

ENFORCEMENT ACTION AGAINST  
THE SHIRE APARTMENTS, LTD.  
WITH RESPECT TO THE SHIRE  
APARTMENTS (HTC FILE # 02470)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

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

On this 9<sup>th</sup> day of October, 2014, 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 **THE SHIRE APARTMENTS, LTD.**, a Texas Limited Partnership (“Respondent”).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (“APA”), Tex. Gov’t Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Administrative Penalties 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.
2. During 2003, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$561,170.00 to acquire, rehabilitate, and operate The Shire Apartments (“Property”) (HTC file No. 02470 / CMTS No. 3273 / LDLD No. 173).

3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective July 6, 2005, and filed of record at Document Number 2005039185 of the Official Public Records of Real Property of Jefferson County, Texas.
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. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted on May 22, 2013. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 10.616 (Property Condition Standards). Notifications of noncompliance were sent and a September 16, 2013, corrective action deadline was set. Partial corrective documentation was submitted before the deadline, but several documents were missing and multiple work orders were incomplete. Final corrective documentation was not received until June 10, 2014, after intervention by the Administrative Penalty Committee. Dates of correction for each violation are indicated in Attachment 1, which includes fourteen violations with corrected dates after the deadline.
6. An on-site monitoring review was conducted on August 21, 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 January 9, 2014, corrective action deadline was set, however, the following violations were not resolved by the deadline:
  - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 13-4040-221 and 4-4220-201, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income) and the LURA. Acceptable corrective documentation was submitted on January 30, 2014, 21 days after the corrective deadline.
  - b. Respondent failed to ensure that the household in unit 3-420-105 qualified for occupancy, by allowing the unit to be occupied by non-qualified full time students and/or not maintaining evidence of an exception, a violation of 10 TEX. ADMIN. CODE §10.609 (Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments), which requires developments to screen for student status. Acceptable corrective documentation was submitted on January 30, 2014, 21 days after the corrective deadline.

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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 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.

- c. Respondent failed to provide the Fair Housing Disclosure Notice for units 16-3960-139, 5-4200-105, and 4-4220.201, 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. At the time of the monitoring review, TDHCA rules did not include a way to resolve the finding and it was held in abeyance pending a rule amendment. 10 TEX. ADMIN. CODE § 10.612 (Tenant File Requirements) became effective on November 28, 2013, incorporating corrective instructions for the violation and a deadline of February 17, 2014, was set. The tenants in all three units have moved out and the violation is considered uncorrectable.
7. An informal conference was held with the Administrative Penalty Committee on March 25, 2014. Property representatives argued that all UPCS violations had been timely resolved, and they presented a large binder of work orders that they indicated had been submitted but rejected without explanation. They also requested clarification regarding what constitutes an acceptable work order. The Administrative Penalty Committee tabled a decision and voted to refer the property to the Compliance Committee for further review in accordance with 10 TEX. ADMIN. CODE § 10.605 (Compliance Committee). Per 10 TEX. ADMIN. CODE § 10.605(b), Patricia Murphy first met with property representatives informally on May 6, 2014, to discuss work order requirements, and she performed a full review of the binder that had been submitted on March 25, 2014. She determined that some work orders received before the corrective action deadline should have been accepted, but 49 violations remained unresolved. She also reviewed work orders received after the corrective action deadline and found a total of 34 remaining violations. She provided written notice of her review results on May 13, 2014, and set a 30 day deadline for Respondent to request a meeting with the Compliance Committee if they disagreed with her findings. Respondent did not request a meeting with the Compliance Committee and final work orders were received on June 10, 2014, resolving the remaining 2013 UPCS violations. Corrected dates in the final column of the spreadsheet at Attachment 1 represent the dates that work was performed by Respondent to repair each finding.
8. Another informal conference was held with the Administrative Penalty Committee on August 26, 2014, and property representatives subsequently agreed to sign an Agreed Final Order calling for a penalty in the amount of \$2,500.00 for the above UPCS and file violations that were found during 2013. All of the 2013 UPCS and file violations indicated above are considered corrected, with the exception of the violations listed in FOF #6c which cannot be resolved and will remain on the issues of noncompliance report for three years.

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
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 § 10.616 and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered during 2013, and not timely corrected.
5. Respondent violated representations made on page 1 of the LURA, Section 4 of the LURA, and 10 TEX. ADMIN. CODE §10.606 in 2013 by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for units 13-4040-221 and 4-4220-201.
6. Respondent violated 10 TEX. ADMIN. CODE §10.609 in 2013 by failing to screen for student status for unit 3-420-105.
7. Respondent violated 10 TEX. ADMIN. CODE §10.608 in 2013, as amended by 10 TEX. ADMIN. CODE § 10.612, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 16-3960-139, 5-4200-105, and 4-4220.201.
8. 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.
9. 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.
10. 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.
11. An administrative penalty of \$2,500.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 \$2,500.00.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay the \$2,500.00 administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before November 10, 2014, 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

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on Oct 9, 2014.

By: /s/ J. Paul Oxe  
Name: J. Paul Oxe  
Title: Chair of the Board of TDHCA

By: /s/ Barbara B. Deane  
Name: Barbara B. Deane  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

Before me, the undersigned notary public, on this 9th day of October, 2014, personally appeared J. Paul Oxe, 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 9th day of October, 2014, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas  
Notary Public, State of Texas

STATE OF TEXAS \_\_\_\_\_ §  
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§  
COUNTY OF TRAVIS \_\_\_\_\_ §

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

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

**RESPONDENT:**

**THE SHIRE APARTMENTS, LTD.**, a Texas Limited Partnership

By: The Shire Apartments GP, LLC, a Texas limited liability company

By: /s/ W P Wenson

Name: William P Wenson

Title: General Partner

Given under my hand and seal of office this 10th day of October, 2014.

/s/ Paige C. O'Hara  
Signature of Notary Public

Paige C. O'Hara  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 10/20/17

**Attachment 1**

**2013 UPCS Violation List**

**[NOTE – THIS ATTACHMENT HAS BEEN OMITTED FROM THE VERSION OF THE AGREED FINAL ORDER TO BE UPLOADED TO THE WEB BECAUSE IT IS NOT AVAILABLE IN AN ACCESSIBLE FORMAT]**