

|                                    |   |                     |
|------------------------------------|---|---------------------|
| ENFORCEMENT ACTION AGAINST         | § | BEFORE THE          |
| HALE CENTER HOUSING                | § | TEXAS DEPARTMENT OF |
| AUTHORITY WITH RESPECT TO          | § | HOUSING AND         |
| PLAINVIEW II (TRIPLEX)             | § | COMMUNITY AFFAIRS   |
| (HOME FILE # 532315 / CMTS # 2658) | § |                     |

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 14<sup>th</sup> day of December, 2017, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **HALE CENTER HOUSING AUTHORITY**, a public housing authority (“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, Caprock Community Action Association, Inc. (“Prior Owner”) was awarded a HOME loan in the amount of \$204,460 to build and operate Plainview II (Triplex) (“Property”) (HOME file No. 532315 / CMTS No. 2658 / LDLD No. 117).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective August 19, 1994, and filed of record at Volume 851, Page 397 of the Official Public Records of Real Property of Hale County, Texas (“Records”). In accordance with Section 7.8 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.

3. Respondent took ownership of the Property and signed an Assumption Agreement with TDHCA to assume the loan and all duties imposed, effective March 17, 2014, and filed the same in the Records at Document Number 2014-001000.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. On May 11, 2016, TDHCA sent notice that Respondent had failed to timely submit their 2015 Annual Owner's Compliance Report, a violation of 10 TAC §10.607(Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The final part was submitted on August 16, 2017, 473 days past the deadline, and after intervention by the Enforcement Committee.
6. An on-site monitoring review was conducted on August 31, 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 May 15, 2017, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
  - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and 10 TAC §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. This violation remains unresolved;
  - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 302, 304, and 306, a violation of 10 TAC §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. This violation remains unresolved;
  - c. Respondent failed to verify occupancy of units 302, 304 and 306 by families consisting of no fewer than five individuals, a violation of Section 2.3 of the LURA. These three households were not qualified for occupancy, so the household sizes are unknown. This violation remains unresolved;
  - d. Respondent failed to execute a lease for unit 304, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires all tenant files to include a lease, and 10 TAC §10.613 (Lease Requirements), which outlines mandatory language that must be included in leases. This violation remains unresolved;

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 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.

- e. Respondent failed to properly calculate and establish a utility allowance, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. The entrance interview questionnaire submitted for this onsite review indicates that Respondent is using the public housing authority (PHA) utility allowance method, which is unacceptable for this property type. Respondent must use the HUD utility schedule model established by TDHCA. This violation remains unresolved;
  - f. Respondent failed to provide the Fair Housing Disclosure Notice for units 302, 304, or 306, a violation of 10 TAC §10.613 (Lease Requirements), which, at the time of move-in for each unit, 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”, which also has not been provided. This violation remains unresolved;
  - g. Respondent failed to provide a Notice of Amenities and Services for units 302, 304, or 306, a violation of 10 TAC §10.613 (Lease Requirements), which, at the time of move-in for each unit, 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”, which also has not been provided. This violation remains unresolved;
  - h. 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. This violation remains unresolved;
  - i. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 302, 304, or 306, 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;
  - j. Respondent failed to execute required lease provisions or exclude prohibited lease language, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction or non-renewal without good cause, except by judicial process. This violation remains unresolved; and
  - k. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements.
7. The following violations remain outstanding at the time of this order:
- a. Pre-onsite documentation violation described in FOF #6.a;
  - b. Household income violations described in FOF #6.b;

