

ENFORCEMENT ACTION AGAINST
SEA RAD, LP WITH RESPECT TO
SEA RAD OAKS
(HTC FILE # 16099 / CMTS # 5212)

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BEFORE THE
TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 15th day of June, 2023, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **SEA RAD, 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 (FOF)

Jurisdiction:

- A. During 2016, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in the annual amount of \$901,883 to acquire and rehabilitate SEA RAD Oaks (Property) (HTC file No. 16099 / CMTS No. 5212).
- B. Respondent] signed a land use restriction agreement (LURA) regarding the Property. The LURA was dated December 20, 2018, and filed of record at Document Number 2019001067 of the Official Public Records of Real Property of Travis County, Texas (Records).
- C. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

- D. The Department conducted a final construction inspection on October 21, 2021. The inspection focused on application commitments and representations, amenities, and program requirements relating to accessibility. The Inspection report showed 19 accessibility deficiencies, including violations of Section 504 of the Rehabilitation Act of 1973; Titles II and III of the Americans with Disabilities Act, as further defined through the 2010 ADA Standards for Accessible Design (2010 ADA); Tex. Gov't Code §§2306.6722 and 2306.6730; 10 TAC §§1.201-1.212 (Accessibility Rules); and Addenda C and D of the LURA. The Department issued notifications of noncompliance setting an April 19, 2022, corrective action deadline. After referral for an administrative penalty, Respondent negotiated a corrective plan with the Enforcement Committee in accordance with 10 TAC 2.302(c), with all corrections to be submitted by March 31, 2023. Respondent has not submitted any corrective documentation, and all violations listed at Exhibit 1 remain unresolved at the time of this Order.

CONCLUSIONS OF LAW

- A. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
- B. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
- C. 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.
- D. Pursuant to Tex. Gov't Code Chapter 2306, Subchapter DD and Tex. Gov't Code §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
- E. Respondent violated Section 504 of the Rehabilitation Act of 1973, Titles II and III of the Americans with Disabilities Act, as further defined through the 2010 ADA Standards for Accessible Design (2010 ADA), Tex. Gov't Code §§2306.6722 and 2306.6730, 10 TAC §§1.201-1.212 (Accessibility Rules), and Addenda C and D of the LURA by failing to correct the following final construction inspection deficiencies:
1. At least one accessible route connection is not provided from the accessible pathway to the barbecue grills at Alexander Oaks;
 2. The sidewalk ramp at Alexander Oaks does not provide the required protection along the edge where the adjacent surface drops off, posing a potential safety hazard;

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

3. The accessible route located near unit 18 is a ramp with a rise greater than 6 inches, but handrails were not provided on both sides of the ramp;
4. Multiple accessible parking spaces reserved for mobility accessible units do not have an accessible aisle that has the required minimum dimensions and is on the same level and flush with the adjoining parking space. There are built up ramps leading to the accessible route;
5. The signs at doors identifying dwelling units do not meet tactile character requirements for accessible signage, and no signs were present at the community room and fitness room at Summit Oaks or the community center at Alexander Oaks;
6. Signs using pictogram images at doors designating permanent interior rooms and spaces do not meet the pictogram field requirements for accessible signage. The pictogram designating the accessible bathroom was not provided at Summit Oaks;
7. The Office at Alexander Oaks is identified as a common use facility, but the height of the entrance door threshold was greater than $\frac{3}{4}$ of inch on the right side where a gap between the threshold and the pavement existed;
8. The mailboxes at Summit Oaks are identified as a common use facility, but the mobility accessible unit 1 mailbox lock is 50 inches above the ground surface and is not within accessible reach ranges;
9. The garbage dumpster at Summit Oaks is identified as a common use facility, but the sill height of the opening of the dumpster is greater than 48 inches above the ground surface and not within accessible reach ranges;
10. The laundry rooms at Summit Oaks and Alexander Oaks are identified as common use facilities, but do not provide the minimum number of accessible front-loading machines;
11. Unit 6101B at Alexander Oaks was designated as a unit required to provide accessible communication features, but a hard-wired audible/visible doorbell button and signal was not provided;
12. Unit 15 at Summit Oaks and Unit 6101B at Alexander Oaks are designated as units required to provide accessible communication features, but means for visually identifying a visitor that provides a full range of view was not provided;
13. Unit 6113A at Alexander Oaks is designated as a mobility accessible dwelling unit, but does not have the minimum required height clearance under the kitchen sink;
14. Unit 1 at Summit Oaks is designated as a mobility accessible dwelling unit, but the door threshold was not beveled at the edge;

