

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
AVALON APARTMENTS, L.L.C.	§	TEXAS DEPARTMENT OF
WITH RESPECT TO AVALON	§	HOUSING AND
APARTMENTS (HTC FILE # 91036)	§	COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 8th day of May, 2014, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **AVALON APARTMENTS, L.L.C.**, a Texas limited liability corporation (“AVALON” or “Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. In 1991, Texas Avalon, Ltd. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an total amount of \$857,230.00 to rehabilitate Avalon Apartments (“Property”) (HTC file No. 91036 / CMTS No. 954 / LDLD No. 102).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective February 4, 1993, and filed of record at Volume 10941, Page 396 of the Official Public Records of Real Property of Tarrant County, Texas (“Records”). In accordance with Section 2(b) of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.

4. Respondent took ownership of the Property on March 31, 2014 and is subject to the continuing requirements of the LURA.
5. Respondent is a Texas limited liability 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:

6. Respondent has a history of violations and previously signed an Agreed Final Order effective May 25, 2012, agreeing to pay a \$5,000 administrative penalty which was to be fully forgivable provided that Respondent complied with all of the following requirements:
 - a. Respondent to attend next available First Thursday Training;
 - b. Respondent to submit work orders for 2009 Uniform Physical Condition Standards (“UPCS”) violations on or before May 31, 2012;
 - c. Respondent to make Unit 237 ready for occupancy on or before May 31, 2012;
 - d. Respondent to update all tenant files and ensure that each included completed tenant applications, verifications of all sources of income and assets, tenant income certifications, leases and lease addenda, on or before June 31, 2012 in preparation for an onsite review by the Department. During the onsite review, findings would be addressed as follows:
 - i. If units 117, 137, 234, 237, or 241 were occupied and the file monitor was unable to verify eligibility of all current tenants in those units, this would be considered a violation of the Agreed Final Order;
 - ii. If units 117, 137, 234, 237 or 241 were vacant, the file monitor would verify that the unit(s) were ready for occupancy. If a unit was not ready for occupancy, this would be considered a violation of the 2012 Agreed Final Order.
 - iii. If the file monitor found violations relating to other tenant files that are reviewed, a subsequent 90-day deadline for correcting any new violations would be set. If Avalon did not submit corrective documentation on or before the deadline set by the file monitor, TDHCA reserved the right to assess additional administrative penalties outside of the 2012 Agreed Final Order.

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.

The following violations were not resolved as required by the Agreed Final Order and a penalty demand letter was sent. Respondent failed to submit the required \$5,000 penalty payment on or before the February 21, 2013 deadline. The Department referred the file to the Office of the Attorney General and they negotiated a payment plan with Respondent. The following violations remain unresolved:

- a. Respondent failed to make Unit 234 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair;
 - b. Respondent failed to provide evidence meeting minimum TDHCA guidelines to prove that the following UPCS violations from the July 23, 2009 physical inspection had been resolved, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair;:
 - i. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
 - ii. Units 122, 125, 230 – pest infestations (exterminator invoices required);
 - iii. Units 217 and 230 - range hood filters missing;
 - iv. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress;
7. On August 1, 2012, TDHCA sent notice that Respondent had failed to timely submit their 2011 Annual Owner’s Compliance Report, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report.

Parts A and C were submitted on 2/23/2012. Part D was submitted on 7/5/2012. Part B remains outstanding.

8. On July 17, 2012, TDHCA notified Respondent of a regularly scheduled UPCS inspection to be conducted on August 24, 2012. TDHCA attempted to inspect on the scheduled date but Respondent was not present to allow access, so only a limited inspection was performed of the property’s exterior. Inspection reports showed numerous property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notices to Owner), as amended, a 90-day corrective action deadline of December 10, 2012 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Acceptable corrective action was received after the corrective action period had expired.

9. An on-site monitoring review was conducted on July 25, 2012, to determine whether Respondent had resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. As indicated in FOF #8, the file monitor was not able to verify resolution of all prior violations. The review also identified new findings of noncompliance. A monitoring letter was sent on August 15, 2012, but no response was received and the following findings remain uncorrected:

Prior findings that remained unresolved at the time of the review:

- a. Respondent failed to provide evidence meeting minimum TDHCA guidelines to prove that the following UPCS violations from the 2009 physical inspection had been resolved, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair.
 - i. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
 - ii. Units 122, 125, 230 – pest infestations (exterminator invoices required);
 - iii. Units 217 and 230 – range hood filters missing;
 - iv. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress;
- b. Respondent failed to make Unit 234 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair.

