

ENFORCEMENT ACTION AGAINST
SOUTHEAST TEXAS COMMUNITY
DEVELOPMENT CORPORATION
WITH RESPECT TO
SOUTHEAST TEXAS COMMUNITY
DEVELOPMENT
(HOME FILE # 537606 / CMTS # 2680)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 14th day of December, 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 **SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION**, 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. During 1998, Respondent was awarded an allocation of HOME funds totaling \$650,274 to build and operate Southeast Texas Community Development Corporation Rental Housing in Port Arthur, Jefferson County (“Property”) (HOME file No. 537606 / CMTS No. 2680 / LDLD No. 96).

2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective September 15, 2000, and filed of record at Document Number 2000042415 of the Official Public Records of Real Property of Jefferson County, Texas (“Records”).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. Property has a history of violations and previously signed an Agreed Final Order on March 24, 2015, agreeing to a \$1,000 administrative penalty, which was to be fully forgivable provided that Respondent complied with all requirements of the Order. The Order was violated and the administrative penalty was paid in full upon demand.
5. An on-site monitoring review was conducted on July 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 March 8, 2017, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. This violation remains unresolved;
 - b. Respondent failed to maintain written policies and procedures, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written policies and procedures, including tenant selection criteria, that meet minimum TDHCA requirements. This violation remains unresolved;
 - c. 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 the disabled. An affirmative marketing plan was received in response to an administrative penalty informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to the disabled. This violation remains unresolved;
 - d. Respondent failed to provide an income certification due on April 1, 2015 for unit 2929A, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and 10 TAC §10.612 (Tenant File Requirements), which require developments to annually certify income. Acceptable corrective documentation was received on August 22, 2017, after intervention by the Enforcement Committee and the violation is considered resolved;

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.

- e. Respondent collected gross rents that exceeded income limits for units 2838B and 2848A as a result of an improperly calculated utility allowance. TDHCA publishes maximum rent limits annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. Exceeding the maximum rent is a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). These findings were originally identified during an onsite monitoring review conducted on November 21, 2013, and were not resolved under the above referenced Agreed Final Order at FOF #4. These findings were reviewed again during the July 26, 2016 onsite monitoring review and remain unresolved.
 - f. Respondent collected gross rents that exceeded income limits for units 2848A, 2929C, and 549A as a result of an improperly calculated rent limit for households designated at 50% of Area Median Income (AMI), a violation of Article III of the LURA and 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). These findings were originally identified on May 23, 2016 while reviewing corrective documentation submitted under the Agreed Final Order at FOF #4. These findings were reviewed again during the July 26, 2016 onsite monitoring review and remain unresolved.
6. The following violations remain outstanding at the time of this order:
- a. Pre-onsite documentation violation described in FOF #5.a;
 - b. Written policies and procedures violation described in FOF #5.b;
 - c. Affirmative marketing plan violation described in FOF #5.c;
 - d. Gross rent violations described in FOF #5.e; and
 - e. Gross rent violations described in FOF#5.f.

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. Respondent violated 10 TAC §10.607 and §10.618 in 2016, by not submitting pre-onsite documentation including a unit status report, entrance interview questionnaire, affirmative marketing plan, and tenant selection criteria, in preparation for the monitoring review;
4. Respondent violated 10 TAC §10.610 in 2016, by not maintaining written tenant selection criteria meeting TDHCA requirements;
5. Respondent violated 10 TAC §10.617 in 2016, by failing to provide a complete affirmative marketing plan;

6. Respondent violated 10 TAC §10.611 and 10 TAC §10.612 in 2016, by failing to provide tenant income certification and documentation to ensure qualification for the program;
7. Respondent violated 10 TAC §10.622 in 2016 by charging rents that exceeded income limits as a result of an improperly calculated utility allowance, and not making timely corrections once the violations were discovered;
8. 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.
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 §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.
11. An administrative penalty of \$2,500 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 \$2,500, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$1,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before March 14, 2018.