15. Unit 6109A and Unit 6113A are designated as mobility accessible dwelling units, but the kitchens do not provide the minimum clearance required for a kitchen that is not a pass-through with a separate entrance and exit;
16. Unit 6113A is designated as a mobility accessible dwelling unit, but a projecting object (soap dish) is mounted in an inaccessible position related to the grab bars in the shower in the accessible bathroom;
17. Unit 13 at Summit Oaks and Unit 6109A at Alexander Oaks are designated as a mobility accessible dwelling units, but the toilet position in the accessible bathrooms do not have the flush control on the open side of the toilets;
18. Unit 1 at Summit Oaks is designated as a mobility accessible dwelling unit and a side grab bar was provided at the toilet in the accessible bathroom, but no back grab bar was provided. When a grab bar is provided all grab bars must be provided in the required accessible locations; and
19. Unit 6113A at Alexander Oaks is designated as a mobility accessible dwelling unit, but the roll-in shower grab bar located at the back wall extends beyond the edge of a fixed seat.

- F. 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.
- G. 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.
- H. 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.
- I. An administrative penalty of \$25,000 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 \$25,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the final construction inspection violations as indicated in the exhibits and submit complete documentation of the corrections to TDHCA on or before September 13, 2023.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, the satisfactory performance under this Order will be accepted in lieu of the assessed administrative penalty, and the full amount of the administrative penalty is subject to deferral and forgiveness as follows:

- A. A \$12,500 portion of the assessed administrative penalty shall be deferred and forgiven if violations E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E16, E17, E18, and E19 are fully corrected and Respondent submits complete documentation of the corrections to TDHCA on or before September 13, 2023; and
- B. A \$12,500 portion of the assessed administrative penalty shall be deferred and forgiven if violation E15 is fully corrected and Respondent submits complete documentation of the corrections to TDHCA on or before September 13, 2023.

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 unforgiven portion of the administrative penalty as defined above 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 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

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Approved by the Governing Board of TDHCA on June 15, 2023.

By: /s/ Leo Vasquez
Name: Leo Vasquez
Title: Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 15th day of June, 2023, personally appeared Leo Vasquez, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Nancy Dennis
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 15th day of June, 2023, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Nancy Dennis
Notary Public, State of Texas

Exhibit 1

Correct each violation following the instructions below, and then submit complete corrections via CMTS following the upload instructions at <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

Evidence of correction must be provided for each deficiency and must provide enough evidence to verify that the work has been done correctly and is 100% complete.

Where photographic evidence is required below, any photographic evidence involving dimensions, clearances, slope, etc. requires the photographer to compose each shot so that the details of the condition as well as a wide view showing the greater context are all included in the same picture. This requires a digital camera to be set at a high enough resolution so that the reviewer can adjust the image and clearly see both the ramp slope being checked and the level's digital readout, or tape's measurement with both ends of the tape visible in the frame. This also requires the camera to be positioned at an angle that aligns the measurement on the tape with the condition being measured.

Where owner certifications are required below, the certifications must specifically address the details of the corrected deficiency and place Respondent on the record as having confirmed that the repair is complete and the corrected condition meets the technical specification cited in the deficiency letter. Requested certifications must state that the correction was made in the cited unit and in all other units where the requirement applies.

Where accessibility specialist, architect, engineer, and/or other service provider certifications are required below, the certifications must specifically address the details of the corrected deficiency and place that professional on the record as having confirmed that the repair is complete and the corrected condition meets the technical specification cited in the deficiency letter. Requested certifications must state that the correction was made in the cited unit and in all other units where the requirement applies. Certifications from accessibility specialists, architects, engineers and other service providers must be provided on company letterhead and be dated and signed with the professional's printed name, designation and registration number.

Accessible Site and Common Use Facilities The following item or items were found at the time of inspection to be in non-compliance or it was unclear if the item was in full compliance with applicable accessibility standard.

Item #1 Deficiency: Accessible Route Within a Site (HUD 11exceptions/TDHCA TAC 10 Rule 1.206/2010 ADA 206.3) This development is subject to ADA design requirements. At least one accessible route connection is not provided from the accessible pathway to barbecue grills at Alexander Oaks.



o **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected. The certification must verify that a dedicated no-step pedestrian route located within the boundaries of the site is provided between the accessible pathway and all amenities and that the route is not located in a vehicular driveway in the direction of traffic and has a stable, firm, and slip resistant surface.

