

ENFORCEMENT ACTION AGAINST  
JOE W. TYLER, SR., D/B/A  
LT PARTNERSHIP WITH RESPECT  
TO WILSHIRE APARTMENTS  
(LIHTC FILE # 93062)

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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 May, 2013, the Governing Board of the Texas Department of Housing and Community Affairs (“Board”) considered the matter of whether enforcement action should be taken against **JOE W. TYLER, SR d/b/a LT PARTNERSHIP**, a general partnership (“LT Partnership” or “Respondent”). The **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (“TDHCA” or “Department”) alleges that Respondent violated its Land Use Restriction Agreement and 10 TEX. ADMIN. CODE, CHAPTER 60 by failing to timely notify TDHCA of a sale with respect to the following property sold by Respondent in September of 2011: Wilshire Apartments (LIHTC File No. 93062 / CMTS No 1136 / LDDL No. 152);

The Board has jurisdiction over this matter pursuant to TEX. GOV’T CODE § 2306.041 (Imposition of Penalty) and TEX. GOV’T CODE §§ 2306.261-2306.273 (Regulation of Housing Sponsors). The Board has the authority to dispose of this case by agreed order or otherwise pursuant to the provisions of TEX. GOV’T CODE § 2306.044 (Penalty to be Paid or Hearing Requested). The Department finds that Respondent engaged in acts or practices that violated Sections 3(j) and 3(k) of the Land Use Restriction Agreement (“LURA”) and 10 TEX. ADMIN. CODE §60.107 (Notices to the Department)<sup>1</sup>. The Department alleges that such conduct constitutes grounds for the imposition of an administrative penalty pursuant to TEX. GOV’T CODE § 2306.041 (Imposition of a Penalty), 10 TEX. ADMIN. CODE §1.13 (Adjudicative Hearing Procedures), 10 TEX. ADMIN. CODE § 1.14 (Administrative Penalties) and 10 TEX. ADMIN. CODE §§60.307-309 (Administrative Penalties). In a desire to conclude this matter without further delay and expense, the Board and Respondent, through their respective signatures hereto, announce that they have compromised and settled all claims and they agree to the entry of this Agreed Final Order.

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<sup>1</sup> All references to 10 TEX. ADMIN. CODE § 60.107 refer to the version of the code in effect at the time of the September 2, 2011 sale from LT Partnership to Saul Gomez. The violations of that rule and the LURA remain violations under the current code and all interim amendments.

## WAIVER

Respondent acknowledges the existence of the right to request a hearing on the matters considered in this order, 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 the right to judicial review of this agreed order and acknowledges the jurisdiction of the Board over Respondent in these matters.

Upon investigation and recommendation of the Administrative Penalty Committee, the Board makes the following findings of fact and conclusions of law and enters this order:

## FINDINGS OF FACT

### Jurisdiction:

1. Wilshire Apartments, a 19-unit apartment complex located in Conroe, Texas, is subject to a Land Use Restriction Agreement ("LURA") dated to be effective December 20, 1993, filed of record at Document Number 9369136, Volume 938-01, Page 494 of the Official Public Records of Real Property of Montgomery County, Texas. The LURA was signed in consideration for an allocation of low income housing tax credits in the annual amount of \$12,006.00 awarded by TDHCA.

### Compliance Violations:

1. On September 2, 2011, LT Partnership sold Wilshire Apartments to Saul Gomez without submitting notice of the sale to TDHCA. This action was a violation of:
  - a. Section 3(k) of the LURA, which states that the owner must notify the Department in writing prior to any sale, transfer or exchange of the property;
  - b. Section 3(j) of the LURA, which states that the owner must require the successor owner to deliver to the Department a written Assumption Agreement, assuming all obligations under the LURA and Section 42 of the Code. Further, the LURA provides the Department the ability to void any sale, transfer or exchange of the project in the event that the Assumption Agreement is not executed and delivered as required; and
  - c. 10 TEX. ADMIN. CODE §60.107 which required written notice of a sale to be provided to TDHCA at least thirty days prior to the event.
2. Additional violations of the LURA and TDHCA rules that existed at the time of the sale have since been corrected by Saul Gomez, with the exception of five units that will be deemed to be in compliance upon occupancy by qualified tenants. The units in question are currently vacant but ready for occupancy.

**CONCLUSIONS OF LAW**

1. Pursuant to TEX. GOV'T CODE §2306.041 and §2306.177, the board has personal and subject matter jurisdiction over LT Partnership;
2. LT Partnership violated 10 TEX. ADMIN. CODE §60.107 and Sections 3(j) and 3(k) of the LURA by failing to submit notice of the September 2, 2011 sale from LT Partnership to Saul Gomez.
3. An administrative penalty of \$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 statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case, including the Mr. Gomez's submission of a late Ownership Transfer Request and his subsequent correction of multiple file monitoring and physical condition standards violations, the Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that **LT PARTNERSHIP** shall pay, and is hereby directed to pay, an administrative penalty of FIVE HUNDRED AND NO ONE-HUNDREDTHS DOLLARS (\$500.00) to be paid within thirty (30) days of the date this Agreed Final Order is approved by the governing board of TDHCA. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs."

**IT IS FURTHER ORDERED** that payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on May 9, 2013.

By: /s/ J. Paul Oxer  
Name: J. Paul Oxer  
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 May, 2013, personally appeared J. Paul Oxer, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ 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 May, 2013, 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

