

ENFORCEMENT ACTION AGAINST
FOUNDATION OF HOPE, INC. WITH
RESPECT TO RINCON POINT
APARTMENTS (HOME FILE # 534031
/ CMTS # 2618)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 30th day of July, 2015, 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 **FOUNDATION OF HOPE, INC.**, a Texas nonprofit corporation (“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. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. During 1996, Respondent was awarded an allocation of HOME funds by the Board, in the annual amount of \$1,490,000 to build and operate Rincon Point Apartments (“Property”) (HOME file No. 534031 / CMTS No. 2618 / LDLD No. 160).
3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective August 28, 1998, and filed of record at Document Number 465858 of the Official Public Records of Real Property of San Patricio County, Texas (“Records”), as amended by a First Amendment effective September 17, 2010, and filed in the Records at Volume 4187, Page 368.
4. Respondent is a Texas nonprofit corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on March 25, 2014, 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 an August 4, 2014 corrective action deadline was set. Partial corrective documentation was received, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 7, 16, 33, 36, a violation of 10 TEX. ADMIN. CODE §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 evidence that the required number of units had been designated as being occupied by Special Needs Individuals or Families, a violation of Section 2.3(b) of the amended LURA, which requires 35% of units to be made available for occupancy by Special Needs Individuals or Families. At the time of the review, 13 units were required but only 11 had been designated as Special Needs and none included the required verification. Responses regarding this finding were submitted between May 22, 2015 and May 25, 2015, after an administrative penalty informal conference notice was sent, and the finding was subsequently dropped.
 - c. Respondent failed to provide evidence that rent had been properly determined for unit 4 after the household income increased above 80% at recertification, a violation of 10 TEX. ADMIN. CODE §10.622 (Special Rules Regarding Rents and Rent Limit Violations), which requires owner to charge rent equal to 30 percent of the household’s adjusted income when the household income increases above

¹ 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.

80% at recertification. The wrong rent amount was calculated and charged. A response regarding this finding was submitted on May 22, 2015, after an administrative penalty informal conference notice was sent, indicating that the household moved out on May 1, 2014, and a new tenant had moved in on September 1, 2014. Since the household moved out and the requested documentation to resolve the finding could not be provided, there is no corrective action available and the finding will remain uncorrected.

- d. Respondent failed to provide the Fair Housing Disclosure Notice for units 3, 7, 16, 19, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires 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.”

Responses regarding these findings were submitted between May 22, 2015 and May 25, 2015, after an administrative penalty informal conference notice was sent. The finding remains unresolved for unit 3 because an appropriately signed notice has not been submitted, but the finding can be resolved by submitting a signed Tenant Rights and Resources Guide Acknowledgment. The finding is uncorrectable for units 7, 16, and 19 because the households moved out without signing during the appropriate time period.

- e. Respondent failed to provide a Notice of Amenities and Services to units 7, 16, 19, 36, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which 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.”

Responses regarding these findings were submitted between May 22, 2015 and May 25, 2015, after an administrative penalty informal conference notice was sent. The finding remains unresolved for unit 36 because an appropriately signed notice has not been submitted, but the finding can be resolved by submitting a signed Tenant Rights and Resources Guide Acknowledgment. The finding is uncorrectable for units 7, 16, and 19 because the households moved out without signing during the appropriate time period.

6. The following violations remain outstanding at the time of this order:
 - a. Household income above limit violations described in FOF #5a;
 - b. Rent calculation violation described in FOF #5c;
 - c. Fair Housing Disclosure Notice violations described in FOF #5d; and
 - d. Notice of Amenities and Services violations described in FOF #5e.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
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 §10.611 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 7, 16, 33, and 36;
4. Respondent violated Section 2.3(b) of the amended LURA by failing to ensure the correct number of Special Needs units;
5. Respondent violated 10 TEX. ADMIN. CODE §10.622 by failing to properly determine the rent for unit 4 after the household income increased above 80% at recertification;
6. Respondent violated 10 TEX. ADMIN. CODE §10.612 by failing to provide the Fair Housing Disclosure Notice for units 3, 7, 16, and 19;
7. Respondent violated 10 TEX. ADMIN. CODE §10.613 by failing to provide the Notice of Amenities and Services to units 7, 16, 19, and 36;
8. 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.
9. 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.
10. 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.
11. An administrative penalty of \$2,850 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violations. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$2,850, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before August 31, 2015.

