

**ENFORCEMENT ACTION
AGAINST STEPHEN TOWNSEND
WITH RESPECT TO GABLES
MANOR (HTF FILE # 98031)**

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**BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS**

AGREED FINAL ORDER

On this 12th day of September, 2013, 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 **STEPHEN TOWNSEND** (“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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-0503, and 10 TAC §1.14 and 10 TAC, Chapter 60.
2. On June 28, 1996, Community Council of Cass, Marion and Morris Counties, Inc., a Texas nonprofit corporation (“Original Owner”) was awarded an Housing Trust Fund allocation in an total amount of \$221,850 to build and operate Gables Manor (“Property”) (HTF file No. 93031 / CMTS No. 2648 / LDLD No. 151).
3. Original Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective June 28, 1998 and filed of record at Volume 267, Page 327 of the Official Public Records of Real Property of Morris County, Texas (“Records”). In accordance with Section 7.8 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. William F. Ross and Susan V. Ross (“Second Owner”) purchased the property and assumed responsibility for the Housing Trust Fund loan on December 16, 2004.

5. Respondent took ownership of the Property by way of a Sheriff's Tax Deed dated December 20, 2011 and filed of record at Document Number 2011-001936 of the Records. The property remained subject to the LURA per Section 7.8 of the LURA. In addition, the property description in the Sheriff's Tax Deed specifically states that the property remains subject to the LURA.
6. Respondent is an individual that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

7. Uniform Physical Condition Standards ("UPCS") inspections were performed in 2004, 2007 and 2008. Each inspection report showed numerous serious property condition violations and violations of 10 Tex. Admin. Code §10.616 which requires the property to be "decent, safe, sanitary, in good repair, and suitable for occupancy." The property became vacant and unsuitable for occupancy, a violation of Section 2.2 of the LURA, which requires units to be available for occupancy. TDHCA first provided notice of the violations to Current Owner on January 27, 2012, after receiving a copy of the recorded Sheriff's Tax Deed and requested that Current Owner submit a corrective plan for consideration by the Administrative Penalty Committee ("Committee"). A December 31, 2012, completion deadline was set to fully renovate the property, but this was not achieved.
8. Annual Owner's Compliance Reports for the years 2011 and 2012 were due on April 30, 2012, and April 30, 2013, respectively. Failure to submit annual reports is a violation of Section 4.3 of the LURA which requires the owner to submit a certificate of continuing compliance in a form prescribed by the Department. It is also a violation of 10 TEX. ADMIN. CODE §10.603 ("Reporting Requirements"), which requires each development to submit an Annual Owner's Compliance Report electronically. TDHCA provided notice of the violation to Current Owner on January 27, 2012, but no reports were submitted.
9. An Affirmative Marketing Plan must be maintained at the property. Failure to have an Affirmative Marketing Plan and keep supportive marketing materials advertising vacancies to disabled persons and to minority persons identified in census materials as living in the community but least likely to apply, is a violation of 10 TEX. ADMIN. CODE §10.612(3) (Requirements Pertaining to Households with Rental Assistance). TDHCA provided notice of the violation to Current Owner on January 27, 2012, but no plan or supporting documents were submitted.
10. The following violations remain outstanding at the time of this order:
 - a. UPCS violations described in FOF #7.
 - b. Annual Owner's Compliance Report violations described in FOF #8.
 - c. Affirmative Marketing Plan violation described in FOF #9.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.041-.0503, 10TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to Tex. Gov't Code §2306.261 – 2306.271, 10 Tex. Admin. Code §10.601 and Section 4.5 of the LURA, TDHCA has the authority to monitor housing sponsors and their properties for noncompliance.
4. Pursuant to Tex. Gov't. Code §2306.231, TDHCA has the authority to order alterations, changes or repairs necessary to protect the health, safety and welfare of the occupants of a housing development.
5. Respondent violated Section 2.2 of the LURA by failing to make units available for occupancy.
6. Respondent violated 10 Tex. Admin. Code §10.616 by failing to return the property to a condition that is "decent, safe, sanitary, in good repair, and suitable for occupancy" after receiving notice of the violations and not making timely corrections.
7. 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.
8. 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.
9. 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.
10. An administrative penalty of \$12,000 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 \$12,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall submit the documents listed at Attachment 1 within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall make all units ready for occupancy and shall perform a full rehabilitation to the Uniform Physical Condition Standard included at Attachment 2, including repairs to all violations indicated at Attachment 3, in preparation for a TDHCA inspection to be performed on or after July 31, 2014. If any violations are found during the 2014 TDHCA inspection, Respondent shall receive a 90-day period to make repairs and submit corrective documentation to TDHCA in accordance with TDHCA rules.

