

ENFORCEMENT ACTION AGAINST
AHOURLAMAZDA, LLC WITH
RESPECT TO
OAKRIDGE APARTMENTS
(HTC FILE # 93159 / CMTS # 1189)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 27th day of April, 2017, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **AHOURLAMAZDA, LLC**, a Texas 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 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 1995, Beverly Partners Ltd (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$34,726 to build and operate Oakridge Apartments (“Property”) (HTC file No. 93159 / CMTS No. 1189 / LDDL No. 426).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective November 9, 1995, and filed of record at Volume 96008, Page 0953 of the Official Public Records of Real Property of Dallas County, Texas (“Records”). 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.

3. Respondent took ownership of the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective February 17, 2010, and filed the same in the Records at Document Number 2010000041489, thereby further binding Respondent to the terms of the LURA.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. Property has a history of violations and previously signed an Agreed Final Order on March 19, 2016, agreeing to a \$1,000 Administrative Penalty, of which \$500 was to be paid at signing and the remaining \$500 was to be fully forgivable provided that Respondent submitted full corrective documentation to resolve all Uniform Physical Condition Standards (“UPCS”) violations by March 28, 2016. Respondent paid the \$500 administrative penalty and submitted full corrections as required.
6. An on-site monitoring review was conducted on January 28, 2016, 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 a July 11, 2016, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. The required documentation was submitted on January 17, 2017, 190 days past the corrective deadline, after an administrative penalty informal conference notice was sent;
 - b. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Tenant Selection Criteria, now Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. A document labeled “Statement of Rental Policy” was submitted in response to an administrative penalty informal conference notice, but it did not meet the minimum requirements under the rule;
 - c. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan that meets minimum requirements, and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 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.

A plan labeled “Marketing Strategy and Tactics” was submitted in response to an administrative penalty informal conference notice, but it outlined general marketing for the property and did not include any affirmative marketing requirements;

- d. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. A utility allowance was submitted on January 17, 2017, but it was the utility allowance published by the Dallas County Housing Agency, not the City of Dallas Housing Authority. The development is located within the municipal boundaries of the City of Dallas, and as a result, the Dallas County Housing Authority is not the applicable organization;
- e. Respondent failed to provide an Annual Eligibility Certifications for unit 122, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household. Unit Status Reports indicate that the household occupied the unit in 2009. The last Annual Eligibility Certification observed in the file was from 2012;
- f. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 216, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. Pay stubs in the file during the onsite review showed that the household occupying the unit on June 5, 2015, did not qualify at move-in. The same household signed a Tenant Rights and Resources Guide Acknowledgment on February 20, 2017, the date suggesting that this lease was renewed after TDHCA notified Respondent that the household was over income. This was later confirmed by the property manager;
- g. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. A photograph of the Tenant Rights and Resources Guide taped to a door was submitted, but the required certification has not been submitted;
- h. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 106, 214, 216, and 222, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The required form was submitted for units 106, 214, 216, and 222 on February 22, 2017, 226 days past the corrective deadline, after an administrative penalty informal conference notice was sent;
- i. Respondent failed to provide the Fair Housing Disclosure Notice for unit 203, a violation of 10 TAC §10.612 (Tenant File Requirements), which, at the time of move-in for this unit during 2014, required 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”, which also has not been provided. The required form was submitted on February 22, 2017, 226 days past the corrective deadline, after an administrative penalty informal conference notice was sent; and

- j. Respondent failed to provide a Notice of Amenities and Services to unit 203, a violation of 10 TAC §10.613 (Lease Requirements), which, at the time of move-in for this unit during 2014, 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”, which also has not been provided. The required form was submitted on February 22, 2017, 226 days past the corrective deadline, after an administrative penalty informal conference notice was sent.
7. The following violations remain outstanding at the time of this order:
 - a. Written tenant selection criteria violation described in FOF #6.b;
 - b. Affirmative marketing plan violation described in FOF #6.c;
 - c. Utility allowance violation described in FOF #6.d;
 - d. Annual Eligibility Certification violation described in FOF #6.e;
 - e. Household income violation described in FOF #6.f; and
 - f. Lease notice violation described in FOF #6.g.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503 and 10 TAC §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 TAC §10.607 and §10.618 in 2016, by not submitting pre-onsite documentation in preparation for an onsite monitoring review;
5. Respondent violated 10 TAC §10.610 in 2016, by not maintaining written tenant selection criteria meeting TDHCA requirements;
6. Respondent violated 10 TAC §10.617 in 2016, by failing to provide a complete affirmative marketing plan and maintain evidence of outreach marketing efforts;

