

**ENFORCEMENT ACTION AGAINST
LL REAL PROPERTY, L.L.C. WITH
RESPECT TO MONTERREY VILLA
APARTMENTS (HTF FILE # 09801)**

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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 **LL REAL PROPERTY, L.L.C.**, a California limited liability company (“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, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. On March 5, 1998, W.I. Miller & Associates, Inc. a Texas corporation (“Prior Owner”) was awarded a Housing Trust Fund allocation by the Board, in the total amount of \$544,500 to acquire Monterrey Villa Apartments (“Property”) (HTC file No. 09801 / CMTS No. 2608 / LDLD No. 179).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective March 5, 1998 and filed of record at Document Number S907352 of the Official Public Records of Real Property of Harris County, Texas (“Records”). In accordance with Section 7.8 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the land and binding on all successors and assigns for the full term of the agreement.
4. Respondent took record title to the Property via a General Warranty Deed with Vendor’s Lien that was effective June 1, 2007, and filed of record at Document Number 20070371231 of the Records. The property remained subject to the LURA per Section 7.8 of the LURA.

5. Respondent is a California limited liability company 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:

6. An on-site monitoring review was conducted on October 17, 2012, to determine whether Respondent had resolved prior violations of LURA requirements¹ to lease units to low income households, maintain records demonstrating eligibility, determine the appropriate utility allowance and establish appropriate rent amounts. A prior monitoring review in 2010 had identified numerous violations and the October 17, 2012, onsite review was intended to verify correction of past noncompliance. A monitoring letter was sent and Respondent was requested to submit a response including corrective documentation no later than February 7, 2013. A response was received, however, several issues remained uncorrected and Respondent was requested to reply a second time. A response was received, but the following were not corrected before the July 30, 2013, informal conference with the TDHCA Administrative Penalty Committee:
 - a. Respondent failed to correctly complete or document tenant's annual income recertification for units 8, 21, 22, 23, 25, 31 and 35, a violation of Section 2.2(b) and 4.2 of the LURA which requires annual income determination, and a violation of 10 Tex. Admin. Code §60.111(d) (Income at Recertification) which requires annual income recertifications for mixed income Housing Trust Fund properties.
 - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for the following units: 7, 18, 21, 22, 23, 25, 27, and 32, a violation of Section 2 of the LURA which defines the income limits, and a violation of 10 Tex. Admin. Code §60.108 (Determination, Documentation and Certification of Annual Income) which outlines documentation requirements for determining income.
 - c. Respondent failed to establish appropriate rent amounts for units 7, 18, 21, 22, 23, 25, 27, and 32, a violation of Section 3.1 of the LURA which defines the appropriate rent limits, and a violation of 10 TEX. ADMIN. CODE §60.118 (Special Rules Regarding Rents and Rent Limit Violations). TDHCA publishes maximum rent limits annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Monterrey Villa was unable to document the rent amounts being charged.
 - d. Respondent failed to meet the property's additional State required rent and occupancy restrictions, a violation of Section 2.2(a) of the LURA. Representations regarding rent and occupancy restrictions are made during the application phase and determine how the property shall be monitored by TDHCA

¹ Within this Agreed Final Order, all references to the TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTER 60 refer to the version of the code in effect at the time of the original November 30, 2010 compliance monitoring review that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

in accordance with in accordance with 10 TEX. ADMIN. CODE § 60.101 the LURA. Monterrey Villa Apartments has a total of 36 units, 27 of which are required to be income and rent restricted. Sections 2.2(a) and 3.1(a) of the LURA indicate that:

- i. 11 units must be occupied by extremely low income families with incomes at or below the 30% area median income (“AMI”) limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for that income level. In addition, the maximum rent cannot exceed 30% of the family income;
- ii. 11 units must be occupied by very low income families with incomes at or below the 60% AMI limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for that income level. In addition, the maximum rent cannot exceed 30% of the family income; and
- iii. 5 units must be occupied by low income families with incomes at or below the 80% AMI limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for a family whose income equals 65% of AMI. In addition, the maximum rent cannot exceed 30% of the family income.

Of these income categories, Owner has only verified 5 of the necessary 11 units at the 30% level indicated at FOF #6d(i).

7. The following violations remain outstanding at the time of this order:
 - a. Annual income recertification violation described in FOF #6a;
 - b. Household initial occupancy income limit violations described in FOF #6b; and
 - c. Additional State required rent and occupancy restrictions described in FOF #6d(i).

CONCLUSIONS OF LAW

1. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).
2. 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.
3. Respondent violated Sections 2.2(b) and 4.2 of the LURA and 10 Tex. Admin. Code §60.111(d) by failing to annually recertify tenants for units 8, 21, 22, 23, 25, 31 and 35.
4. Respondent violated Section 2 of the LURA and 10 Tex. Admin. Code §60.108 by failing to provide sufficient documentation that household incomes were within prescribed limits upon initial occupancy for units 7, 18, 21, 22, 23, 25, 27, and 32.
5. Respondent violated Section 3.1 of the LURA and 10 TEX. ADMIN. CODE §60.118 by failing to establish appropriate gross rents for units 7, 18, 21, 22, 23, 25, 27, and 32.

6. Respondent violated Section 2.2(a) of the LURA by failing to maintain the additional state required income and rent restrictions.
7. Because Respondent is a housing sponsor with respect to the Property and has violated the TDHCA LURA, 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 the LURA, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
10. A partially probated administrative penalty of \$5000 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 \$5,000, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$2,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall correct the file monitoring violations as indicated in the attachments and submit documentation of the corrections to TDHCA no later than November 11, 2013.

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 remaining assessed administrative penalty in the amount of \$2,500 which shall be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this Order, then the remaining assessed administrative penalty in the amount of \$2,500 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 that Respondent 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), emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below. 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

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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 §
§
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 HARRIS §

BEFORE ME, DAVID ADAMS, a notary public in and for the State of TEXAS, on this day personally appeared LILY LIANG, known to me or proven to me through _____ 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 LILY LIANG, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of MANAGER 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, LILY LIANG, 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:

LL REAL PROPERTY, L.L.C.,

a California limited liability company

By: /s/ Lily Liang

Name: Lily Liang

Title: Manager

Given under my hand and seal of office this 29th day of Sept, 2013.

/s/ David Adams
Signature of Notary Public

David Adams
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 11-9-2016

Attachment 1

Tenant File Instructions

Additional income and rent restrictions. 11 units must be occupied by extremely low income families with incomes at or below the 30% area median income (AMI) limit published by TDHCA and rents that do not exceed the maximum rent limit published by TDHCA for that income level. In addition, the maximum rent cannot exceed 30% of the family income. Respondent has only provided evidence proving that 5 units are occupied by tenants at 30% AMI and must submit qualifying paperwork (tenant application, verifications of all sources of income and assets, tenant income certification, lease and lease addendum) for 6 additional units that are restricted at this level.

Annual recertification violation for units 8, 21, 22, 23, 31 and 35. See chart below.

Household income violation for units 7, 21, 22 and 23. See chart below.

Circumstance with respect to units listed above	Required Action
If unit is occupied by a qualified household	Acceptable documentation was not collected at move-in or during subsequent recertifications. Perform a full recertification for the year 2013 and submit the full file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Note that you must also complete the Fair Housing Choice Disclosure Notice for any households completing tenant file paperwork after 12/27/2012.
If unit is occupied by a new qualified household	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice.
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, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after November 11, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
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 is occupied by a qualified household, you must to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after November 11, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.

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, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after November 11, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
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