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 March 14, 2018.

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 \$1,000 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 \$2,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" 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 2, 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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Approved by the Governing Board of TDHCA on 12/14, 2017.

By: /s/ J.B. Goodwin
Name: J.B. Goodwin
Title: 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 §
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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 14th day of December, 2017, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas
Notary Public, State of Texas

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 14th day of December, 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/ Leah Sargent Rosas
Notary Public, State of Texas

Exhibit 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 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. **Important notes -**
 - i. Do not backdate any documents listed below.
 - ii. All corrections must be submitted via CMTS upload. See link for steps to upload documents <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **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. See the letter uploaded to CMTS on 9/26/2017 for a highlighted version of this rule, which indicates sections that were missing from your last submission.
What to submit: Submit written policies and procedures via CMTS.
6. **Affirmative marketing plan** – As corrective action, the Development previously submitted a correctly updated Affirmative Marketing Plan. However, the marketing outreach materials were not submitted as required. These outreach marketing materials (such as marketing letters) must be sent to each organization identified in your plan, ensuring that 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.”*
What to submit: Submit copies marketing outreach materials via CMTS.

9. **Gross rent violations** – Rents were overcharged to multiple households as a result of an incorrectly calculated utility allowance. In accordance with 10TAC§10.622(d), the owner of a HOME development that collects rent in excess of the allowable limit must refund the amount of rent that was overcharged (not a credit to amounts owed to the development.)
- a. **Unit 2838B: Date of noncompliance is 9/10/2012.**
Issue a refund to the resident in the amount of \$48.00, and submit a copy of the cancelled check via CMTS.
If the owner is unable to locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four year period or until all funds are claimed. Evidence of the trust account must be submitted as evidence of resolution in the event that the resident cannot be located.
 - b. **Unit 2848A: Date of noncompliance is 7/6/2011.** Issue a refund to the Housing Authority in the amount of \$76.00, and provide the Department with a copy of the cancelled check.
10. **Gross rent violations** – Rents were overcharged to multiple households in excess of Low-HOME rent limits. In accordance with 10TAC§10.622(d), the owner of a HOME development that collects rent in excess of the allowable limit must refund the amount of rent that was overcharged (not a credit to amounts owed to the development.)
- a. **Unit 2848A: Date of noncompliance is 1/22/2014.** No documentation addressing this finding has been received, so TDHCA is unable to calculate the necessary rent refund. See instructions below.
 - b. **2929C: Date of noncompliance is 11/4/2013.** No documentation addressing this finding has been received, so TDHCA is unable to calculate the necessary rent refund. See instructions below.
 - c. **549A: Date of noncompliance is 10/11/2013.** No documentation addressing this finding has been received, so TDHCA is unable to calculate the necessary rent refund. See instructions below.

In accordance with 10TAC§10.622(d), HOME developments that collect rent in excess of the allowable limit, the Department will require the owner to refund the amount of rent that was overcharged (not a credit to amounts owed to the development.) Follow these steps to correct:

- i. Calculate the rent overages;
- ii. Reduce the households' rents and notify the tenants in writing of the reduction of rent;
- iii. Update/amend the lease contracts;
- iv. Provide the Housing Authority a refund;
- v. What to submit if the same household remains in the unit: Copies of the resident notices, the calculation of refunded rent (an excel spreadsheet is preferred but not required), copies of the updated lease contracts, copies of cancelled checks to the Housing Authority and current tenant ledgers.
What to submit if the household has moved out: Calculation of refunded rent (an excel spreadsheet is preferred but not required), and copies of cancelled checks to the Housing Authority.

The Department will then determine whether or not the submitted materials sufficiently correct the noncompliance. Partial corrections are unacceptable and the Owner is responsible for ensuring that submissions are complete and satisfactorily address all findings. If there are questions, the Department urges you to ask them before the deadline so that a complete submission can be made.

Exhibit 2:

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