New findings:

- c. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 129, 132, 227, 115, 117, 110, 137, 237, and 241, a violation of 10 TEX. ADMIN. CODE § 60.110 (Lease Requirements), which requires certain lease language;
- d. Respondent failed to provide pre-onsite documentation, including entrance questionnaire, unit status report, utility allowance, affirmative marketing plan, written leasing criteria (including required deposits and refund policies), written wait list policy, documents supporting application fees or charges; verification of contact information. Failure to submit the documentation is a violation of 10 TEX. ADMIN. CODE §60.115 (Onsite Monitoring), which requires all developments to make all necessary documentation available to the Department;
- e. Respondent failed to make Unit 121 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standard) which requires units to be decent, safe, sanitary and in good repair;

- f. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 129, 132, 227, 115, and 110, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) which outlines how to properly determine household income.
 - g. Respondent failed to provide Annual Eligibility Certifications for units 122, 123, 124, 125, 126, 127, 130, 133, 224, 225, 226, 227, 228, 229, 230, 114, 115, 116, 118, 119, 120, 217, 104, 105, 107, 108, 109, 111, 112, 202, 204, 205, 207, 208, 209, 211, 212, 134, 135, 136, 139, 140, 141, 235, 236, 238, 239, 240, and 241, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification), which requires developments to annually collect an Annual Eligibility Certification form from each household.
10. On July 7, 2013, TDHCA sent notice that Respondent had failed to timely submit their 2012 Annual Owner's Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.
- Parts A and C were submitted on 4/3/2014. Part D was submitted on 4/11/2014. Part B remains outstanding.
11. The following violations remain outstanding at the time of this order:
- a. Unit 234 not available for rent, as described in FOF # 6 and 9b;
 - b. 2009 UPCS Violations described in FOF #6 and 9a;
 - c. 2011 Annual Owners Compliance Report violation described in FOF # 7;
 - d. Lease violations described in FOF # 9c;
 - e. Pre-onsite documentation violations, as described in FOF # 9d;
 - f. Unit 121 not available for rent, as described in FOF # 9e;
 - g. Household income above limit upon initial occupancy, as described in FOF #9f;
 - h. Annual Eligibility Certification violations, as described in FOF 9g;
 - i. 2012 Annual Owners Compliance Report violation described in FOF # 10;

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TEX. ADMIN. CODE § 60.116 in 2009, 10 TEX. ADMIN. CODE § 60.118 in 2012, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
4. Respondent violated Section 3(g) of the LURA and 10 TEX. ADMIN. CODE §60.118 in 2012 by failing to make two units suitable for occupancy and available for rent.
5. Respondent violated 10 TEX. ADMIN. CODE §60.105 in 2012 and 10 TEX. ADMIN. CODE §10.603 in 2013 by failing to submit Annual Owner's Compliance Reports for the years 2011, and 2012, respectively;
6. Respondent violated 10 TEX. ADMIN. CODE §60.110 in 2012 by failing to execute required lease provisions.
7. Respondent violated 10 TEX. ADMIN. CODE §60.115 in 2012 by failing to provide required pre-onsite documentation.
8. Respondent violated representations made on page 1 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2012 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 5 units.
9. Respondent violated 10 TEX. ADMIN. CODE §60.111 by failing to annually collect Annual Eligibility Certification forms for 49 units.
10. 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.
11. 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.
12. 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.

13. An administrative penalty of \$10,000.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of \$10,000.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as indicated in Attachment 1 and submit work orders in the correct format, including all necessary parts, to document the corrections to TDHCA on or before August 6, 2014.

IT IS FURTHER ORDERED that Respondent shall fully correct all file monitoring violations as indicated in Attachments 2 and 3, and submit full documentation of the corrections to TDHCA on or before August 6, 2014.

IT IS FURTHER ORDERED that Respondent shall convert unit 234 to residential use and provide evidence of the conversion to TDHCA as indicated at Attachment 2 on or before August 6, 2014.

IT IS FURTHER ORDERED that a \$2,500.00 portion of the administrative penalty shall be deferred and forgiven if owner completes the material LURA amendment process regarding the office in unit 121 and submits the necessary \$2,500.00 processing fee, regardless of whether the amendment is approved;

IT IS FURTHER ORDERED that, if Respondent chooses to convert unit 121 from an office to residential unit instead of submitting a material LURA amendment request, the conversion must be complete and evidence of the conversion must be submitted to TDHCA as indicated at Attachment 2 on or before August 6, 2014.

