

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
MARY LEE FOUNDATION	§	TEXAS DEPARTMENT OF
WITH RESPECT TO	§	HOUSING AND COMMUNITY
VILLA ELAINA	§	AFFAIRS
(HTF 853338/ CMTS 4210)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 9<sup>th</sup> day of December, 2021, 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 **MARY LEE FOUNDATION**, a Texas nonprofit corporation (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 2004, Respondent received a monthly amortizing State Housing Trust Fund loan in the amount of \$116,743 to rehabilitate and operate Villa Elaina (Property) (HTF file 853338 / Loan No. 700853338/ CMTS No. 4210 / LDLD No. 299). A Predevelopment

Housing Trust Fund loan in the amount of \$19,244 was also provided in 2003 (Predevelopment Loan No. 8510200009).

2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective February 26, 2004, and filed of record at Document Number 2004035861 of the Official Public Records of Real Property of Travis County, Texas (Records), as amended by a First Amendment executed on February 29, 2012, and filed in the Records at Document Number 2012053160.
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>3</sup>:

4. Property has a history of violations and previously signed an Agreed Final Order on May 24, 2015, stipulating that violations had occurred and were not timely corrected, but assessing no administrative penalty.
5. An on-site monitoring review was conducted on January 28, 2021, 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 May 2, 2021, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
  - a. Respondent failed to implement the current version Tenant Rights and Resources Guide, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. This violation was corrected after referral for an administrative penalty.
  - b. Respondent failed to provide the current Tenant Rights and Resources Guide and get a signed Acknowledgment for units 103, 104, 106, 110, 206, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. This violation was corrected after referral for an administrative penalty.
  - c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 104 and 206, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual

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<sup>3</sup> 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.

Income), 10 TAC §10.612 (Tenant File Requirements), which describes file requirements, and a violation of Section 2.2 of the LURA, which requires screening of tenants to ensure qualification for the program.

- d. Respondent failed to designate units 108, 201, and 202 as special needs housing and provide supporting documentation, a violation of Section 2.2 of the LURA, which requires all units to be available for occupancy by a Special Needs Individual or Special Needs Family, and a violation of 10 TAC §10.618(c)(4) (Onsite Monitoring), which requires provision of documentation deemed necessary by the Department. Such documentation would include support for additional property-specific LURA requirements, such as Special Needs designations for each household in order to comply with this LURA.
  - e. Respondent failed to meet additional state required rent and occupancy restrictions for units 103, 106, and 110, a violation of Section 3.1(a) of the LURA, which requires eleven units to have households with an income at or below 30% of the income limit for household size and a gross rent restricted to the 30% limit for bedroom size; a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income), which provides for certification and designation of households; and a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations), which requires refunds for overcharged rents.
  - f. Respondent failed to implement an updated utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. The Unit Status Report was updated with the correct utility allowance after referral for an administrative penalty.
6. The following violations remain outstanding at the time of this order:
- a. Household income violations described in FOF #5c;
  - b. Special needs violations described in FOF #5d; and
  - c. Additional state required rent and occupancy restriction violations described in FOF #5e.

### **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. Respondent violated leasing requirements in 10 TAC §10.613 in 2021, by failing to implement the current version of the Tenant Rights and Resources Guide by posting that guide in a common area of the leasing office;

4. Respondent violated leasing requirements in 10 TAC §10.613 in 2021, by failing to provide a current Tenant Rights and Resources Guide for five units and have the households sign the current acknowledgment form;
5. Respondent violated 10 TAC §10.611, 10 TAC §10.612, and Section 2.2 of the LURA in 2021, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for two units;
6. Respondent violated Section 2.2 of the LURA and 10 TAC §10.618(c)(4) by not ensuring the designation of all households as special income and not providing supporting documentation;
7. Respondent violated Section 3.1(a) of the LURA, 10 TAC §10.611, and 10 TAC §10.622 in 2021, by failing to meet additional state required rent and occupancy restrictions for three units;
8. Respondent violated 10 TAC § 10.614 in 2021 by failing to properly calculate a utility allowance;
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 \$6,350 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 \$6,350, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$1,587.50 portion of the assessed administrative penalty by cashier's check payable to the "Texas

Department of Housing and Community Affairs” within thirty days of the date this Agreed Final Order is approved by the Board.

**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 the Department via CMTS on or before February 7, 2022.

**IT IS FURTHER ORDERED** that property management staff, shall attend Income Determination Training and HTC Compliance Training offered by TDHCA and submit completion certificates to the Department via CMTS on or before February 28, 2022.

