signing.

- f. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 411 and 305, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 3(g) of the LURA, which require screening of tenants to ensure qualification for the program;

Acceptable corrective documentation was submitted for both units on March 11, 2015, 142 days past the corrective deadline, after an administrative penalty informal conference notice was sent.

- g. Respondent failed to provide tenant income certification and documentation for units 411, 305, and 366, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires completion of a tenant income certification, and 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 3(g) of the LURA, which require screening of tenants to ensure qualification for the program.

The findings for units 305 and 411 were resolved on March 11, 2015, 142 days past the corrective deadline, after an administrative penalty informal conference notice was sent. Unit 366 remains unresolved.

- h. Respondent failed to make unit 247 available for rent when the unit was instead used as a maintenance shop, a violation of representations made on page 1 of the LURA, which requires 100% of the units to be used as low income housing.

The finding remains unresolved.

6. The following violations remain outstanding at the time of this order:

- a. Written tenant selection criteria violation described in FOF #5b;
- b. Affirmative marketing plan violation described in FOF #5c;
- c. Fair Housing Disclosure Notice violations for units 214, 370, 388, 336, 294, 331, 159, 185, 372, 405, 411, 352 and 353, as described in FOF #5d;
- d. Notice of Amenities and Services violations for units 214, 336, 159, 185, 411, 352 and 353, as described in FOF #5e;
- e. Tenant income certification and documentation violations for unit 366, as described in FOF #5g;
- f. Unit 247 availability finding described in FOF #5h.

[remainder of page intentionally blank]

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE §2.
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 TEX. ADMIN. CODE §10.607 and §10.618 in 2014, by not submitting pre-onsite documentation including a unit status report and entrance interview questionnaire in preparation for the monitoring review;
5. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2014, by not maintaining written tenant selection criteria meeting TDHCA requirements;
6. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2014, by failing to provide a complete affirmative marketing plan;
7. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 386, 352, 159, 331, 388, 294, 353, 372, 214, 176, 411, 336, 153, 185, 346, 405, 305 and 370;
8. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute the Notice of Amenities and Services for units 411, 346, 185, 353, 214, 386, 352, 336 and 159;
9. Respondent violated 10 TEX. ADMIN. CODE §10.611 and Section 3(g) of the LURA in 2014, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for the units: 411 and 305;
10. Respondent violated 10 TEX. ADMIN. CODE §10.612, 10 TEX. ADMIN. CODE §10.611, and Section 3(g) of the LURA in 2014, by failing to provide tenant income certification and documentation to ensure qualification for the program;
11. Respondent violated representations made on page 1 of the LURA, by using unit 247 for non-residential use as a maintenance shop instead of being available for occupancy.
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 \$1,500.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 Respondent is assessed an administrative penalty in the amount of \$1,500.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachment 1 and submit full documentation of the corrections to TDHCA on or before May 18, 2015.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code §10.406, a copy of which is included at Attachment 2, and obtain approval from the Department prior to consummating a property sale.

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 assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any condition or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$1,500.00 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 sale closing date.

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>. Once uploaded, you must email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to notify the Department that the uploads are complete and 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 the terms of this Agreed Final Order shall be published on the TDHCA website.

[remainder of page intentionally blank]

Attachment 1

File Monitoring Violation Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §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. **Written tenant selection criteria** – Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

Submit updated written tenant selection criteria addressing all requirements at 10 TEX. ADMIN. CODE §10.610, including but not limited to the requirement to state that the Development will comply with state or federal fair housing and anti-discrimination laws.

4. **Affirmative marketing plan** – Respondent submitted an Affirmative Marketing Plan, however evidence of outreach marketing efforts were not submitted for review. In addition, the rule at 10 TEX. ADMIN. CODE §10.617 has changed. The affirmative marketing web tool referenced in the rule in order to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. The disabled must also be selected as a group that is least likely to apply regardless of the tool results.

Submit updated affirmative marketing plan following the instructions at 10 TEX. ADMIN. CODE §10.617, along with evidence of outreach marketing efforts to selected groups identified in the plan.

5. **Fair Housing Disclosure Notice** – Respondent submitted notices for multiple units, however, they were not signed during the appropriate time period. The notice has since been replaced by the Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k).

Correctable findings: Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k) and submit signed Tenants Rights and Resource Guide Acknowledgments for units 214, 370, 388, 336, 294 and 331. If the tenant has moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.

Uncorrectable findings: The households that triggered the findings for units 153, 159, 185, 372, 405, 411, 352 and 353 have vacated the units without completing the required form. Therefore, there is no corrective action available and the finding will remain outstanding.

6. **Notice of Amenities and Services** – Respondent submitted notices for multiple units, but the submission was incomplete.

Correctable findings: Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k) and submit signed Tenants Rights and Resource Guide Acknowledgments for units 214 and 336. If the tenant has moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.

Uncorrectable findings: The households that triggered the findings for units 159, 185, 411, 352 and 353 have vacated the units without completing the required form. Therefore, there is no corrective action available and the finding will remain outstanding.

7. **Tenant income certification and documentation** – Respondent submitted incomplete documentation regarding unit 366.

Submit:

- a. Lease;
 - b. Either the Notice of Amenities and Services, if signed on or before January 8, 2015 – OR – the Tenant Rights and Resources Guide Acknowledgment which replaced the Notice of Amenities and Services as of January 9, 2015 per 10 Texas. Admin. Code §10.613.
8. **Unit not available for rent** – Respondent has indicated that unit 247 is no longer a maintenance shop and is occupied by a qualified tenant, but has not submitted corrective documentation.

Submit full tenant file for current qualified household. Full tenant file must include the following documentation in the order listed below:

- a. Tenant application;
- b. Verifications of all sources of income and assets;
- c. Tenant income certification;
- d. Lease;
- e. Lease addendum;
- f. Either a timely signed Fair Housing Disclosure Notice and Notice of Amenities and Services – OR – the Tenant Rights and Resources Guide Acknowledgment. At the time of your monitoring review, the Fair Housing Disclosure Notice and Notice of Amenities and Services were required forms. If you have already received these signed forms for the tenant in unit 247, you may submit the forms via CMTS if the following are met:
 - a. Notice of Amenities and Services signed before 1/9/2015.
 - b. Fair Housing Disclosure Notice signed no more than 120 days and no less than 30 days prior to the date that the household was legally obligated to provide written notice of their intention to terminate or renew their lease.

If the Fair Housing Disclosure Notice and Notice of Amenities and Services were not signed during the appropriate time periods as indicated above, please follow the requirements from the new rule at 10 Texas. Admin. Code §10.613, and submit the Tenant Rights and Resources Guide Acknowledgment instead.

Attachment 2:

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