

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
PINEYWOODS HOME TEAM	§	TEXAS DEPARTMENT OF
AFFORDABLE HOUSING	§	HOUSING AND
(HOME 539113 / HTF 859003)	§	COMMUNITY AFFAIRS

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 4<sup>th</sup> day of September, 2014, 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 **PINEYWOODS HOME TEAM AFFORDABLE HOUSING**, a Texas nonprofit corporation (“Pineywoods” or “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:

**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 §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. On June 30, 2000, TDHCA awarded HOME and Housing Trust Fund (“HTF”) program funds to Respondent in the amounts of \$970,504.00 and \$800,000.00, respectively,

to build and operate Pineywoods Home Team Affordable Housing (“Property”) (HOME 539113 / HTF 859003 / CMTS No. 2653 / LDLD No. 491).

3. Respondent signed a land use restriction agreement for each program (collectively, “LURAs”) regarding the Property:
  - a. The HOME Land Use Restriction Agreement (“HOME LURA”) was effective June 30, 2000, and filed of record at Volume 1284, Page 65 of the Official Public Records of Real Property of Angelina County, Texas (“Angelina Records”) and Volume 01495, Page 0001 of the Official Public Records of Real Property of Nacogdoches County, Texas (“Nacogdoches Records”); as corrected by that Correction of LURA executed on November 8, 2002, and recorded at Volume 1679, Page 209 in the Angelina Records only; as replaced by that Amended and Restated LURA executed on January 21, 2014, and recorded at Document Number 2014-00314164 in the Angelina Records, and Document Number 2014-1169 in the Nacogdoches Records.
  - b. The HTF Land Use Restriction Agreement (“HTF LURA”) was effective June 30, 2000, and filed of record at Volume 1284, Page 91 in the Angelina Records, and Volume 01495, Page 00024 in the Nacogdoches Records; as corrected by that Correction of LURA executed on November 8, 2002, and recorded at Volume 1679, Page 205 in the Angelina Records only; as replaced by that Amended and Restated LURA executed on January 29, 2014, and recorded at Document Number 2014-00314163 in the Angelina Records, and Document Number 2014-1168 in the Nacogdoches Records.
4. Respondent is a Texas nonprofit corporation 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<sup>1</sup>:

1. On May 13, 2014 and June 20, 2014, TDHCA sent notice that Respondent had failed to timely submit their 2013 Annual Owner’s Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report on or before April 30 of each year. All parts remain outstanding.

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

2. An on-site monitoring review was conducted on May 22, 2013, 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 January 6, 2014, corrective action deadline was set, however, no response was received and the following violations remain unresolved:
  - a. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.
  - b. Respondent collected gross rents for units 215, 908, and 1306 that exceeded TDHCA limits as a result of Respondent's failure to properly calculate the utility allowance. TDHCA publishes maximum rent limits annually for each program 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. Exceeding the maximum rent is a violation of 10 TEX. ADMIN. CODE §10.618 (Special Rules Regarding Rents and Rent Limit Violations).
3. The following violations remain outstanding at the time of this order:
  - a. 2013 Annual Owner's Compliance Report violation described in FOF # 1;
  - b. Utility allowance violation described in FOF #2a;
  - c. Gross rent violations for units 215, 908, and 1306, described in FOF #2b;

### **CONCLUSIONS OF LAW**

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. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TEX. ADMIN. CODE §10.607 in 2014, by failing to submit Annual Owner's Compliance Report for the years 2013;
4. Respondent violated 10 TEX. ADMIN. CODE §10.618 in 2014, by collecting gross rents that exceeded the applicable limits for units 215, 908, and 1306.
5. 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.
6. 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.

7. 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.
8. An administrative penalty of \$250.00 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 \$250.00, subject to deferral as further ordered below.

**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 December 31, 2014.

**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 conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$250.00 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" 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 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>. If it comes due and payable, the penalty payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> 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 4, 2014.

By: /s/ J. Paul Oxer  
Name: J. Paul Oxer  
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** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 4<sup>th</sup> day of September, 2014, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Peggy M. Henderson  
Notary Public, State of Texas

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 4<sup>th</sup> day of September, 2014, 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/ Peggy M. Henderson  
Notary Public, State of Texas



## Attachment 1

### Tenant File Instructions

The following must be submitted on or before 12/31/2014:

1. **2013 Annual Owner's Compliance Report ("AOCR") violation:** Submit Parts A, B, C, and D of the 2013 AOCR via the Compliance Monitoring and Tracking System ("CMTS") at <https://pox.tdhca.state.tx.us/aims2/pox>. Training materials regarding this system are available at <http://www.tdhca.state.tx.us/pmcomp/reports.htm>.
2. **Utility Allowance:** Acceptable utility allowance schedules have been submitted and this violation will be considered corrected upon resolution of the gross rent findings, as indicated below.
3. **Gross rent violation for units 215, 908, and 1306:**
  - a. **Unit 215:** Rent was overcharged in the amount of \$478.00 and may be applied to the balance that the household owes the property. The household vacated the unit in October of 2013. To correct the violation, update the move-out disposition form (or form the property is using) to show a reduction in the balance owed to the property by \$478 and submit for review.
  - b. **Unit 908:** Rent was overcharged in the amount of \$179.00 and must be submitted to the applicable Housing Authority since the household was receiving Section 8 rental assistance. To correct, submit a copy of the cancelled check to the Housing Authority or a copy of a money order and submit for review.
  - c. **Unit 1306:** Rent was overcharged in the amount of \$687.00 and may be applied to the balance that the household owes the property. The household vacated the unit in April of 2014. To correct the violation, update the move-out disposition form (or form the property is using) to show a reduction in the balance owed to the property by \$687 and submit for review.