

ENFORCEMENT ACTION AGAINST
HALE CENTER HOUSING
AUTHORITY WITH RESPECT TO
PLAINVIEW II (TRIPLEX) (HOME
FILE # 532315 / CMTS # 2658)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 12th day of January 2023, 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 (FOF)

Jurisdiction:

1. During 1994, Caprock Community Action Association, Inc. ("Prior Owner") received a HOME loan in the amount of \$204,460 to build and operate Plainview II (Triplex) ("Property") (HOME file No. 532315 / CMTS No. 2658).

2. Prior Owner signed a Land Use Restriction Agreement (“LURA”) regarding the Property. The LURA was effective August 19, 1994, and filed of record on August 22, 1994, at Volume 851, Page 397 of the Official Public Records of Real Property of Hale County, Texas (“Records”), and amended via a First Amendment to Land Use Restriction Agreement (Multifamily Properties) (HOME Program) effective May 27, 2020, and filed of record on September 16, 2020, at Document Number 2020-002690 of the 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 purchased the Property and signed an Assumption Agreement with TDHCA to assume the loan, LURA, and all duties imposed, effective March 17, 2014, and filed of record on March 24, 2014, at Document Number 2014-001000 of the Records.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. Respondent has a history of violations, and previously signed Agreed Final Orders on January 11, 2018 and March 27, 2020. Respondent violated both Agreed Final Orders, and was required to pay a \$1,000 administrative penalty in 2018, and a \$6,500 administrative penalty in 2020.
6. A file monitoring review was conducted on March 1, 2022, 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 June 8, 2022, corrective action deadline was set, then extended to a final deadline of September 16, 2022, however, the following violations were not resolved before the extended corrective action deadline and were referred for an administrative penalty:
 - a. Respondent failed to timely implement the utility allowance schedule provided by the Department on October 4, 2021, requiring implementation by November 3, 2021. Another utility allowance was then issued by the Department on October 4, 2022, for implementation by November 3, 2022. Failure to timely implement the 2021 and 2022 utility allowances is a violation of 10 TAC §10.607 (Utility Allowances), which requires all developments to update their utility allowance annually. Respondent has not yet submitted a Unit Status Report to correct the finding, showing implementation of the 2022 utility allowance. Respondent submitted the last Unit Status Report via CMTS on April 29, 2022.
 - b. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 302 on March 1, 2021, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income), and violations of Sections 2.4 and 4.3 of the LURA, all of which

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.

require certification and documentation of tenant household income prior to unit occupancy in order to ensure qualification for the program. The finding is unresolved.

- c. Respondent leased unit 306 to a household with income that exceeded prescribed limits at initial occupancy on June 1, 2021, and then renewed the lease on June 1, 2022, violating 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Sections 2.4 and 4.3 of the LURA, which require certification and documentation of tenant household income prior to unit occupancy in order to ensure qualification for the program. The finding is unresolved, but Respondent indicates that the lease for this nonqualified household will not be renewed upon expiration.
 - d. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 302 and 304 in 2021, violations of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language preventing evictions or refusal to renew except for good cause. Leases were also missing language to require households to report changes in student status. The finding is unresolved.
7. All violations listed above remain 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.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to Tex. Gov't Code Chapter 2306, Subchapter DD and Tex. Gov't Code §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
4. Respondent violated 10 TAC §10.607 in 2021 by failing to timely implement an updated utility allowance.
5. Respondent violated 10 TAC §10.611 and Sections 2.4 and 4.3 of the LURA in 2021 and 2022, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units 302 and 306.
6. Respondent violated leasing requirements in 10 TAC §10.613 in 2021, by failing to execute required lease language for units 302 and 304.
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 \$5,300 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 \$5,300, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$2,000 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before February 13, 2023.

IT IS FURTHER ORDERED that Cindy Carthel (executive director) and Mary Hernandez (property manager) shall attend Income Determination Training on or before February 13, 2023.

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 13, 2023.

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 remaining administrative penalty in the amount of \$3,300 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. 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:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 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 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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Approved by the Governing Board of TDHCA on January 12, 2023.

By: /s/ Leo Vasquez
Name: Leo Vasquez
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 12 day of January, 2023, personally appeared Leo Vasquez, 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/ Nancy N. Dennis
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 12 day of January, 2023, 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/ Nancy N. Dennis
Notary Public, State of Texas

STATE OF TEXAS §
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COUNTY OF Hale §

BEFORE ME, Tammy Robinett (*notary name*), a notary public in and for the State of Texas, on this day personally appeared Cindy Carthel, 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 she executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. “My name is Cindy Carthel, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Executive Director for Respondent. 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 by Respondent to execute this document.
3. The Taxpayer ID for Respondent is **[REDACTED]**.
4. The mailing address for Respondent is P.O. Box 1257, Hale Center, TX 79041.
5. 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:

HALE CENTER HOUSING AUTHORITY, a public housing authority

By: /s/ Cindy Carthel
Name: Cindy Carthel
Title: Executive Director

Given under my hand and seal of office this 2nd day of February, 2023.