IT IS FURTHER ORDERED that, if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of an additional \$2,500.00 portion of the assessed administrative penalty amount, and that this \$2,500.00 portion 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 administrative penalty, with any necessary reductions as indicated above, 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>. When 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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on 5/8, 2014.

By: /s/ J. Paul Oxe
Name: J. Paul Oxe
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 8th day of May, 2014, personally appeared J. Paul Oxe, 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 8th day of May, 2014, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

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

Attachment 1

UPCS instructions

2009 UPCS Violation List:

1. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
2. Units 122, 125, 230 – pest infestations (exterminator invoices required);
3. Units 217 and 230 – range hood filters missing;
4. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress;

Instruction: Each violation indicated above must be fixed and you must prepare and submit sufficient documentation of correction as indicated by the guidelines below via CMTS on or before August 6, 2014.

Guidelines: Ideally, a separate work order is created by Building or Unit for deficiencies found in each area. For example, the work order for a single unit may indicate all identified deficiencies listed for that unit if each correction is individually described. However, most developments generate a separate work order for each deficiency to ensure the response is adequately complete and the description of each corrective action is clearly detailed. Five pieces of information are needed on work orders or invoices:

1. The location of the deficiency, i.e. Bldg. 5 Unit 502 or Site- near outside gate, etc.
2. Description of the deficiency, i.e. Damaged Doors, Hardware, locks – Bedroom door won't latch properly. Site-Hazards Other- Broken Glass.
3. How the deficiency was corrected. Just a few quick words are sufficient, i.e. “replaced bedroom door latch” or “adjusted bedroom door latch”. “Removed broken glass.” “Sheetrock repair, taped, floated, and painted”. Conversely, words such as “fixed,” “done,” “complete” are inadequate and are NOT acceptable.
4. The date the deficiency was corrected. The department requires a correction date in order to accept the documentation. If there is no date of correction listed, the deficiency is not considered corrected.
5. The signature of the person who either performed the repair or acknowledges that the repair was performed satisfactorily. This is very important. Someone must certify that the correction was acceptably completed.

Please submit all of the work orders in the same order that they appear in the list above. This facilitates faster processing and increases the chances that all violations will be fully addressed.

For repairs such as concrete repairs, roofing, etc. where vendors are utilized instead of onsite maintenance staff, please include the scope of work with the dated invoice of the contractor that performed the work.

For pest control, the Structural Pest Control Act (Chapter 1951 of the Occupations Code) requires licensing of businesses and individuals that perform structural pest control for hire. Additionally, persons performing pest control at an apartment building must be licensed. As a result, you must submit a pest control invoice by a licensed contractor that includes a date, contractor signature, units treated and the type of pest treated.

Finally, you may submit photographs in support of the above if you wish. However, they are only necessary if the TDHCA asks for them as specific support for a deficiency still in question. If you do submit photographs, please make sure that they are labeled and supporting work orders and or invoices are attached. Photographs, by themselves, are not acceptable documentation of correction.

Attachment 2

Tenant File Instructions

Submit the following fully acceptable file monitoring documentation via CMTS on or before August 6, 2014:

1. Part B of the 2011 and 2012 Annual Owner's Compliance Reports. If you have technical problems, please contact TDHCA's database administrator, James Roper, at 512.936.7751 or james.roper@tdhca.state.tx.us;
2. Unit 121: Choose option (a) or (b):
 - (a) If you choose to submit a material LURA amendment request, you must:
 - i. Submit the \$2,500 processing fee;
 - ii. Follow the material LURA amendment instructions beginning at page 17 of <http://www.tdhca.state.tx.us/asset-management/docs/PostCarryoverActivitiesManual.pdf> and submit the required documentation to TDHCA.
 - (b) If you choose to convert unit 121 from an office to a residential unit instead of submitting a material LURA amendment request:
 - i. The conversion must be complete and you must submit related work orders regarding the make-ready process, along with a letter certifying that the unit is ready for occupancy and photographs of the unit.
 - ii. In addition:
 1. If the unit is occupied as of August 6, 2014, you must submit copies of the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice.
 2. If the unit is vacant as of August 6, 2014, you must submit the full tenant file as soon as the unit is occupied by a qualified household. A complete tenant file includes: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice. *Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement (i) above has been fulfilled and the unit is vacant as of August 6, 2014.*

3. Unit 234:

(a) The conversion must be complete and you must submit related work orders regarding the make-ready process, along with a letter certifying that the unit is ready for occupancy and photographs of the unit.