7. Respondent violated 10 TAC §10.614 in 2016, by failing to properly calculate a utility allowance;
8. Respondent violated 10 TAC §10.612 between 2013 and 2016, by failing to collect Annual Eligibility Certifications for unit 122.
9. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2015 by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 216. This violation was then repeated in 2016 when the lease was renewed.
10. Respondent violated leasing requirements in 10 TAC §10.613 in 2016, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
11. Respondent violated leasing requirements in 10 TAC §10.613 in 2015 and 2016, by failing to provide a Tenant Rights and Resources Guide to units 106, 214, 216, and 222, and have the households sign an acknowledgment form;
12. Respondent violated 10 TAC §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for unit 203;
13. Respondent violated 10 TAC §10.613 in 2014, by failing to execute the Notice of Amenities and Services for unit 203;
14. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
15. 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.
16. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code § 2306.053 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.
17. An administrative penalty of \$7,700 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 Respondent is assessed an administrative penalty in the amount of \$7,700, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$5,000 portion of the assessed administrative penalty in monthly installments of \$1,000 each, by cashier's check payable to the "Texas Department of Housing and Community Affairs", with the first payment due on July 1, 2017 and the final payment due on November 1, 2017.

IT IS FURTHER ORDERED that the property manager at Oakridge Apartments shall attend First Thursday Income Eligibility Training offered by TDHCA, and submit a completion certificate to the Department on or before July 1, 2017.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before July 1, 2017.

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 remaining assessed administrative penalty in the amount of \$2,700, and that remaining amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$2,700 shall be due and payable to the Department, and the Department shall send written notice to Respondent that it has violated a provision of this Order. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs", to be paid as follows, either: (1) a lump sum to be paid on or before November 1, 2017, (2) a sum added to the ongoing monthly installments such that the full payment of the entire penalty is made on or before November 1, 2017, or (3) the property closing date if sold before November 1, 2017.

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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. 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

IT IS FURTHER ORDERED that 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, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on April 27, 2017.

By: /s/ Leslie Bingham-Escareño
Name: Leslie Bingham-Escareño
Title: Vice Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 27th day of April, 2017, personally appeared Leslie Bingham-Escareño, 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/ Peggy M. Henderson
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 27th day of April, 2017, personally appeared James "Beau" Eccles, 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/ Peggy M. Henderson
Notary Public, State of Texas

STATE OF TEXAS §
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 COUNTY OF Dallas_____§

BEFORE ME, Carolyn K. Templin, a notary public in and for the State of Texas, on this day personally appeared Ramin Amini, known to me or proven to me through DL # [redacted from web version] 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 Ramin Amini, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of President for Respondent. I am the authorized representative of 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 Order by the Board of the Texas Department of Housing and Community Affairs.”

RESPONDENT:

AHOURAMAZDA, LLC, a Texas limited liability company

By: /s/ Ramin Amini
 Name: Ramin Amini
 Title: President

Given under my hand and seal of office this 22nd day of May, 2017.

/s/ Carolyn K. Templin
 Signature of Notary Public

Carolyn K. Templin
 Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: 10-3-2018

Attachment 1

File Monitoring Violation Resources and Instructions

1. 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)

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

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

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

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>

Affirmative Marketing: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

Tenant Selection Criteria: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

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

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

4. **All corrections must be submitted via CMTS:** See link for steps to upload documents <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

5. **Important notes -**

- i. Do not backdate any documents listed below.
- ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

6. **Written policies and procedures** – Respondent submitted written policies labeled “Statement of Rental Policy”, however, that document was incomplete.

How to prepare compliant criteria: Prepare updated written policies and procedures addressing all requirements at 10 TAC §10.610. Staff recommends using that rule as a checklist. A webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. A cheat sheet for further verification is available at <http://www.tdhca.state.tx.us/pmcdocs/15-AOCR-TSC.pdf>, however, please note that the cheat sheet was only published as an aide for annual reporting and, as such, should not be relied upon as a primary resource; you are required to follow all requirements of the rule.

What to submit: Once your written policies and procedures are complete, the owner must review the criteria, then sign and upload to CMTS the applicable Owner Certification included at Attachment 2.

6. Lease violations, including Tenant Rights and Resources Guide, Fair Housing Disclosure Notice, and Notice of Amenities and Services.

What to submit: The owner must review the applicable Owner Certification at Attachment 2, verify that all requirements described by the certification have been met, then submit a signed Owner Certification via CMTS.