/s/ Tammy Robinett
Signature of Notary Public

Tammy Robinett
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas
My Commission Expires: 12-13-2024

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 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>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.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 -**

- a. Attend Income Determination Training before working on corrective documentation.
- b. Do not backdate any documents listed below.
- c. Transferring a qualified household from another unit is not sufficient to correct any findings. Doing so will simply cause the finding to transfer to the other unit.
- d. Technical support regarding how to compile a complete tenant file is at Exhibit 2.

6. **Lease violations for units 302 and 304:**

- i. **Unit 302:** The Unit Status Report shows that a new household moved in on August 1, 2022. Correct the lease violation by uploading the Texas Apartment Association (TAA) lease and TAA Lease Contract Addendum for Units Participating in Government Regulated Affordable Housing Programs for this current household.
- ii. **Unit 304:** Respondent submitted a signed TAA Lease Contract Addendum for Units Participating in Government Regulated Affordable Housing Programs, however, it was not dated and the top of the page that identified the household name and address was cut off. To correct the lease violation, upload via CMTS no later than 2/13/2023 a complete version of the lease addendum. Ensure that it is dated and includes the entire page.

(See Exhibit 2 for technical support about leases.)

7. **Utility Allowance:** Respondent has not implemented the 2022 Utility Allowance, which was provided by TDHCA on October 4, 2022, for implementation by November 3, 2022. To correct this finding, update CMTS to show the correct utility allowance for each unit as indicated in the table below, and then submit a Unit Status Report via CMTS.

Remember, 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.

Rent will be tested by TDHCA development-wide once the proper utility allowance is implemented. 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>

[UTILITY ALLOWANCE CALCULATIONS ARE EXCLUDED FROM WEB VERSION BECAUSE THEY ARE NOT IN AN ACCESSIBLE FORMAT]

8. **Household income violation for unit 302.** Perform the following:

- A. The Unit Status report shows that a new household moved in August 1, 2022. Submit a full tenant file* for that new household, establishing that they qualify for occupancy.

9. **Household income violation for unit 306.** Perform the following:

- A. Issue a nonrenewal notice to current tenant and upload a copy to CMTS by 2/13/2023, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. Ensure that the nonrenewal notice complies with requirements of the rule at [10 TAC 10.802\(g\)](#). If the tenant is protected by another program such as Section 8 or USDA-RD and the property cannot issue a nonrenewal notice as a result, submit a letter stating which program protects the household and committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available;
- 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 of the full tenant file* after February 13, 2023, is acceptable for this circumstance, provided that Requirement A above is fulfilled.

***A full tenant file must prove eligibility and include all of the following information:**

- A. Tenant application;
- B. Verifications of all sources of income and assets;
- C. Income certification;
- D. Lease and lease addendum;
- E. Tenant Rights and Resources Guide Acknowledgment; and
- F. A copy of the tenant selection criteria under which the household was screened.

Remember that items A-C above must be dated within 120 days of one another.

Technical support regarding how to compile a complete tenant file is at Exhibit 2.

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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. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. A suggested tenant file checklist is available at this link: <https://www.tdhca.state.tx.us/pmcdocs/Suggested-File-Checklist.docx>.

**Important Note* The application, verifications of income and assets, and Tenant Income Certification (1 – 6 below) must be signed within 120 days of one another. If one component is outside of that 120-day time frame, all of the items in 1-6 must be done again in order to meet the 120-day requirement.*

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, and student status. 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.” Applications must be signed and dated 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. Examples:
 - a. **First hand verifications are required:** Paystubs or payroll print-outs must show gross income for at least a two month period.
 - b. **Verification of non-employment income is required:** 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) are acceptable for social security and/or unemployment 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 award amount.
 - c. **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.
 - d. **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, including assets such as checking or savings accounts, and verification is required. 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. Examples of how to verify assets:
 - a. Six months of statements are required for verification of checking accounts.
 - b. Two months of statements are required for verification of savings account balances.
5. **Verify Student Status:** Must screen for student status; can be collected on the Annual Eligibility Certification, the Certification of Student Eligibility Form, or the income Certification Form. If the household indicates they are students, there are two forms that *must* be used: the Certification of Student Eligibility form must be completed by the household, and the Student Verification form is used to verify and document their student status.
6. **Income Certification Form:** Must use 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.
7. **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>. Generally speaking, you must ensure that the tenant-paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limit 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\(f\) - \(h\)](#). TAA has an affordable housing 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.

8. **Written Policies and Procedures / Tenant Selection Criteria:** Written policies and procedures requirements are at [10 TAC §10.802](#).
9. **Violence Against Women Act of 2013 (VAWA):** The property is required to provide all prospective tenants the VAWA forms 5380 and 5382 at the time of application, at the time they are approved, at the time of denial, and at the time the household is given a notice to vacate or non-renewal. Forms are available at the Forms link above.
10. **Tenant Rights and Resources Guide:** In accordance with [10 TAC §10.613\(d\)](#), 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 each 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.

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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 exceptions to the ownership transfer process in this subsection are applicable.

(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, Persons and 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 (relating to Amendments and Extensions).

(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 IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this subchapter has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this subchapter.

(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)(B) 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)(C) 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; and
 - (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) of this subchapter (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 subchapter.
 - (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).

Source Note: The provisions of this §10.406 adopted to be effective February 3, 2022, 47 TexReg 266