

ENFORCEMENT ACTION AGAINST
TEXAS BAY BLUFF, LLC WITH
RESPECT TO
SABINE PARK APARTMENTS
(HTC FILE # 96134 / CMTS # 1594)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 14th day of December, 2017, 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 **TEXAS BAY BLUFF, LLC**, a Texas limited liability company (“” or “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. During 1996, Three Rivers Manor, Ltd. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$897,897 to rehabilitate Sabine Park Apartments (“Property”) (HTC file No. 96134 / CMTS No. 1594 / LDLD No. 505).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 22, 1998, and filed of record at Volume 1105, Page 950 of the Official Public Records of Real Property of Orange County, Texas (“Records”), as

amended by an Agreement to Comply with and First Amendment executed on July 31, 2015, and filed in the Records at Document Number 422235. 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. Respondent took ownership of the Property in 2015 and signed an Agreement to Comply with and First Amendment with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Assume and Comply) and filed the same in the Records at Document Number 422235, thereby binding Respondent to the terms of the LURA.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on January 26, 2017. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Inspection Standards). Notifications of noncompliance were sent and a June 18, 2017, corrective action deadline was set. Partial corrective action was received but the violations listed at *Exhibit 1* remain unresolved.
6. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on February 27, 2014. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Inspection Standards). Notifications of noncompliance were sent and a June 55, 2014, corrective action deadline was set. This inspection pre-dated the ownership of Respondent, but resolution is required of all successors and assigns as a result of the LURA. Partial corrective action was received but the violations listed at *Exhibit 1* remain unresolved.
7. An on-site monitoring review was conducted on February 26, 2014, 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 July 16, 2014, corrective action deadline was set, however, multiple violations were not corrected before the corrective action deadline. This review pre-dated the ownership of Respondent, but resolution is required of all successors and assigns as a result of the LURA. The following findings remain unresolved:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 518, 520, and 602, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income), which requires screening of tenants to ensure qualification for the program;

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

- b. Respondent failed to provide an Annual Eligibility Certifications for units 129, 518, and 32, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household;
 - c. Respondent failed to provide the Fair Housing Disclosure Notice for unit 612, a violation of 10 TAC §10.613 (Lease Requirements), which, at the time of move-in for during 2013, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a “Tenant Rights and Resources Guide”, which also has not been provided; and
 - d. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 112 and 146, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. Partial corrective documentation was received in response to an administrative penalty informal conference notice, including a signed lease addendum for unit 101 but omitting the required certification indicating that the form had been implemented property-wide.
8. The following violations remain outstanding at the time of this order:
- a. 2017 UPCS violation described in FOF #5;
 - b. 2014 UPCS violation described in FOF #6;
 - c. Household income qualification violations described in FOF #7.a;
 - d. Annual Eligibility Certification violations described in FOF #7.b;
 - e. Lease notice violation described in FOF #7.c; and
 - f. Lease language violations described in FOF #7.d.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503 and 10 TAC §2.
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 §10.621 by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
5. Respondent violated 10 TAC §10.611 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 518, 520, and 602.
6. Respondent violated 10 TAC §10.612 by failing to collect Annual Eligibility Certifications for units 129, 518, and 32.
7. Respondent violated 10 TAC §10.613 by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for unit 612.
8. Respondent violated 10 TAC §10.613 by failing to execute required lease language for units 112 and 146; to provide leases that included required lease language.
9. 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.
10. 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.
11. 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.
12. An administrative penalty of \$1,500 is an appropriate penalty in accordance with 10 TAC §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 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 \$1,500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as indicated in the exhibits and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before March 14, 2018.

IT IS FURTHER ORDERED that Respondent shall fully correct all file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before March 14, 2018.

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC 10.621(a)

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 \$1,500 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 5, 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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Exhibit 1

UPCS Instructions

1. UPCS violations that must be corrected are listed in the attached spreadsheets.
2. Prepare corrective documentation following these guidelines:
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS following the instructions at
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

2017 UPCS Violations

Deficiency Area	L1	L2	L3	Deficiency	Comments
Site:					
Grounds		x		Erosion/Rutting Areas	erosion throughout property
Grounds		x		Overgrown/Penetrating Vegetation	trees rubbing building throughout
Health & Safety			x	Hazards—Sharp Edges	broken glass ; throughout
Health & Safety			x	Hazards—Tripping	sidewalk uneven; multiple locations
Refuse Disposal		x		Broken/Damaged Enclosure—Inadequate Outside Storage Space.	damaged enclosures
Bldg 3:					
Unit 536					
Doors			x	Deteriorated/Missing Seals (Entry Only)	Front entry door;
Floors			x	Soft Floor Covering Missing/Damaged	missing throughout
Kitchen		x		Dishwasher/Garbage Disposal—Inoperable	garbage disposal not functioning;
Bldg 13:					
Unit 610					
Kitchen		x		Dishwasher/Garbage Disposal—Inoperable	dishwasher missing
Kitchen			x	Range/Stove—Missing/Damaged/Inoperable	Range is missing
Kitchen			x	Refrigerator-Missing/Damaged/Inoperable	Refrigerator missing
Bldg 40:					
Unit 10					
Doors			x	Damaged Surface (Holes/Paint/Rust/Glass)	hole(s);Bedroom 1
Doors	x			Missing Door	Bedroom 2
Floors		x		Soft Floor Covering Missing/Damaged	Bedroom 2; missing

