

ENFORCEMENT ACTION AGAINST ADRIAN	§	BEFORE THE
DUENEZ WITH RESPECT TO SECOND NORTH	§	TEXAS DEPARTMENT OF HOUSING
APARTMENTS	§	AND COMMUNITY AFFAIRS
(HTC FILE # 94001 / CMTS # 1201)	§	
	§	
	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 10th day of November, 2021, 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 **ADRIAN DUENEZ** (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 (FOF)

Jurisdiction:

1. During 1994, Prior Owner was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$18,368 to build and operate Second North Apartments ("Property") (HTC File No. 94001/ CMTS No. 1201 / LDLD No. 502).
2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was dated November 18, 1994, and filed of record at Volume 3148, Page 77, and filed of record at Volume 3618, Page 84, of the Official Public Records of Real Property of Cameron County, Texas. In accordance with Section 2 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. The Property was purchased by Respondent on March 10, 2017. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. A desk file monitoring review was attempted on November 10, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Respondent failed to respond and a notification of noncompliance was sent, setting a March 9, 2021, corrective action deadline. No corrections were received and Respondent was referred for an administrative penalty for failure to allow monitoring, a violation of 10 TAC §10.618, which requires Owners to provide records for review.
6. Respondent provided records to correct the violation for failure to allow monitoring on April 22, 2021, after the Enforcement Committee made contact. This enabled the Compliance Division to resume its monitoring review, which was ultimately completed in May of 2021. Violations of the LURA and TDHCA rules were identified, notifications of noncompliance were sent, and an August 22, 2021, corrective action deadline was set. Corrections were timely received, but the following violations were not resolved before the corrective action deadline and were referred for an administrative penalty:
 - a. Respondent failed to establish an updated utility allowance, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. A utility allowance schedule was submitted, but the utility allowance was not added to the Unit Status Report / Quarterly Vacancy Report in CMTS so that the Department could verify that rents are appropriately restricted.
 - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1, 3, 6, 9 and 10, 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.
7. All violations listed at FOF #6 above are considered unresolved at the time of this Order.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers 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.

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 §10.618 in 2020 by failing to allow a monitoring review.
5. Respondent violated 10 TAC §10.614 in 2021 by failing to establish an updated utility allowance.
6. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2021, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units 1, 3, 6, 9 and 10.
7. 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.
8. 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.
9. 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.
10. An administrative penalty of \$1,000 is an appropriate penalty in accordance with 10 TAC Chapter 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 Governing 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 Adrian Duenez shall attend Income Determination Training offered by TDHCA and submit a completion certificate to the Agency on or before February 8, 2022. Registration details are at this link: <https://www.taa.org/event-category/affordable-housing/>. The next course is on November 16, 2021.

IT IS FURTHER ORDERED that Adrian Duenez shall attend Housing Tax Credit (HTC) Training offered by TDHCA and submit a completion certificate to the Agency on or before February 8, 2022. Registration details are at this link: <https://www.taa.org/event-category/affordable-housing/>. The next course is on November 18, 2021.

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 January 9, 2022.

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 to inform her that the documentation is ready for review. The Unit Status Report must be submitted within the Unit Status Report section of CMTS. 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:
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TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711
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IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 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.

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STATE OF TEXAS §
§
COUNTY OF Cameron §

BEFORE ME, Adela Hernandez (notary name), a notary public in and for the State of Texas, on this day personally appeared Adrian Duenez, known to me or proven to me through circle one: personally known / driver's license / passport 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 Adrian Duenez. I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. 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 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 Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

By: /s/ Adrian Duenez
Name: Adrian Duenez
Title: Owner

Given under my hand and seal of office this 22nd day of Nov., 2021.

/s/ Adela Hernandez
Signature of Notary Public

Adela Hernandez
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas
My Commission Expires: 12-14-2022

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

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 the 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>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFags.htm>
4. **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. **Important notes -**
 - i. Do not backdate any documents listed below.
 - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. A transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. **Utility Allowance** – This 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.
How to prepare: Details regarding utility allowances are at this link: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>. Calculate a utility allowance in accordance with 10 TAC §10.614. Look over the “10.614 (utility allowance)” tab of this spreadsheet, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>
What to submit: You previously submitted a utility allowance schedule from the Housing Authority of the City of Harlingen, but this does not demonstrate that the utility allowance has been implemented. You must:
 - i. Calculate the appropriate utility allowance using that utility allowance schedule and upload a copy to CMTS; and
 - ii. Submit the development’s updated Unit Status Report to demonstrate that the utility allowance has been implemented. Rent will be tested 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.

7. **Household income above limit upon initial occupancy for units:** Follow the instructions in the following table for units 1, 3, 6, 9 and 10. Technical support regarding tenant file components are at Exhibit 2.