(b) In addition:

i. If the unit is occupied as of August 6, 2014, you must submit copies of the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice.

ii. If the unit is vacant as of August 6, 2014, you must submit the full tenant file as soon as the unit is occupied by a qualified household. A complete tenant file includes: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice. *Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement (a) above has been fulfilled and the unit is vacant as of August 6, 2014.*

4. Lease violations for units 129, 132, 227, 115, 117, 110, 137, 237, and 241: 10 TAC §60.110 (now §10.613) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period and for 3 years after termination of a LURA in accordance with Revenue Ruling 2004-82. In addition, HTC developments are prohibited 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. These prohibitions must be included in the lease or a lease addendum. The Texas Apartment Association has an affordable lease addendum that has incorporated this required language and may be used if you are a TAA member.

Execute an appropriate lease addendum for all units in the Development, including the units listed above, and submit a sample lease addendum to TDHCA along with a letter indicating that the addendum has been signed by all households. If you do not use TAA forms and are uncertain whether your lease addendum form is acceptable, please submit a sample as soon as possible so that TDHCA staff can review and approve it.

5. Pre-onsite documentation violations. Submit all of the following documentation:

- (a) Entrance Interview Questionnaire (form is available via CMTS);
- (b) Unit Status Report (USR) reporting occupancy as of December 31, 2013 (report is available in CMTS);
- (c) Copies of current Utility Allowance (Public Housing Authority schedule, letter from local provider or other Department approved documentation) and documentation of allowance used for the two years prior;
- (d) Current Affirmative Marketing Plan, along with evidence of special outreach to those identified as being least likely to apply and the disabled. Examples of acceptable special outreach evidence includes letters, flyers, etc;
- (e) Written leasing criteria, including required deposits and refund policy;
- (f) Written wait list policy;
- (g) Documents supporting the costs charged to tenants for any application fees or charges; and
- (h) Verification that the contact information currently entered into CMTS is correct.

6. Household income above limit upon initial occupancy violations for units 110, 115, 129, 132, and 227. If units are occupied by a qualified household that occupied the unit as of the date of the last onsite review that was conducted on July 25, 2012, follow the instructions below.

[NOTE – SPECIFIC FILE INSTRUCTIONS HAVE BEEN OMITTED FROM THIS SECTION IN THE VERSION OF THE AGREED FINAL ORDER TO BE UPLOADED TO THE WEB BECAUSE THEY ARE NOT AVAILABLE IN AN ACCESSIBLE FORMAT]

- continued from page 13 regarding Household income violations - If units 110, 115, 129, 132, or 227 are not occupied by a qualified household or the residents have changed since July 25, 2012, follow instructions in the chart below.

7. Annual Eligibility Certification violations for units 122, 123, 124, 125, 126, 127, 130, 133, 224, 225, 226, 227, 228, 229, 230, 114, 115, 116, 118, 119, 120, 217, 104, 105, 107, 108, 109, 111, 112, 202, 204, 205, 207, 208, 209, 211, 212, 134, 135, 136, 139, 140, 141, 235, 236, 238, 239, 240, and 241. If unit is occupied by a qualified household that occupied the unit as of the date of the last onsite review that was conducted on July 25, 2012, complete an Annual Eligibility Certification for the current year and submit for review. If unit is not occupied by a qualified household or the residents have changed since July 25, 2012, follow instructions in the chart below.

Circumstance with respect to units listed above	Required Action
If unit is occupied by a new qualified household that occupied the unit after July 25, 2012	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none"> 1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. <i>Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none"> 1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA. 2. As soon as the unit become available and is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. <i>Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>

If unit is vacant	<ol style="list-style-type: none">1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. <i>Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>
-------------------	---

Attachment 3

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:** The Department does not have a required form to screen households, but we make this form available for that purpose. It is required that households 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.
2. **Verify Income:** 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. **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;
 - b. **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;
 - c. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits;
 - d. **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;
 - e. **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.

3. **Verify Assets:** 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. 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 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.
4. **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 (and be signed by) each adult household member.
5. **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 Tex. Admin. Code §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 Tex. Admin. Code §10.613(e) 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. The Texas Apartment Association 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.

6. **Fair Housing Choice Disclosure Notice:** Must be signed by all new adult applicants at the time of their application, and no more than 120 days prior to the effective date of their lease.

If a household was not provided this notice prior to move in or transfer, the property must ensure that the form is signed no more than 120 days and no less than 30 days prior to the date that each household is legally obligated to provide written notice of their intention to terminate or renew their lease. A calculator is available at <http://www.tdhca.state.tx.us/pmcdocs/FHDNoticeCalculator.xls> in order to help calculate the appropriate execution date.