

ENFORCEMENT ACTION AGAINST  
AUSTIN GATEWAY, LTD. WITH  
RESPECT TO  
GATEWAY APARTMENTS  
(HTC FILE # 94093 / CMTS # 1246)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 15<sup>th</sup> day of December, 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 **AUSTIN GATEWAY, LTD.**, a Texas limited partnership (“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 1994, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$25,404 to acquire and rehabilitate Gateway Apartments (“Property”) (HTC file No. 94093 / CMTS No. 1246 / LDLD No. 331).
2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective March 6, 1997, and filed of record at Volume 13041, Page 0323 of the Official Public Records of Real Property of Travis County, Texas.

3. Respondent is a limited partnership that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

4. Property has a history of violations and previously executed an Agreed Final Order on January 6, 2015.
5. A new on-site monitoring review was conducted on January 20, 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 July 3, 2016, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
  - a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), 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. The violation remains uncorrected.
  - b. Respondent failed to collect data for units 106 and 205, a violation of 10 TAC §10.612 (Tenant File Requirements) and Section 4 of the LURA, which require developments to annually collect an Annual Eligibility Certification form from each household. The violation for unit 205 was corrected on October 1, 2016, 90 days past the deadline, after intervention by the Enforcement Committee. The violation for unit 106 remains unresolved.
  - c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 103, 106, and 206, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. All three violations remain unresolved.
  - d. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation was corrected on October 1, 2016, 90 days past the deadline, after intervention by the Enforcement Committee.
  - e. Respondent failed to provide the Fair Housing Disclosure Notice for units 106 and 205, a violation of 10 TAC §10.608 (Lease Requirements), which, at the time of move-in for this unit during November of 2013, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. The violation for unit 205 was corrected on October 1, 2016, 90 days past the deadline, after intervention by the Enforcement Committee. This form has been combined with the Notice of Amenities and Services into a

replacement document called a “Tenant Rights and Resources Guide”, which also has not been provided to unit 106. The affected household occupying unit 106 at the time of the review vacated without executing the required documentation and the finding is uncorrectable.

- f. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 103 and 206, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation for unit 103 was corrected on October 1, 2016, 90 days past the deadline, after intervention by the Enforcement Committee. The affected household occupying unit 206 at the time of the review vacated without executing the required documentation. That finding is uncorrectable.
6. On May 11, 2016, TDHCA sent notice that Respondent had failed to timely submit their 2015 Annual Owner’s Compliance Report that came due on April 30, 2016, reporting data as of December 31, 2015, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report. The final parts were submitted on September 30, 2016, 153 days past the deadline.
  7. The following violations remain outstanding at the time of this order:
    - a. Affirmative marketing violation described in FOF #5.a;
    - b. Data collection violation for unit 106 described in FOF #5.b;
    - c. Household income violations for units 103, 106, and 206, described in FOF #5.c;
    - d. Uncorrectable lease violation for unit 106 described in FOF #5.e;
    - e. Uncorrectable lease violation for unit 206 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, 10 TAC §2.
2. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.617 in 2016, by failing to provide a complete affirmative marketing plan and marketing materials;
5. Respondent violated 10 TAC §10.612 and Section 4 of the LURA in 2016 by failing to collect an Annual Eligibility Certification for units 106 and 205;

6. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2016 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 103, 106, and 206;
7. Respondent violated leasing requirements in 10 TAC §10.613 in 2016, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
8. Respondent violated 10 TAC §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 106 and 205;
9. Respondent violated leasing requirements in 10 TAC §10.613 in 2016, by failing to provide a Tenant Rights and Resources Guide to units 103 and 206, and have the households sign acknowledgment forms;
10. Respondent violated 10 TAC §10.607 in 2016 by failing to submit Annual Owner's Compliance Reports for the year 2015;
11. 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.
12. 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.
13. 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.
14. An administrative penalty of \$1,500 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 \$1,500, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before January 29, 2017.

**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 January 29, 2017.

**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 in the amount of \$1,000, and that remaining 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, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining 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](mailto: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:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> 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 Attachment 3, 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.