2014 UPCS Violations

Deficiency Area	L1	L2	L3	Deficiency	Comments
Grounds			X	Erosion/Rutting Areas	erosion throughout property / ruts
			X	Overgrown/Penetrating Vegetation	overgrown vegetation throughout property
Health & Safety			X	Ponding/Site Drainage	ponding multiple location
			X	Hazards - Sharp Edges	broken glass on sidewalk bldg 36
			X	Hazards - Tripping	sidewalk uneven bldg 32
Trash		X		Broken/Damaged Enclosure-Inadequate Outside Storage	inadequate dumpster
Building: 1					
Unit: 521 for 515					
Doors			X	Damaged Surface (Holes/Paint/Rusting)	hole closet
Health & Safety			X	Emergency Fire Exits - Emergency/Fire Exits	
			X	Blocked/Unusable	br1 headboard blocking egress - repaired
Kitchen	X			Refrigerator-Missing/Damaged/Inoperable	gasket
Building: 10					
Unit: 210					
Electrical			X	GFI Inoperable	bath1
Kitchen	X			Refrigerator-Missing/Damaged/Inoperable	gasket
Building: 11					
Unit: 604					
Kitchen	X			Refrigerator-Missing/Damaged/Inoperable	gasket
Building: 12					
Building Exterior					
Roofs	X			Damaged Soffits/Fascia	peeling paint
Unit: 608 for 606 vacant					
Doors			X	Damaged Surface (Holes/Paint/Rusting)	br2 damaged
Floors	X			Floor Covering Damage	entry
Kitchen		X		Dishwasher/Garbage Disposal - Damaged/Inoperable	dishwasher

Building: 13**Unit: 612 for 610**

Floors		X	Floor Covering Damage	all rooms damaged
Kitchen	X		Refrigerator-Missing/Damaged/Inoperable	gasket

Building: 14**Unit: 211 vacant**

Windows		X	Cracked/Broken/Missing Panes	living damaged
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Building: 16**Unit: 203**

Kitchen	X		Refrigerator-Missing/Damaged/Inoperable	gasket
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Building: 19**Unit: 531**

Electrical		X	GFI Inoperable	bath2
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Building: 21**Unit: 120**

Kitchen	X		Dishwasher/Garbage Disposal - Damaged/Inoperable	dishwasher
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Building: 24**Unit: 138 for 132**

Electrical		X	Missing Breakers/Fuses	missing breaker
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Building: 25**Unit: 117 for 115**

Health & Safety		X	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	br1, br2 dresser blocking egress
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Building: 28**Unit: 39**

Doors		X	Damaged Surface (Holes/Paint/Rusting)	damaged x2
Health & Safety		X	Infestation - Insects	roaches

Building: 30

Unit: 76 vacant

Doors	X	Missing Door	missing x4
Floors	X	Missing Flooring	
Kitchen	X	Range/Stove - Missing/Damaged/Inoperable	damaged
	X	Refrigerator-Missing/Damaged/Inoperable	missing

Building: 31

Unit: 71 vacant

Doors	X	Damaged Surface (Holes/Paint/Rusting)	damaged x1
HVAC System	X	Inoperable	damaged
Kitchen	X	Range/Stove - Missing/Damaged/Inoperable	missing

Unit: 36 for 34

Health & Safety	X	Infestation - Insects	roaches
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Building: 33

Unit: 32

Kitchen	X	Refrigerator-Missing/Damaged/Inoperable	gasket
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Building: 35

Unit: 51 vacant

Kitchen	X	Range/Stove - Missing/Damaged/Inoperable	missing
Walls	X	Water Stains/Water Damage/Mold/Mildew	kitchen mildew

Building: 36

Unit: 58 vacant

Kitchen	X	Refrigerator-Missing/Damaged/Inoperable	missing
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Building: 37

Unit: 31

Kitchen	X	Refrigerator-Missing/Damaged/Inoperable	gasket
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Building: 39

Unit: 40 vacant

Floors	X	Floor Covering Damage	all carpet stained
Hot Water Heater	X	Inoperable Unit/Components	damaged
HVAC System	X	Inoperable	damaged
Kitchen	X	Range/Stove - Missing/Damaged/Inoperable	damaged

Building: 4

Unit: 558 vacant

Ceiling	X	Bulging/Buckling	br2 hole 3x6
Floors	X	Missing Flooring	all carpet
Health & Safety	X	Electrical Hazards - Exposed Wires/Open Panels	panel missing cover
Kitchen	X	Refrigerator-Missing/Damaged/Inoperable	missing

