

ENFORCEMENT ACTION AGAINST  
VALLEY ISLAND PALMS, LP WITH  
RESPECT TO ISLAND PALMS  
APARTMENTS (HTC FILE # 95034 /  
CMTS # 1341)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

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

On this 12<sup>th</sup> day of March, 2015, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **VALLEY ISLAND PALMS, LP**, 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. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 1995, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,193,996.00 to build and operate Island Palms Apartments (“Property”) (HTC file No. 95034 / CMTS No. 1341 / LDLD No. 217).
3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective May 29, 1997, and filed of record at Document Number 644516 of the Official Public Records of Real Property of Hidalgo County, Texas (“Records”).
4. Respondent is a Texas limited partnership 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 Violations<sup>1</sup>:

5. An on-site monitoring review was conducted on October 31, 2013, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a March 17, 2014, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain outstanding at the time of this order:
  - a. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.607 (Utility Allowances), which requires all developments to establish a utility allowance. At the time of the monitoring review, the utility allowance from the local public housing authority that was being used by the Property did not have an effective date and had not been implemented. Partial corrective documentation was received; however, an incorrect calculation was used for the two bedroom allowance. Additional corrective documentation was received to address the two bedroom allowance, but the documentation indicated that tenants were not responsible for paying natural gas water heating. Any change to utilities paid by the tenant must be submitted to the Department for approval prior to implementation and no request was received. Respondent has since indicated verbally that this was an error and tenants are not responsible for paying natural gas water heating but must submit documentation. The finding remains unresolved.
  - b. Respondent failed to provide the Fair Housing Disclosure Notice for units 71, 223, 424, and 604, a violation of 10 TEX. ADMIN. CODE § 10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period. Corrective documentation was received, but the forms were not completed within the appropriate signature periods and the findings remain unresolved.

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<sup>1</sup> 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.

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. 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 TEX. ADMIN. CODE §10.607 in 2013, by failing to properly calculate a utility allowance.
5. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 71, 223, 424, and 604.
6. 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.
7. 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.
8. 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.
9. An administrative penalty of \$200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$200.00, subject to deferral as further ordered below.

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

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

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$200.00 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

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

<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 the terms of this Agreed Final Order shall be published on the TDHCA website.

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## Attachment 1

### **File Monitoring Instructions**

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

Once uploaded, email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to indicate that documentation is ready for review.

**1. Utility allowance finding:** Revised utility allowance calculations for one, two, and three bedroom units were received, but the calculations indicated that tenants are now responsible for paying natural gas water heating. The Department does not have record of a request to change the utilities paid for by the tenant as required per 10 TEX. ADMIN. CODE §10.614(b).

During the Enforcement Committee Informal Conference on February 24, 2015, Respondent stated verbally that this was a mistake. According to Respondent, the Property pays natural gas water heating and does not pass the cost along to residents.

If the utility allowance submission that included natural gas water heating was a mistake and tenants are not responsible for paying this cost, submit a letter explaining the error and requesting that TDHCA reconsider the finding. Also include a correctly calculated utility allowance omitting natural gas water heating, along with a revised Unit Status Report reflecting the correct allowance.

If the utility allowance submission that included natural gas water heating was not a mistake and tenants are responsible for paying this cost, submit a request for tenants to now be responsible for natural gas water heating. For instructions and necessary documentation needed to obtain approval, please visit the Department's utility allowance page here: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>. Please note that if the public housing authority has updated the utility allowance schedule, the most current version must be used within ninety days it was made available to the public.

### **2. Fair Housing Disclosure Notice Finding for Units 71, 223, 424, and 604:**

An amendment to 10 TEX. ADMIN. CODE §10.613 has condensed the Fair Housing Disclosure Notice and the Tenant Services and Amenities Notice into a single document called the Tenant Rights and Resources Guide, available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm> along with an Acknowledgement form that must be signed by residents.

Complete the guide, then post a laminated copy in the office.

Provide a copy to the tenants in units 424 and 604, then have them sign the Acknowledgment. Submit a copy of the completed guide and Acknowledgements for units 424 and 604.

The Unit Status Report indicates that the households that were present in units 71 and 223 at the time of the 10/31/2013 file monitoring review have since moved out; therefore, the finding is uncorrectable for these units. Please include the move-out date in your response and acknowledge that the finding is uncorrectable.