

ENFORCEMENT ACTION AGAINST
SOUTHEAST TEXAS COMMUNITY
DEVELOPMENT CORPORATION,
INC. (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 12th day of March, 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 **SOUTHEAST TEXAS COMMUNITY DEVELOPMENT CORPORATION, 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. In 1998, Respondent was awarded an allocation of HOME funds by the Board, in the amount of \$650,274.00 to build and operate Southeast Texas Community Development (“Property”) (HOME file No. 537606 / CMTS No. 2680 / LDLD No. 96).
3. 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”).
4. Respondent is a Texas nonprofit corporation that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

1. An on-site monitoring review was conducted on November 21, 2013, to determine whether Respondent was complying with file monitoring requirements, including requirements to lease units to low income households and maintain records demonstrating eligibility. A prior monitoring review conducted on September 10, 2012, had identified violations that were not fully resolved because of unit vacancies, and the November 21, 2013, onsite review was conducted to fulfill two purposes: A) to verify correction of past noncompliance and B) to monitor a new set of units for compliance. Notifications of noncompliance were sent and an April 23, 2014, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent overcharged gross rents for units 2838B, 2848A, and 2848B, a violation of 10 TEX. ADMIN. CODE § 10.618 (Special Rules Regarding Rents and Rent Limit Violations), which indicates that the amount of rent paid by a household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit published by the Department. The finding for unit 2848B was corrected on February 9, 2015, 292 days past the deadline, after intervention by the Enforcement Committee. The rest remain unresolved.
 - b. Respondent failed to provide Tenant Income Certification and documentation for units 2848B, 737A, 808A, 808D, 2547A, 2547B, 2741A, 2838B and 2929A, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income), which requires developments to certify and document household income using the TDHCA Income Certification form. The finding for units 737A, 808D, 2547A, 2547B, 2741A, and 2838B were corrected on February 9, 2015, 292 days past the deadline, after intervention by the Enforcement Committee. The rest remain unresolved.

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.

- c. Respondent failed to provide the Fair Housing Disclosure Notice for units 549A, 549B, 2848A, 2929C, and 2929D, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. The findings were corrected on February 9, 2015, 292 days past the deadline, after intervention by the Enforcement Committee.
 - d. Respondent failed to ensure that the household in unit 808A qualified for occupancy, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. The finding remains unresolved.
2. The following violations remain outstanding at the time of this order:
- a. Gross rent violations described in finding of fact (“FOF”) #1a for units 2838B and 2848A;
 - b. Tenant Income Certification violations described in FOF #1b for units 2848B, 808A, and 2929A; and
 - c. Household income violation described in FOF #1d for unit 808A.

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 § 10.618 in 2013 by overcharging gross rents for units 2838B, 2848A, and 2848B.
4. Respondent violated 10 TEX. ADMIN. CODE §10.606 in 2013 by failing to provide Tenant Income Certifications for units 2848B, 737A, 808A, 808D, 2547A, 2547B, 2741A, 2838B and 2929A.
5. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013 by failing to provide fair housing disclosure notices for units 549A, 549B, 2848A, 2929C, and 2929D.
6. Respondent violated Section 4 of the LURA and 10 TEX. ADMIN. CODE §10.606 in 2013 by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 808A.
7. 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.

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 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.
10. An administrative penalty of \$1,000.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. 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 \$1,000.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before April 13, 2015.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$1,000.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. If it comes due and payable, the penalty payment must be submitted to the following address:

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| If via overnight mail (FedEx, UPS): | If via USPS: |
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| TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701 | TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711 |
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IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

Approved by the Governing Board of TDHCA on 3/12, 2015.

By: /s/ J. Paul Oxer
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

By: /s/ Barbara B. Deane
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12th day of March, 2015, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

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

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12th day of March, 2015, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas

Notary Public, State of Texas

Attachment 1

Tenant File Instructions

Upload the following corrective documentation to CMTS by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

Once uploaded, email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to indicate that documentation is ready for review.

1. Failure to provide tenant income certification and documentation for units 2848B, 808A, and 2929A.

- 2848B – See letter at Attachment 2 for instructions.
- 2929A – See letter at Attachment 2 for instructions.
- 808A – Submit letter certifying that this vacant unit is ready for occupancy. Once occupied, follow instructions in the letter at Attachment 2. Occupancy after the 4/13/2015 deadline is acceptable provided that a letter certifying that the unit is ready for occupancy is received by the deadline.

2. Gross rent findings for units 2838B and 2848A.

- 2838B – See letter at Attachment 2 for instructions.
- 2848A – See letter at Attachment 2 for instructions.

3. Household income above income limit upon initial occupancy for unit 808A.

Submit letter certifying that this vacant unit is ready for occupancy. Once occupied, follow instructions in the letter at Attachment 2. Occupancy after the 4/13/2015 deadline is acceptable provided that a letter certifying that the unit is ready for occupancy is received by the deadline.

4. For all units listed above: For any files listed above where the letter at Attachment 2 requests a Fair Housing Disclosure Notice, please check to ensure that the notice was correctly signed. According to the old rule relating to that notice, it must be signed between 30 and 120 days before notice is due under the lease. If it was not signed during that period, provide the new Tenant Rights and Resources Guide to the household and have them sign the Acknowledgment Form. This Guide recently replaced the Fair Housing Disclosure Notice and the Tenant Services and Amenities Notice, available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm> along with an Acknowledgement form that must be signed by residents. Submit a copy of the Guide and signed Acknowledgment in place of the Fair Housing Disclosure Notice. Do not backdate any documents.

Attachment 2

Instruction Letter dated 2/19/2015

[attachment omitted from web version]

NOTE – Remember that in addition to providing instructions regarding how to resolve current violations listed at Attachment 1 and within the Agreed Final Order, this letter also identifies three new gross rent violations for units 2848A, 2929C, and 549A, and provides a new corrective deadline of 5/20/2015 to resolve those new findings. Those findings are not subject to the terms of this Agreed Final Order and may be referred for an administrative penalty at a later date if not timely resolved.