- c. Occupancy restriction violations described in FOF #6.c;
- d. Lease violation described in FOF #6.d;
- e. Utility allowance violation described in FOF #6.e;
- f. Fair housing disclosure violation described in FOF #6.f;
- g. Notice of amenities and services violation described in FOF #6.g;
- h. Tenant rights and resources guide violations described in FOF #6.h and 6.i;
- i. Lease violations described in FOF #6.j; and
- j. Written policies and procedures, including tenant selection criteria, violations described in FOF #6.k.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.607 in 2016 by failing to submit all parts of the Annual Owner's Compliance Report for the year 2015;
4. Respondent violated 10 TAC §10.607 and §10.618 in 2016, by not submitting pre-onsite documentation including a unit status report and entrance interview questionnaire in preparation for the monitoring review;
5. Respondent violated 10 TAC §10.611 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 302, 304, and 306;
6. Respondent violated Section 2.3 of the LURA in 2016 by failing to ensure that units were occupied by households with at least 5 members;
7. Respondent violated 10 TAC §10.612 in 2016 by failing to executed a lease for unit 304;
8. Respondent violated 10 TAC §614 in 2016 by failing to properly calculate a utility allowance;
9. Respondent violated 10 TAC §10.613 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 302, 304, and 306;
10. Respondent violated 10 TAC §10.613 in 2014, by failing to execute the Notice of Amenities and Services for units 302, 304, and 306;
11. Respondent violated leasing requirements in 10 TAC §10.613 in 2015, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;

12. Respondent violated leasing requirements in 10 TAC §10.613 in 2015, by failing to provide a Tenant Rights and Resources Guide for units 302, 304, and 306, and have the households sign acknowledgment forms;
13. Respondent violated 10 TAC §10.610 in 2016, by not maintaining written policies and procedures, including tenant selection criteria, meeting minimum TDHCA requirements;
14. 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.
15. 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.
16. 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.
17. An administrative penalty of \$1,000 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 \$1,000, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 12, 2018.

**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, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, 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](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<br>Attn: Ysella Kaseman<br>221 E 11 <sup>th</sup> St<br>Austin, Texas 78701 | TDHCA<br>Attn: Ysella Kaseman<br>P.O. Box 13941<br>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 Exhibit 4, 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 12/14, 2017.

By: /s/ J.B. Goodwin  
Name: J.B. Goodwin  
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 14th day of December, 2017, personally appeared J.B. Goodwin, 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 14th day of December, 2017, 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/ Leah Sargent Rosas  
Notary Public, State of Texas



## Exhibit 1

### File Monitoring Violation Resources and Instructions

1. 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)
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:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>
4. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. All corrections must be submitted via CMTS: See link for steps to upload documents <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Pre-onsite documentation** – Will be corrected when you submit acceptable written tenant selection criteria and a waiting list policy, both of which are part of # 4 below.
6. **Written policies and procedures**

How to prepare compliant criteria: First watch the webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements at [10 TAC §10.610](#), including but not limited to tenant selection criteria and a wait list policy. Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy.

What to submit: Once your written policies and procedures are complete, the owner must review the criteria, then sign and upload to CMTS (1) the applicable Owner Certification included at *Exhibit 2* - AND - a copy of the complete written policies and procedures.
9. **Utility Allowance** – Respondent has submitted an Entrance Interview Questionnaire, indicating that they elected to use the public housing authority (PHA) method. This method is not permitted for your program and you must use the utility allowance established by TDHCA using the HUD utility schedule model (*see Exhibit 3*). Please note that a utility allowance is not an amount that you will charge to tenants; it is an estimate of how much the households pay toward utilities, to ensure that their total housing expenses are appropriately restricted.

What to do: Implement the new utility allowance indicated at *Exhibit 3*. Verify that rents are properly restricted by ensuring that the tenant paid portion, plus the utility allowance, plus all mandatory fees is at or below the maximum rent published by TDHCA.

What to submit: Update the Unit Status Report to reflect the new utility allowance and submit via CMTS. Rent will be tested by the Department development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

**10. Lease notice violations, including Tenant Rights and Resources Guide, Fair Housing Disclosure Notice, and Notice of Amenities and Services.**

Actions to perform: The Fair Housing Disclosure Notice and the Notice of Amenities and Services have been combined and replaced by a new form called the Tenants Rights and Resource Guide (“Guide”). Implement the Guide as indicated at 10 TAC §10.613(k). Customize the Guide form that is available on the Forms webpage. Post customized and laminated Guide in a common area of the leasing office. Provide a copy to the households in units 302, 304, and 306, and have each household sign the Tenant Rights and Resources Guide Acknowledgment available on the Forms webpage. Going forward, provide a copy of the Guide to each household during the application process and upon any subsequent change to the amenities or services and have the households sign Acknowledgments.