*[Remainder of page intentionally blank]*

*Approved by the Governing Board of TDHCA on December 15th, 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** §

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**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 15th day of December, 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** §

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**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 15th day of December, 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



## Attachment 1

### File Monitoring Violation Resources and Instructions

- a. 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)
- b. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
- c. Technical support and training presentations are available at the following links:  
Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>
- d. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
- e. **Important notes -**
  - i. Do not backdate any documents.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.
- f. **Affirmative marketing plan** – Submit complete Affirmative Marketing Plan along with outreach marketing materials, as indicated below. A webinar presentation is available at:  
<http://www.tdhca.state.tx.us/pmcomp/presentations.htm>.

#### Frequent problems observed by TDHCA that cause plans to be rejected:

1. Not using HUD Form 935.2A;
2. Not correctly identifying populations “least likely to apply”. In general, populations that are least likely to apply *might* include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, families with children, and the disabled. Analysis is required to determine which of these groups are least likely to apply;
3. Not affirmatively marketing to the disabled population. All properties must market to the disabled.
4. Not correctly identifying organizations that are specifically associated with groups identified as “least likely to apply”. For example, marketing to the Housing Authority or placing ads in Craigslist would be considered general marketing, not affirmative marketing, because both serve all persons living in the area;
5. Not including evidence of special outreach efforts, such as marketing letters, to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live;
6. Not including in the outreach marketing materials a sentence in English and Spanish that prospective tenants can access if reasonable accommodations are needed to complete the application process.



To correct:

1. Identify the appropriate housing market in which outreach efforts will be made;
2. Determine the groups that are least likely to apply. The Affirmative Marketing Web Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Since your property has under 40 units, you must enter its census tract (48453001503) into the right side of this tool rather than selecting the development name from the drop-down menu on the left side of the tool. Persons with disabilities must always be selected as a group least likely to apply. The Affirmative Marketing Web Tool for census tract 48453001503 currently shows the following groups as least likely to apply: Persons with Disabilities, Black/African American, and Asian.
3. Identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply, including organizations that assist persons with disabilities. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing. The same is true for the Department Of Human Services, Texas Work Force Solutions, and Texas Neighborhood Service. An Asian Chamber of Commerce or Asian publication could be an avenue to market to the Asian population if that group is identified as one that is least likely to apply. Similarly, local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc, could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association.
4. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
5. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
6. Send marketing outreach materials to the identified organizations, ensuring that said marketing 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.”*
7. Submit all documentation to the Department via CMTS for review.

**g. Household income violations for units 103, 106, and 206:**

Follow the instructions in the letter at Attachment 2.

For the purposes of this Agreed Final Order, the only permitted deviation from those instructions relates to documenting income using an “Income Verification for Households with Section 8 Certificates” executed by the Public Housing Authority for tenants who receive Section 8 assistance. The letter at Attachment 2 states that those verifications will not be accepted as corrective action and may only be used going forward. The Compliance Division has reviewed that direction and, although the Department prefers verifications in the form outlined in the letter at Attachment 2 for households such as units 103, 106, and 203, where the necessary verifications were not collected upon initial occupancy, the Department will accept “Income Verification for Households with Section 8 Certificates” forms signed by the Public Housing Authority as evidence of verified income for units 103, 106, and 206.

**Attachment 2**

**Compliance Monitoring Letter dated 11/9/2016**

*[omitted from web version because screen shots are not accessible.*

*Please contact Ysella Kaseman at [ysella.kaseman@tdbca.state.tx.us](mailto:ysella.kaseman@tdbca.state.tx.us) if you require a copy]*

*[page omitted from web version because screen shot is not accessible.  
Please contact Ysella Kaseman at [ysella.kaseman@tdbca.state.tx.us](mailto:ysella.kaseman@tdbca.state.tx.us) if you require a copy]*

*[page omitted from web version because screen shot is not accessible.*  
*Please contact Ysella Kaseman at [ysella.kaseman@tdbca.state.tx.us](mailto:ysella.kaseman@tdbca.state.tx.us) if you require a copy]*

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*Please contact Ysella Kaseman at [ysella.kaseman@tdbca.state.tx.us](mailto:ysella.kaseman@tdbca.state.tx.us) if you require a copy]*

### Attachment 3:

## 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)

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(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