**IT IS FURTHER ORDERED** that the training completion deadline above may be adjusted by TDHCA staff since the training course schedule for 2022 has not yet been finalized.

**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 remaining assessed administrative penalty in the amount of \$4,762.50, which 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 \$4,762.50 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](mailto: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:

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

**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.

Approved by the Governing Board of TDHCA on December 9, 2021.

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 §

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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 9<sup>th</sup> day of December, 2021, 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/ Kathleen M. Vale

Notary Public, State of Texas

THE STATE OF TEXAS §

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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 9<sup>th</sup> day of December, 2021, 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/ Kathleen M. Vale

Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF Travis §

BEFORE ME, Velma Hernandez-Mercer (notary name), a notary public in and for the State of Texas, on this day personally appeared Charlene Crump (person signing document), 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 (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Charlene Crump, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of 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. 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:**

**MARY LEE FOUNDATION**, a Texas nonprofit corporation

By: /s/ Charlene Crump

Name: Charlene Crump

Title: Director

Given under my hand and seal of office this 15<sup>th</sup> day of December, 2021.

/s/ Velma Hernandez-Mercer  
Signature of Notary Public

Velma Hernandez-Mercer  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: February 1, 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>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFags.htm>
4. **All corrections must be uploaded via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - a. Do not backdate any documents listed below.
  - b. A transfer of a qualified household from another unit is not sufficient to correct any findings.

#### **Instructions:**

##### **6. Special Needs Housing (Units 108, 201, 202):**

**Units 201 and 202:** Special Needs Certifications were received, certifying that both units are special needs, but the Unit Status Report does not designate these units as special needs. Update the Unit Status Report in CMTS to designate both units as special needs.

**Unit 108:** A Special Needs Certification was received, but it was blank and therefore does not certify the unit as special needs. Upload a completed Special Needs Certification or alternate documentation demonstrating the special needs status to CMTS and update the Unit Status Report in CMTS to designate the special needs status. A Special Needs Certification is the easiest way to document special needs status, but you may upload alternate documentation of their special needs status from any point since move-in. Some examples of alternate documentation:

- a. Income Certification form, Part VIII Household Demographics includes a "Disabled" column that can verify disability status if it is checked and the form is signed and dated;
- b. Annual Eligibility Certification, Part II Household Composition includes a "Disabled" column that can verify disability status if it is checked and the form is signed and dated;
- c. An eligibility letter for Social Security disability benefits can verify disability status;
- d. Income Certification form, Part II Household Composition includes a "Date of Birth" column that might document the age of a resident that is aged 60 or older if the form is signed and dated;
- e. Copy of an identification card to document that a resident is aged 60 or older;
- f. A doctor's note regarding disability status; and/or



- g. Documentation (including a self-certification) supporting any of the special needs categories listed under Section 2.2(a) of the LURA.

**7. Household income above limit upon initial occupancy for units:** Previously submitted documentation does not meet the threshold for Corrective Action. Follow the instructions below with respect to units 104 and 206, and upload documentation.

**Unit 104:** The Head of Household (McCann) disclosed on his application that he was in the process of selling his house; however the real estate asset was not verified or clarified and the monitor was unable to determine eligibility. Property management submitted a partial recertification on 10/26/2021, but it did not correct the real estate issue. Manager then sent an explanation on 11/12/2021, saying the real estate was owned by a daughter, but property records do not support that statement.

TDHCA has reviewed the county real estate records. 106 Drover Circle, Wimberley, TX 78676 was owned by this household as of move-in on 4/1/2020. The property was sold to SkayP, LLC on 6/15/2020. This means that the fair market value of the real estate should have been included in the household's assets at move-in. Since assets exceeded \$5,000 at the time of move-in, the Under \$5,000 Asset Certification form may not be used and each asset must be individually verified.

To correct, choose either Option 1 or Option 2, and upload documentation.

Option 1: To correct as of the move-in date of 4/1/2020, upload all of the following:

- a. Checking account statements for accounts 7739 and 1978 for the periods covering 10/1/2019 through 4/1/2020;
- b. Savings account statements for accounts 9620 and 8929, showing the account balances as of 4/1/2020;
- c. Verifications of any other household assets as of 4/1/2020; and
- d. No further documentation is needed for the real estate asset; TDHCA will use county appraisal district and county clerk data, proving ownership by the head of household as of 4/1/2020.