Building: 40

Building Systems Fire Protection	X	Missing/Damaged/Expired Extinguishers	discharged 22
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Building: 5

Building Exterior Roofs	X	Damaged/Clogged Drains	clogged gutters
Building Systems Fire Protection	X	Missing/Damaged/Expired Extinguishers	discharged 549

Exhibit 2

File Monitoring Violation Resources and Instructions

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>
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.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 -**
 - 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. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.
9. **Lease violations for failure to provide Fair Housing Disclosure Notice for unit 612:**

Property previously submitted a back-dated form. The form was created 12/17/2012, but the signed notice submitted as corrective action was dated by the household as of 11/3/2012. Backdating is never permitted for any program documentation.

Actions to perform: Written response explaining why the document was backdated. If unit 612 is still occupied by the same household from 2012, provide them with the Tenant Rights and Resources Guide (which has since replaced the Fair Housing Disclosure Notice), have them sign the Tenant Rights and Resources Guide Acknowledgment.

What to submit: The owner must review the applicable "Owner Certification of Corrected Noncompliance" at *Exhibit 3*, verify that all requirements described by the certification have been met, then submit the signed certification. *Only submit the signed Owner Certification; do not submit any further documentation for this finding.*
10. **Lease language violations for units 112 and 146:**

Actions to perform: Provide households with a lease or lease addendum that complies with TDHCA requirements at 10 TAC §10.613, including but not limited to those requirements:

 - Prohibiting owners from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency;
 - Prohibiting owners from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises.

What to submit: The owner must review the applicable "Owner Certification of Corrected Noncompliance" at *Exhibit 3*, verify that all requirements described by the certification have been met, then submit the signed certification. *Only submit the signed Owner Certification; do not submit any further documentation for this finding.*

11. Annual Eligibility Certification Violations for units 129, 518, and 32: Follow the instructions below and submit complete documentation.

- a. If units are occupied by the same households that occupied the units at the time of the violations (see dates below), have the households execute an Annual Eligibility Certification and submit. Do not back-date.
 - i. Unit 129: Affected household occupied unit as of 10/20/2013;
 - ii. Unit 518: Affected household occupied unit as of 12/31/2012;
 - iii. Unit 32: Affected household occupied unit as of 12/31/2012.
- b. If units are occupied by a new qualified household, a nonqualified household, or the unit is currently vacant, follow the instructions in rows II-VI in the table below for the next violation type and submit the necessary documentation.

12. Household income violations for units 518, 520, and 602: Follow the instructions below and submit complete documentation.

Details regarding how to compile a compliant tenant file are at *Exhibit 4*.

Circumstance with respect to units listed above	Instruction
I. If unit is occupied by the same household that occupied the unit at the time of the violation (see dates below) and that household qualifies for occupancy - Unit 518: 12/31/2012 - Unit 520: 1/2/2014 - Unit 602: 2/10/2014	If the affected households remain in these units, you must recertify those households under current circumstances, using current income and asset information. Submit a new tenant application, new verifications of all sources of income and assets, and a new executed tenant income certification. Note that property must obtain and submit first hand documentation such as pay stubs and bank statements to document income and assets. Third party verification documentation will not be accepted.
II. If unit is occupied by a new qualified household (not the affected households listed above)	Submit the full new tenant file*.
III. If unit is occupied by a nonqualified household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** 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 after 3/14/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.
IV. If unit is occupied by a nonqualified household with a non-expired lease	A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.** B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 3/14/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.

<p>V. If unit has been vacant <i>more than 30</i> days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 3/14/2018 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>VI. If unit has been vacant <i>less than 30</i> days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>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 for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt after 3/14/2018 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum (including required language prohibiting good cause evictions and lock-outs), and Tenant Rights and Resources Guide Acknowledgment.*

If a new certification is performed for an existing household, the verifications of income and assets must be first-hand documentation such as pay stubs and bank statements to document income and assets. Third party documentation will not be accepted.

*** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)*

Exhibit 3

Owner Certifications

(see attached)

Review these certifications, perform the required actions, then sign and submit the certifications via CMTS.

The rules at 10 TAC §10 that are referenced in the attached certifications are available at this link
[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)

[Web version omits the certification forms because they are not in an accessible format]

Exhibit 4

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

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.
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. *Note that if you are recertifying an existing household based upon current circumstances, you must use the first-hand verification method:*
 - a. **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;
 - b. **Employment Verification 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. *If you are recertifying an existing household based upon current circumstances, you must use the first-hand verification method;*
 - c. **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;
 - d. **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;

- e. **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 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. **Tenant Income Certification 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:** 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(f) 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. 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.

7. **Tenant Selection Criteria:** 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:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(m), a laminated copy of this guide must be posted 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 Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources 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.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:

<http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Exhibit 5:

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 to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. 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, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, 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 members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved 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) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit 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 Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (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.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) 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 (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518