7. Affirmative marketing plan –

What is affirmative marketing and information regarding frequent problems observed: Respondent submitted a document labeled “Marketing Strategy and Tactics”, however, it was a general marketing strategy, and did not include any affirmative marketing requirements. First read the rule at 10 TAC §10.617, then watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm> to gain a general understanding regarding affirmative marketing. Next, review the following list of frequent problems observed, which include, but are not limited to:

- Not using HUD Form 935.2A;
- Not correctly identifying populations “least likely to apply”. In general, those 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. Analysis is required to determine which of these groups are least likely to apply;
- Not affirmatively marketing to the disabled. All properties must market to the disabled population;
- Not correctly identifying organizations that are specifically associated with groups identified as “least likely to apply”. For example, marketing to the Housing Authority or placing ads in Craigslist would be considered general marketing, not affirmative marketing, because both serve all persons living in the area;
- Not including evidence of special outreach efforts, such as marketing letters, 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 a sentence in English and Spanish in the outreach marketing materials that prospective tenants can access if reasonable accommodations are needed to complete the application process; and

Steps to complete affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. 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>. The groups *currently* identified by the tool are Persons with Disabilities, White, Not Hispanic, and Asian. Persons with disabilities must always be selected as a group least likely to apply. You must run the Tool yourself to ensure that the data remains the same. If you use this Tool and save a copy with your Plan, you may rely upon its results.

Alternatively, you may perform your own analysis to determine groups that are considered least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified.

- c. 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 generally considered affirmative marketing *unless* you are required to market to the White or Not-Hispanic populations, in which case more general marketing of this type would be acceptable to market to those groups. An Asian Chamber of Commerce or local Asian publication could be an avenue to market to the Asian 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.
- d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 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.”*
- g. Maintain all documentation in your files for future review.

What to submit: Once your Affirmative Marketing Plan *and* outreach materials are complete, the owner must review them, then sign and upload to CMTS the applicable Owner Certification included at Attachment 2.

[Remainder of page intentionally blank]

7. **Utility Allowance** – In January, Respondent submitted a utility allowance published by the Dallas County Housing Agency, not the City of Dallas Housing Authority. The development is located within the municipal boundaries of the City of Dallas, and as a result, the applicable housing authority is the City of Dallas Housing Authority. Their website is at <http://www.dhadal.com> and their published utility allowance is currently available at <http://www.dhadal.com/Business/2/Utility%20Allowances>.

What to submit: Calculate a utility allowance in accordance with 10 TAC §10.614 and submit a copy of the new utility allowance via CMTS. Also submit the development’s updated Unit Status Report to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

8. **Tenant file violations for units 122 and 216:**

What to submit if the affected households remain in the units:

Unit # 122	Bldg. # 3	BIN # TX9301984	
Finding	Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)		
Noncompliance Date	09/23/2013	Current Status Uncorrected	Correction Date
Reason	Owners of HTC developments must collect and maintain current data annually on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department’s Annual Eligibility Certification (AEC) or the Income Certification Form. This household initially occupied the unit on September 23, 2009 and the last AEC form present in the file was executed on September 10, 2012.		
Corrective Action	Have the household execute either form with the required information and submit a copy of the form to the Department for review. Do not backdate the certification.		
Unit # 216	Bldg. # 2	BIN # TX9301983	
Finding	Household income above income limit upon initial occupancy / Program Unit not leased to Low-Income household		
Noncompliance Date	06/06/2015	Current Status Uncorrected	Correction Date
Reason	A household occupied this unit on June 5, 2015. Paycheck stubs in the file indicate that the household did not qualify upon initial occupancy.		
Corrective Action	If circumstances have changed and the household currently qualifies, then certify the household under current circumstances and submit the application, Income Certification, all documentation of income and assets, and any additional screening documentation to the Department for review. If the household cannot be certified under current circumstances, then when the unit becomes available, occupy it with an eligible household and submit: the lease and lease addendums, the rental application and supplemental rental application, the Income Certification, all documentation of income and assets, and the Tenants Rights and Resources Guide Acknowledgement to the Department for review.		

What to submit if circumstances have changed:

Circumstance with respect to units listed above	Instruction
If unit is occupied by a new qualified household	Submit the full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 7/1/2017 is acceptable for this circumstance provided that Requirement A above is fulfilled.

<p>If unit is occupied by a nonqualified household with a non-expired lease</p>	<p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.**</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 7/1/2017 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 7/1/2017 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 7/1/2017 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.*

*** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)*

Attachment 2

Owner Certifications referenced in Attachment 1

[not in accessible format – excluded from web version]

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. Onsite manager must attend First Thursday Training in order to get a full 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 a sample 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. If you use the The Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
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 financial institution. 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 financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). 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. TAA 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:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 4:

Texas Administrative Code

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