IT IS FURTHER ORDERED that Respondent shall submit a status report regarding the rehabilitation on or before January 31, 2014.

IT IS FURTHER ORDERED that Respondent must request and receive authorization from TDHCA prior to any future property transfer. If a sale is contemplated, Respondent shall submit an ownership transfer request as required by TDHCA rules.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, and the violations are corrected 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 \$12,000 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" 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 emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below unless otherwise instructed at Attachment 1. 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

Approved by the Governing Board of TDHCA on Sept. 12, 2013.

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

By: /s/ Barbara B. Deane
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 16TH day of September, 2013, personally appeared J. Paul Oxe, 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/ Leah Sargeant Rosas
Notary Public, State of Texas

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 16TH day of September, 2013, personally appeared Barbara B. Deane, 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/ Leah Sargeant Rosas
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF HARRISON §

BEFORE ME, Jodie Michele Hall, a notary public in and for the State of Texas, on this day personally appeared Charles Townsend, known to me or proven to me through TX DL to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Charles Townsend, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of P.O.A. for Respondent. I am the authorized representative of the Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Final Order by the Board of the Texas Department of Housing and Community Affairs.
4. Respondent hereby waives its right to any evidentiary hearing and any right to judicial review of this Agreed Final Order"

I, Charles Townsend, AN AUTHORIZED REPRESENTATIVE OF RESPONDENT, HAVE READ AND UNDERSTAND THE FOREGOING AGREED FINAL ORDER. I UNDERSTAND THAT BY SIGNING THIS AGREED FINAL ORDER, I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO AN EVIDENTIARY HEARING AND ANY RIGHT TO JUDICIAL REVIEW OF THIS ORDER. I SIGN IT VOLUNTARILY, WILLINGLY, AND KNOWINGLY. I UNDERSTAND THIS AGREED FINAL ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL WIRTTEN OR OTHERWISE.

RESPONDENT:

By: /s/ Charles Townsend

Name: Charles Townsend

Given under my hand and seal of office this 9th day of October, 2013.

/s/ Jodie Michele Hall
Signature of Notary Public

Jodie Michele Hall
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My Commission Expires: 12-21-2015

Attachment 1

**The following documents must be submitted within thirty days of the date this
Agreed Final Order is approved by the Board:**

1. Annual Owner's Compliance Reports for the years 2011 and 2012 must be submitted via the Compliance Monitoring and Tracking System at <https://pox.tdhca.state.tx.us/aims2/pox>.

Training materials are available at: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>.

If you have technical difficulties, please contact the database administrator, James Roper, at 512.936.7751 or james.roper@tdhca.state.tx.us.

2. Affirmative Marketing Plan and supplemental marketing materials to organizations that work with the disabled. Written guidance, the affirmative marketing plan form and samples of supplemental marketing materials will be provided by TDHCA to help with this requirement.

Attachment 2

Comprehensive List of Inspection Items under the Uniform Physical Condition Standard

[OMMITTED FROM WEB VERSION DUE TO ACCESSIBILITY PROBLEMS]

Attachment 3

Uniform Physical Condition Standards (“UPCS”) Violations from 2004, 2007 and 2008

[OMMITTED FROM WEB VERSION DUE TO ACCESSIBILITY PROBLEMS]