Circumstance with respect to units listed above:	Instruction:
I. If unit is occupied by a qualified household	<p>Provide either A or B:</p> <p><u>A. To qualify as of the initial move-in date:</u> Submit the full tenant file*.</p> <p><u>B. To qualify using current circumstances:</u> If your tenant file is incomplete or the household's circumstances have changed, you can qualify the household using their current circumstances. Submit all of the following:</p> <ul style="list-style-type: none"> i. New application using current circumstances; ii. New verifications of each source of income and assets; iii. New Income Certification; iv. Lease and lease addendum; and v. Tenant Rights and Resources Guide Acknowledgment. <p>Remember that items i-iii above must be dated within 120 days of one another.</p> <p><u>C. If the unit is vacant or the household does not qualify,</u> follow alternate instructions below, as applicable.</p>
II. If unit is occupied by a nonqualified household on a month-to-month lease	<p>Provide all of the following:</p> <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*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.</p>
III. If unit is occupied by a nonqualified household with a non-expired lease	<p>Provide all of the following:</p> <p>A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.</p> <p><i>[table continues on next page]</i></p>

[table continued from page 9 above]

IV. If unit has been vacant <i>more than</i> 30 days	Provide all of the following: A. Unit must be made ready for occupancy and a letter certifying that the unit is ready must be submitted to TDHCA. B. Occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirement A above is timely fulfilled, and the file is submitted within 30 days of occupancy.
V. If unit has been vacant <i>less than</i> 30 days	Provide all of the following: A. If unit is ready for occupancy, a letter certifying that the unit is ready must be submitted to TDHCA. 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. The unit must be made ready no more than 30 days from the date of vacancy. C. Occupy the unit by a qualified household, and submit the full new tenant file*. Receipt of the full tenant file after 2/8/2022 is acceptable for this circumstance provided that Requirements A and B above are timely fulfilled, and the file is submitted within 30 days of occupancy.

**A full tenant file must include:*

- i. Tenant application;*
- ii. Verifications of all sources of income and assets;*
- iii. Tenant income certification;*
- iv. Lease and lease addendum; and*
- v. Tenant Rights and Resources Guide Acknowledgment.*

Remember that items i-iii above must be dated within 120 days of one another.

*** If a notice of nonrenewal or notice of termination is sent to a tenant, ensure that it complies with requirements of the rule at 10 TAC 10.802(g).*

Technical support regarding tenant file components are at Exhibit 2.

Exhibit 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. Sign up for Income Determination Training in order to get a full overview of the process. Sign up at <https://www.taa.org/event-category/affordable-housing/>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

****Important Note* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.***

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. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all 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. **Income Verification for Households with Section 8 Certificates:** If you correctly use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. The form may only be used if the housing authority performed an income certification or recertification within 120 days of the effective date of the application that you collect (step 1 above) and the Income Certification form that is signed (step 5 below). If outside of that period, you must verify income and assets yourself.
 - b. **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;
 - c. **Employment Verification Form:** This is a TDHCA 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;

- d. **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;
 - e. **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. These are appropriate if there is an unusual circumstance relating to the tenant file;
 - f. **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.
 - g. **Self-employed and paid in cash:** Respondent indicated that multiple households are self-employed and are paid in cash. There are no tax records and they have no bank accounts. In these circumstances, a self-certification will be acceptable to verify income if no other form of verification is available, except that this option may not be used for all units. A self-certification:
 - i. Must be detailed regarding estimated income. The person needs to state what they do for income, how often they do it, how much they earn, and that they are paid in cash.
 - ii. Must be signed and dated.
 - iii. There is no specific form and it can be hand written if it is legible.
 - iv. This will only be accepted for a limited number of files. If we were to see this for all of the tenant files, that will be considered a violation of the Agreed Final Order.
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. **3rd party verifications** using the TDHCA Asset Verification form. As with the “Employment Verification Form” discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the 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. **Income Certification Form:** This is a TDHCA 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:** This is not a TDHCA form, but it 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 in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Tenant Selection Criteria:** This is not a TDHCA form. 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:** This is a TDHCA form. In accordance with 10 TAC §10.613(l), you must customize the guide for your property and post a laminated copy 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 guide includes:
 - a) Information about Fair Housing and tenant choice; and
 - b) Information regarding common amenities, unit amenities, and services.Additionally, a representative of the household must receive a copy of the 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.

Exhibit 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)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) 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 Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. 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 or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. 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) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit 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 Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is

not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

- (1) A written explanation outlining the reason for the request;
- (2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;
- (3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C of this title (relating to Required Documentation for Application Submission);
- (4) A list of the names and contact information for transferees and Related Parties;
- (5) Previous Participation information for any new Principal as described in §11.204(13)(B) of this title (relating to Required Documentation for Application Submission);
- (6) Agreements among parties associated with the transfer;
- (7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;
- (8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;
- (9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 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;
- (10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) 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 years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping

housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective February 5, 2020, 45 TexReg 722