Option 2: Certify the household under current circumstances and upload all of the following:

- a. Application\* based upon current circumstances;
- b. Verifications\*:
  - 1. Income: All sources of income for both household members.
  - 2. Assets: All sources of assets for both household members. For checking accounts, you must provide six months' worth of consecutive statements. For savings accounts, you must provide a statement that shows the balance during the period being certified. Ensure that accounts 7739, 1978, 9620, and 8929 are included, along with all other current assets.
- c. Income Certification\*;
- d. First and signatory pages of the current lease;
- e. Applicable lease addenda; and
- f. Acknowledgment page of the 2017 version of the Tenant Rights and Resources Guide.

*\*The application, verifications, and Income Certification work together and must be dated within 120 days of one another. Do not backdate any documents. Technical support regarding tenant files is at Exhibit 2.*

**Unit 206:** The Taylor household that moved in 9/1/2020 had assets that were not properly verified. Verifications in the file were dated over 120 days from the date of move-in, including a Chase Account, a Vanguard Account, and a Velocity Account. TDHCA requested copies of asset documentation within 120 days of move-in.

On 10/26/2021, TDHCA received a partial tenant file, including a lease dated 9/1/2021 and a note regarding M. Taylor moving out on 9/1/2021. TDHCA misunderstood and thought this was a new household. Upon further review, it appears that M. Taylor moved out of the unit on 9/1/2021, but A. Taylor remains in the unit and renewed her lease on 9/1/2021. The file submitted on 10/26/2021 was also incomplete. Problems include: No application was provided; M. Taylor's birthdate was accidentally used for A. Taylor; no assets were verified; Tenant Rights and Resources Guide Acknowledgment is the old 2015 form instead of the 2017 version.

To correct, you must certify the household under current circumstances and upload:

- a. Application\* for A. Taylor, using current circumstances;
- b. Verifications\* of all sources of income and assets:
  1. Income: Include the social security benefits letter;
  2. Assets: Verify A. Taylor's checking and savings accounts. For checking accounts, you must provide six months' worth of consecutive statements. For savings accounts, you must provide a statement that shows the balance during the period being certified.
- c. Income Certification\* (remember to correct her birthdate when you redo this form);
- d. First and signatory pages of the current lease for A. Taylor;
- e. Applicable lease addenda; and
- f. Acknowledgment page of the 2017 version of the Tenant Rights and Resources Guide.

*\*The application, verifications, and Income Certification work together and must be dated within 120 days of one another. Do not backdate any documents. Technical support regarding tenant files is at Exhibit 2.*

**8. Additional state required rent and occupancy restrictions (Units 103, 106, 100):** Previously submitted documentation does not meet the threshold for Corrective Action.

- a. **Unit 103:** The household was not found to meet the income or rent limits as designated at the 30% limits. To correct, Respondent must identify *an additional unit* at the Development that does meet the income and rent limits at 30% and upload this tenant file to the Department for review. The Unit Status Report (USR) must also be updated to reflect this newly designated 30% unit.
- b. **Units 106 and 110:** The households in units 106 and 110 were found to have rents that exceeded the 30% limit. Respondent must reduce the rents for these units to the 30% limit, update the tenant lease contracts and the USR to show the new rents, notify the households of the rent change, and refund overcharged rents to the households. To correct, submit the updated USR and upload updated leases reflecting the reduced rent, notification to the households of the reduction in rent, and copies of the cancelled checks to evidence that the overcharged rent has been refunded.

## 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. 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>.

*\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.*

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. 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. There are multiple methods:
  - 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 (at least two months’ worth of check stubs for HOME, NHTF, NSP, and TCAP RF);
  - 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;
  - 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. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - 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. **First hand verifications** such as bank statements to verify a checking account. Ensure that you collect at least six months' worth of checking account statements. For savings accounts, collect a statement showing the account balance as of the income certification date.
  - b. **3<sup>rd</sup> 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(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) and (h). 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. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.

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:** In accordance with 10 TAC §10.613(l), 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:
  - c) Information about Fair Housing and tenant choice; and
  - d) Information regarding common amenities, unit amenities, and services.

Additionally, a representative of the 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.

**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 following exceptions to the ownership transfer process outlined herein apply:

(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, 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.

(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 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(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)(A) 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)(B) 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;

(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) (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 section (relating to Reserve Accounts).

(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, Appeals, and other Provisions).

**Source Note:** The provisions of this §10.406 adopted to be effective February 5, 2020, 45 TexReg 722