

ENFORCEMENT ACTION AGAINST
PRAIRIE ESTATES, LTD. WITH
RESPECT TO PRAIRIE ESTATES
(HTC FILE # 97107 / CMTS # 1763)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 8th day of November, 2018, 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 **PRAIRIE ESTATES, LTD.**, a Texas limited partnership (“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 (“FOF”)

Jurisdiction:

1. During 1999, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,039,521 to build and operate Prairie Estates (“Property”) (HTC file No. 97107 / CMTS No. 1763 / LDLD No. 751).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 27, 1999, and filed of record at Volume 99252, Page 04468 of the Official Public Records of Real Property of Dallas County, Texas (“Records”).

3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. An on-site monitoring review was conducted on November 10, 2017, 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 May 24, 2018, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1304, 1406, 2304, and 2402, 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;
 - b. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), 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 persons with disabilities. An affirmative marketing plan was present during the onsite review, but did not comply with the rule requirements;
 - c. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements.
5. The following violations remain outstanding at the time of this order:
 - a. Household income violations described in FOF #4.a;
 - b. Affirmative Marketing Plan violation described in FOF #4.b; and
 - c. Tenant Selection Criteria violation described in FOF #4.c.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

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

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 §10.611 and Section 4 of the LURA in 2017, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1304, 1406 and 2402;
5. Respondent violated 10 TAC §10.617 in 2017, by failing to provide a complete affirmative marketing plan;
6. Respondent violated 10 TAC §10.610 in 2017, by not maintaining written tenant selection criteria meeting TDHCA requirements;
7. 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.
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 §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.
10. An administrative penalty of \$500 is an appropriate penalty in accordance with 10 TAC Chapter 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 \$500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that all property management staff for Prairie Estates, with the exception of maintenance personnel, shall attend First Thursday Income Eligibility Training offered by TDHCA and submit a completion certificate to the Agency on or before February 6, 2019.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 6, 2019.

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, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$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" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

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. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, 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.

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Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

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 Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>
Tenant Selection Criteria Webinar: <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.

Instructions:

6. **Written tenant selection criteria** – Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

How to prepare compliant criteria: First watch the webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements at [10 TAC §10.610](#). Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy. The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:

<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

Examples of problems with prior submission: Problems observed included, but are not limited to:

- a. The Criteria did not include procedures regarding reasonable accommodations per 10 TAC §10.610(c), the waitlist per 10 TAC §10.610(d), or unit transfer policies per 10 TAC §10.610(g);
- b. The Criteria did not contain restrictions on student occupancy per 10 TAC §10.610(b)(1)(A)(ii);
- c. The Criteria did not include VAWA language per 10 TAC §10.610(b)(1)(E); and

- d. It appears that the Development requires an application deposit at the time of application. This must immediately stop and the criteria must be updated to remove this requirement.

What to submit: Once your written policies and procedures are complete, update the effective date, a supervisor must review the criteria, then you must upload the complete written policies and procedures to CMTS.

7. **Affirmative marketing plan –**

Technical Support: First read the rule at 10 TAC §10.617, read the technical assistance guide at <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>, and watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>, to gain a general understanding regarding affirmative marketing.

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 and mark them in your plan. 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, Not Hispanic, and Asian. If you use this Tool and save a copy with your Plan, you may rely upon its results.

Alternatively, if you do not use the Tool, you may perform your own analysis to determine groups that are least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified, you must always include persons with disabilities, and populations representing less than 1% of the total population of the County or MSA will not be required in your affirmative marketing. This analysis must be included with the plan.

When the “Not Hispanic” population is identified by the Web Tool as a group least likely to apply, that group would be marked in your plan as “Other” and you would write in “Not Hispanic”. Many owners assume that the “Not Hispanic” group identified by the Affirmative Marketing Web Tool means “White”. That is not necessarily the case. The Compliance Division explains the category like this: each household member has a Race *and* an Ethnicity. The Race could be White, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander. The Ethnicity could be either Hispanic or Not Hispanic. In other words, a person could be Black/African American and Hispanic. Likewise, a person could be White and Hispanic. In other words, the “Not Hispanic” demographic is literally everyone who is “Not Hispanic.”