What to submit: The owner must review the applicable Owner Certifications at Exhibit 2 (there are multiple for this finding), verify that all requirements described by the certifications have been met, then submit a signed Owner Certification via CMTS. *Only submit the signed Owner Certifications for these findings; do not submit any further documentation for these findings.*

**11. Lease violation for unit 304:** All units must have a written lease between the tenant and the owner of the property, with a period of not less than one year unless by mutual agreement between the tenant and the owner.

Actions to perform: Provide household in unit 304 with a lease or lease addendum that complies with TDHCA requirements at 10 TAC §10.613, including but not limited to the requirement to specifically state in the lease or in an addendum to the lease that evictions or non-renewal of leases for other than good cause are prohibited.

What to submit: The owner must review the applicable Owner Certification at Exhibit 2, verify that all requirements described by the certification has been met, then submit the signed Owner Certification via CMTS. *Only submit the signed Owner Certifications for these findings; do not submit any further documentation for these findings.*

**12. Failure to provide special needs housing:** Units 302, 304, and 306 must be continuously available for occupancy by families consisting of no fewer than five individuals. Follow the corrective action for violation #13 below.

**13. Household income above limit upon initial occupancy / unit not leased to qualified households:** Follow the instructions in the table below with respect to units 302, 304, and 306, and submit complete documentation via CMTS:

| Circumstance with respect to units listed above                           | Instruction                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If unit is occupied by a qualified household                              | Submit the full tenant file*.                                                                                                                                                                                                                                                                                                                                                        |
| If unit is occupied by a nonqualified household on a month-to-month lease | <p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.**</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 2/12/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p> |

|                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>If unit is occupied by a nonqualified household with a non-expired lease</p> | <p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.**</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 2/12/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>                                                                                                                                                                                                                                                                                        |
| <p>If unit has been vacant <i>more than</i> 30 days</p>                         | <p>A. Unit must be made ready for occupancy and a letter certifying that it is ready for occupancy must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 2/12/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>                                                                                                                                                                                                                       |
| <p>If unit has been vacant <i>less than</i> 30 days</p>                         | <p>A. If unit is ready for occupancy, a letter certifying that it is ready for occupancy must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 2/12/2018 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p> |

*\*Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, Tenant Rights and Resources Guide Acknowledgment, and a copy of the tenant selection criteria under which the household was screened.*

*\*\* If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at [10 TAC 10.610\(f\)](#)*

**Exhibit 2**

**Owner Certifications**

(see attached)

Once you complete the requirements of Exhibit 1, the owner should review the attached certifications, then sign and submit then via CMTS.

The rules at 10 TAC §10 that are referenced in the attached certifications are available at this link  
[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)

*[Certifications omitted from web version because they are not in accessible format]*

### **Exhibit 3**

#### **TDHCA Utility Allowance**

The submitted Entrance Interview Questionnaire indicated that The Development has elected to calculate the utility allowance using the PHA method. The PHA method is prohibited under the HOME program. §10.614 (d)(2) allows for the owner to comply by using the Written Local Estimate, HUD Utility Schedule Model, Energy Consumption Model, or the Actual Use Method.

The Department has established a Utility Allowance using the HUD Utility Schedule Model as identified in §10.614(d)(3) and HOME Final Rule §92.252(d).. This allowance is calculated based on the following representations:

1. That the building(s) are not RHS assisted or have RHS assisted tenants;
2. That the residents are financially responsible for electricity and gas and that the utilities are not paid to or through the owner of the building based on an allocation formula or RUBS;
3. That the only building type is Single Family Attached; and
4. The unit types are four bedroom.

*[Utility allowance table omitted from web version because it is not in an accessible format]*

## Exhibit 4:

### **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 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>. You may also watch income eligibility training presentation by TDHCA staff at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>.

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must 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. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **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. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

- 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.
4. **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. **3<sup>rd</sup> 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 financial institution. 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 financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **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 all household members, and be signed by each adult household member.

6. **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 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period. Owners executing or renewing leases after November 1, 2007, must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.
8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(m), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

**Exhibit 5:**

**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