

ENFORCEMENT ACTION AGAINST
PETER HUU LE AND DIANA THI NGUYEN
WITH RESPECT TO
DALE MEADOWS F/K/A ST. JOHN COLONY
(HOME FILE #530200001/CMTS #4001)

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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 June, 2016, 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 **PETER HUU LE AND DIANA THI NGUYEN**, husband and wife (“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 2002, Saint John Colony Neighborhood Association (“Original Owner”) was awarded an allocation of HOME funds by the Board, in an annual amount of \$324,000 to build and operate Dale Meadows f/k/a St. John Colony (“Property”) (HOME file No. 530200001 / CMTS No. 4001 / LDLD No. 130).

2. Original Owner signed a Land Use Restriction Agreement (“LURA”) regarding the Property. The LURA was effective in 2004, and filed of record at Volume 356, Page 200 of the Official Public Records of Real Property of Caldwell County, Texas (“Records”). The property was sold and the purchaser, Dale Meadows, LLC, signed an Amended and Restated Land Use Restriction Agreement (“Amended LURA”) on September 27, 2011, filed in the Records at Document Number 120785. In accordance with Section 7.7 of the LURA, as amended, 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.
3. Respondent took ownership of the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Comply and Amendment), effective February 18, 2014, and filed the same in the Records at Document Number 140660, thereby acknowledging that Respondent is bound to the terms of the LURA.
4. Respondent 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 May 18, 2015, 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 December 1, 2015, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 200 and 201, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2.4 of the LURA, which require screening of tenants to ensure qualification for the program. The finding was corrected March 25, 2016, after intervention by the Enforcement Committee and 115 days past the deadline.
 - b. Respondent failed to provide a Tenant Income Certification for units 201 and 307, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to annually collect an income certification form from each household. The finding was corrected March 25, 2016, after intervention by the Enforcement Committee and 115 days past the deadline.
 - c. Respondent failed to maintain written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The rule has since been amended at 10 TEX. ADMIN. CODE §10.610

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.

(Written Policies and Procedures). A plan was submitted on March 25, 2016, but did not meet all rule requirements and the finding remains unresolved.

- d. Respondent failed to provide a Notice of Amenities and Services to units 108 and 200, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which, at the time of move-in for these units, 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”. The finding was corrected March 25, 2016, after intervention by the Enforcement Committee and 115 days past the deadline.
 - e. Respondent failed to provide the Fair Housing Disclosure Notice for units 108, 200, and 201, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which, at the time of move-in for these units, required 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”. The finding was corrected March 25, 2016, after intervention by the Enforcement Committee and 115 days past the deadline.
 - f. Respondent failed to execute required lease provisions or exclude prohibited lease language, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. The finding remains unresolved.
6. The following violations remain outstanding at the time of this order:
- a. Tenant Selection Criteria violation described in FOF #5.c;
 - b. Lease violation 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.
2. Respondent is a “housing sponsor” as that term is defined in TEX. GOV'T CODE §2306.004(14).
3. Respondent violated Section 2.4 of the LURA and 10 TEX. ADMIN. CODE §10.611 in 2015 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for two units;
4. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2015, by failing to provide a tenant income certification to ensure qualification for the program;

5. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2015, by failing to provide a written tenant selection criteria that meet minimum standards;
6. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to execute the Notice of Amenities and Services for two units;
7. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to execute the Fair Housing Disclosure Notice for three units;
8. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to execute required lease language for all units;
9. 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.
10. 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.
11. 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.
12. An administrative penalty of \$1,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.302.

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, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that all owner representatives for Dale Meadows f/k/a St. John Colony, who process tenant files shall attend First Thursday Income Eligibility Training on or before August 29, 2016.

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 August 29, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TEX. GOV'T 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 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 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 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 June 30, 2016.

By: /s/ J Paul OXer
Name: J. Paul OXer
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 §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 1st day of July, 2016, 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/ Melissa M. Whitehead
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 1st day of July, 2016, 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/ Melissa M. Whitehead
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, _____, a notary public in and for the State of _____, on this day personally appeared _____, known to me or proven to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

- 1. "My name is Peter H Le, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
- 2. I hold the office of Owner for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
- 3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

PETER H LE, husband

By: /s/ Peter H Le
Name: Peter H Le
Title: Owner

Given under my hand and seal of office this _____ day of _____, 2016.

/s/ Daniel L Brown
Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My Commission Expires: 2/21/2017

DIANA THI NGUYEN, wife

By: /s/ Diana Ngyuyen

Name: Diana Ngyuyen

Title: _____

Given under my hand and seal of office this _____ day of _____, 2016.

Daniel L. Brown

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 2/21/2017

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>

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

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

Submit updated written tenant selection criteria addressing all requirements at [10 TEX. ADMIN. CODE §10.610](#), including but not limited to the requirement to state that the Development will comply with state or federal fair housing and anti-discrimination laws. Staff recommends using that rule as a checklist.

5. **Lease language for all units** – Respondent failed to provide households with a Good Cause Eviction lease addendum. Evictions and terminations of tenancy for other than good cause are prohibited in accordance with [10 Tex. Admin. Code §10.613](#). For rental properties participating in the HOME program, federal regulations 24 CFR 92.253 provide that a property owner may not evict a resident or refuse to renew a lease except for good cause. In addition, for HOME program units, the property owner must provide a resident with at least 30 days written notice before either seeking an eviction or not renewing the lease. The written notice must specify the grounds for eviction or nonrenewal of the lease.

Provide each household in the development with a Good Cause Eviction lease addendum and submit a copy of each household's executed addendum to the Department for review. If a unit is vacant, the finding will remain uncorrected but will not be in violation of this Agreed Final Order provided that you submit a letter certifying that the unit is vacant but ready for occupancy.

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