

ENFORCEMENT ACTION AGAINST
EL PATRIMONIO APARTMENTS, LP
WITH RESPECT TO EL PATRIMONIO
APARTMENTS (HTC FILE # 00010 /
CMTS # 30)

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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 March, 2015, 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 **EL PATRIMONIO APARTMENTS, LP**, 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 Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by TEX. GOV’T CODE § 2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by TEX. GOV’T CODE § 2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT

Jurisdiction:

1. 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, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.

2. In 2000, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$962,746.00 to build and operate El Patrimonio Apartments (“Property”) (HTC file No. 00010/ CMTS No. 30 / LDLD No. 474).
3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective September 30, 2001, and filed of record at Document Number 1025782 of the Official Public Records of Real Property of Hidalgo County, Texas (“Records”).
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 Violations¹:

5. An on-site monitoring review was conducted on July 12, 2012, 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 December 4, 2012, corrective action deadline was set. The following violations were not corrected before the corrective action deadline and remain unresolved at the time of this order:
 - a. Respondent failed to meet additional rent and occupancy restrictions, a violation of Appendix A of the LURA, which requires at least 44 units to be occupied by tenants at or below 50% of the Area Median Gross Income (“AMGI”), with rents at or below the allowable tax credit rents at the 50% AMGI level. El Patrimonio Apartments has a total of 192 units, 44 of which are required to meet the 50% AMGI restriction. Respondent failed to maintain that minimum requirement and only 19 of the required 44 units were restricted to the 50% rent limits at the time of the monitoring review. 25 units were overcharged rents as the result of a miscalculation, a violation of gross rent limitations at 10 TEX. ADMIN. CODE §60.120 and current 10 TEX. ADMIN. CODE §10.622, requiring the overcharged rents to be refunded – not credited – back to the households at Attachment 1.

[Remainder of page intentionally blank]

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
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 Appendix A of the LURA and 10 TEX. ADMIN. CODE §60.120 in 2012 by failing to meet additional rent and occupancy restrictions.
5. 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.
6. 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.
7. 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.
8. An administrative penalty of \$200.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308, which were in place at the time of the violation. It remains appropriate under the replacement rule at 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$200.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before April 13, 2015.

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, then the full administrative penalty in the amount of \$200.00 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

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>. 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 the terms of this Agreed Final Order shall be published on the TDHCA website.

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Attachment 1

Required rent refund amounts

[Accessible version of table not available. Omitted from web version of order]

Attachment 2

1/7/2015 letter with refund instructions

If a household is due a rent refund and can be located, follow the instructions in the attached letter in accordance with the requirements at 10 Tex. Admin. Code §10.622.

If a household is due a rent refund and is not able to be located, you have two options:

1. Follow instructions in the attached letter in accordance with requirements at 10 Tex. Admin. Code §10.622, and submit evidence of the opened trust account.
2. In the event that bank fees for the required trust account(s) will exceed the amount of the required refund, the Executive Director for TDHCA has approved suspending the trust fund requirement in accordance with his authority at 10 Tex. Admin. Code §10.626. Instead, you proposed and the Executive Director of TDHCA approved maintaining a reserve in the property's operating account to cover these amounts due to tenants, then remitting the funds to the Texas Comptroller of Public Accounts after the 4 year claim period has expired. If you choose this option:
 - a. Submit evidence of the established reserve in your operating account via CMTS on or before the deadline indicated above;
 - b. Continue to maintain the operating reserve for four years from the date that the funds are set aside;
 - c. Maintain records of the operating reserve on site for future compliance monitoring visits;
 - d. Maintain records regarding any tenants who claim funds from the operating reserves, including cancelled checks;
 - e. Maintain records regarding any funds remitted to the Texas Comptroller of Public Accounts once the 4 year claim period has expired.

[Accessible version of additional attachment not available. Omitted from web version of order]