- c. Identify in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials for each of the targeted groups. The organizations must specifically reach those groups designated as least likely to apply. The Tool provides a link to a map that will show which Census tracts may be most beneficial for affirmative marketing. The census tracts provided for outreach consideration represent nearby neighborhoods identified in the U.S. Census as having the greatest number of the groups who are least likely to apply at your development based on its location. The identified neighborhoods may represent a first step for planning meaningful outreach and marketing for your development.

Specific examples:

- i. Least likely to apply population - People with disabilities:
 - A. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
 - B. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>

- C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 - D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
 - E. Local non-profits in your area serving people with disabilities
 - F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
- ii. Least likely to apply population - Asian:
 - A. Local Asian real estate association
 - B. Local Asian Chamber of Commerce
 - C. Local Asian American Resource Center
 - D. Local organizations serving the Asian community
 - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA’s Web Tool, these areas are listed under “tracts for outreach consideration”
 - iii. Least likely to apply population – Not Hispanic:
 - A. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA’s Web Tool, these areas are listed under “tracts for outreach consideration”
- 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. Ensure that your plan includes a section considering how Limited English Proficiency may affect populations least likely to apply, and including ways you plan to mitigate language barriers related to advertising and community outreach. Such information should be included in the Plan as an additional consideration, or as an attachment to the Plan. Some sample information that may be useful for preparation is available at <http://www.tdhca.state.tx.us/pmcdocs/LAP-Guide.doc>;
 - g. 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.”*
 - h. Look over the “10.617 (affirmative marketing)” tab of the spreadsheet at the following link, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>
 - i. Maintain all documentation in your files for future review.

What to submit: Once your updated Affirmative Marketing plan *and* outreach materials are complete, have them reviewed by a supervisor, then submit both via CMTS.

9. **Household income above limit upon initial occupancy for units:** Follow the instructions below with respect to units 1304, 1406, 2304, and 2402, and submit documentation.

Circumstance with respect to units listed above	Instruction
I. If unit is occupied by a qualified household	<p>TDHCA requested documentation verifying assets for each household at the time of move in. If that could not be completed, you must recertify the household using current circumstances. The Development responded by submitting the initial certification without verification of assets for each household. To correct, recertify the households using current circumstances, and submit for each unit:</p> <ul style="list-style-type: none"> A. New application using current circumstances; B. New verifications of each source of income and assets, C. New Income Certification; D. Lease and lease addendum; and E. Tenant Rights and Resources Guide Acknowledgment. <p>Remember that items A-C above must be dated within 120 days of one another.</p> <p>If the unit is vacant or the tenant does not qualify, follow alternate instructions below.</p>
IV. If unit is occupied by a nonqualified household with a non-expired lease	<ul style="list-style-type: none"> A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.* B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after 2/6/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.
V. If unit has been vacant <i>more than 30</i> days	<ul style="list-style-type: none"> A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA. B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/6/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.
VI. If unit has been vacant <i>less than 30</i> days	<ul style="list-style-type: none"> A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA. 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). C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/6/2018 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.

* 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)

Exhibit 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for 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**²: Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must 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 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. **Release and Consent**: Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income**³: 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. **Income Verification for Households with Section 8 Certificates**: This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. Since the necessary income and asset verifications were performed by the housing authority and were effective as of a specific date, this form must be signed within 120 days of that effective date, either at initial move-in or at recertification. This form must also be dated within 120 days of the application and Income Certification that you collect. If outside of that period, you must verify income and assets yourself.
 - b. **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;
 - c. **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;

² & ³ Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

- d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
 - e. **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;
 - f. **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.
4. **Verify Assets⁴:** 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. First hand verifications are required for the HOME Program. For savings accounts, use the current balance. For checking accounts, use the average balance for the last 6 months (include 6 months of statements and average the balance). For other account types or for HTC properties, 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

⁴ Remember that the application, verifications of income and assets, and the Tenant Income Certification form must be signed within 120 days of one another. If one component is outside of that timeframe, you must recertify.

verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

5. **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 all household members, and be signed by each adult household member. *Remember that it must be signed within 120 days of the application and the verifications of income and assets.*
6. **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(f) 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.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **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>.

Per 10 TAC §10.613(m), a laminated copy of this guide must be posted in a common area of the leasing office, and you must 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.

A copy of the acknowledgment form is available at:

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

Exhibit 3:

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