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 October 28, 2015.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at Attachment 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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 and the remaining administrative penalty in the amount of \$2,350 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 remaining administrative penalty in the amount of \$2,350 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 during the term 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>. 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 the terms of this Agreed Final Order shall be published on the TDHCA website.

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §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:

Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

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>

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

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

4. Important notes -

- a. Do not backdate any documents listed below.
- b. A transfer from another unit is not sufficient to correct any of the above findings. This will instead transfer the finding to the other unit.

5. Household income above income limit upon initial occupancy for unit 33: On 5/22/2015, the property manager responded to indicate that the unqualified tenant moved out 9/1/2013, and a new household moved in 3/19/2014. Submit the following for the current qualified household: application, verification of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.
6. Notice of Amenities and Services Violations: If the household that moved into unit 36 on 1/1/2014 remains in the unit, submit signed Tenant Rights and Resources Guide Acknowledgment. If tenant has moved out without signing, submit move-out date and acknowledge that the finding is uncorrectable.
7. Fair Housing Disclosure Notice Violations: If the household that moved into unit 3 on 4/1/2013 remains in the unit, submit signed Tenant Rights and Resources Guide Acknowledgment. If tenant has moved out without signing, submit move-out date and acknowledge that the finding is uncorrectable.
8. Household income above income limit upon initial occupancy for unit 7: On 5/22/2015, the property manager responded to indicate that the necessary documentation had been uploaded to CMTS, however, it was not submitted.

The Unit Status Report indicates that the household for whom the violation was originally identified no longer occupies the unit. Submit the full tenant file for the current household, including: application, verification of all sources of income and assets, fully executed tenant income certification, lease, lease addendum, Tenant Rights and Resources Guide Acknowledgment.

9. Household income above income limit upon initial occupancy for unit 16: On 5/22/2015, the property manager responded to indicate that the necessary documentation had been uploaded to CMTS, however, it was not submitted.

Since the household for whom the violation was originally identified no longer occupies the unit, submit the full tenant file for the current household, including: application, verification of all sources of income and assets, fully executed tenant income certification, lease, lease addendum, Tenant Rights and Resources Guide Acknowledgment.

10. Household income above income limit upon initial occupancy for unit 36: On 5/22/2015, the property manager responded and indicated that the household was above the limit at the time of initial lease, but their financial situation changed at time of renewal. An incomplete tenant file was uploaded for the household.

- a. If the household is over income, send a Notice of Nonrenewal and submit a copy to the Department.
- b. If the household now qualifies for occupancy, as represented on 5/22/2015, submit:
 - i. Documentation regarding rental income: Household includes a property manager and a maintenance staff member. If household is receiving a discount on rent, that is considered income and verification, such as a leasing contract documenting the amount of rental income they are collecting each month must be submitted. The amount must also be factored into the income calculation to determine whether the household qualifies for occupancy. If no rental discount is being received, indicate that in your response.
 - ii. Clarification regarding house: The prior application listed a house and rental income, but that was not disclosed in the current application. During the informal conference, property manager indicated that the house had been sold. Please submit verification, such as a HUD-1 Settlement Statement.
 - iii. Income verifications: A Zero dollar asset verification was submitted for the adult daughter, but no verifications for husband and wife. Submit first hand documentation, such as check stubs or payroll print-outs of earnings, to verify income for the husband and wife.
 - iv. Asset verifications: Checking and savings accounts were disclosed on the supplemental application, but the property manager submitted incomplete asset verification documentation for daughter and wife. The forms were not completed by the financial institution and were unsigned. Submit verification of all accounts disclosed on the supplemental application, either with bank statements or verification(s) completed by the bank. To prevent fraud, you must submit the verification directly to the bank and must not allow the tenant to handle it. If you receive the verification via mail, retain the envelope and submit along with the verification. If you receive it via fax, ensure that the fax stamp is on it.

Attachment 2:

Texas Administrative Code

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