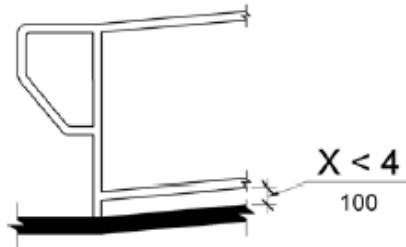
Item #2 Deficiency: Ramp Edge Protection (2010 ADA 405.9) This development is subject to ADA design requirements. The ramp located at Alexander Oaks does not provide the required protection along the edge where the adjacent surface drops off posing a potential safety



hazard.

Corrective Action – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected at the location cited and throughout the accessible route for the property. The certification must verify that edge

protection is provided along each side of all ramp segments with a slope of greater than 5% or **where the adjacent ground surface drops off at the edges**. A curb or barrier shall be provided that prevents the passage of a 4 inch diameter sphere in contact with the walking surface.



Item #3 Deficiency: Handrails (2010 ADA 405.8, 505.2) This development is subject to ADA design requirements. The accessible route located near Unit 18 is a ramp with a rise greater



than 6 inches. Handrails were not provided on both sides of the ramp.

- **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected at the location cited and at all ramps with over 5% slope and with a rise of over six inches and accessible stairs that are part of a means of egress, throughout the property. The certification must verify that accessible stairs and ramps meet each of the following handrail specifications: 1) handrails are provided on both sides of the stairs and ramps; 2) rail height is between 34-38 inches, measured vertically from the top of the rail to the stair nosing or ramp and landing surface; 3) the size of handrail gripping surface is from 1¼-2 inches in diameter; 4) clearance around all rails is at least 1½ inches; 5) there are no supports or mounting brackets on the top or sides of handrails; 6) bottom-mounted rail supports are at least 1½ inches long; and 7) handrail extensions are provided meeting all specifications required under *ADA 505.10*.

Item #4 Deficiency: Accessible Parking Access Aisle (2010 ADA 502.3) This development is

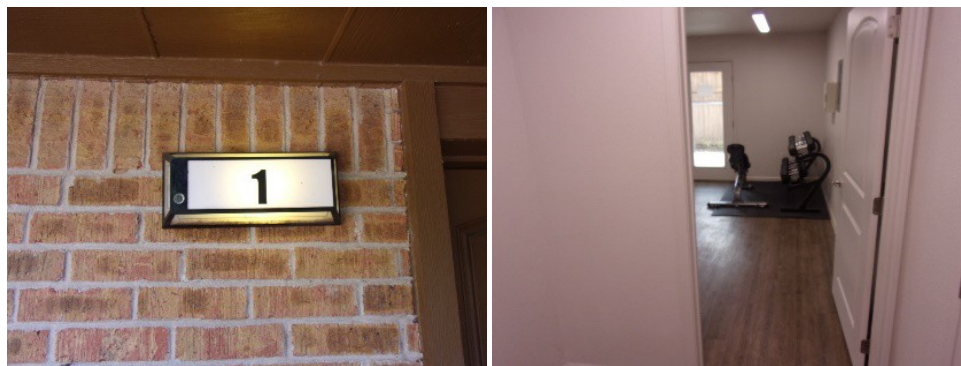


subject to ADA design requirements. Multiple accessible parking spaces reserved for mobility accessible units do not have an accessible access aisle that has the required minimum dimensions and is on the same level and flush with the adjoining parking space. There are built up ramps leading to the accessible route.

- **Corrective Action** – Please provide an owner’s certification with photographic evidence that the condition has been corrected at the location cited and at all accessible parking spaces on the property. The certification must verify that all accessible access aisles meet the following conditions: 1) aisles are located adjacent to each accessible parking space; 2) car aisles are marked to discourage parking within a space that is at least 60 inches wide (line center to center); 3) van aisles are marked to be at least 60 inches wide if the adjacent parking space is 132 inches wide, or 96 inches wide if the parking space 96 inches wide; 4) aisles are marked to discourage parking in them; 5) aisles have a level surface (max. 2% slope for drainage); 6) **aisles are not obstructed and have no built-up curb ramps or vertical support columns**; 7) aisles extend the full length of the parking spaces they serve; and 8) aisles adjoin directly to an accessible route with no-steps (one aisle may be shared between two adjacent accessible parking spaces).



Item #5 Deficiency: Room and Egress Route Signage (2010 ADA 216.2, 216.4.1, 703) This development is subject to ADA design requirements. The signs at doors identifying dwelling units do not meet tactile character requirements for accessible signage and the community room and fitness room at Summit Oaks and the community center at Alexander Oaks do not meet the *tactile* and *visual* character requirements for accessible signage as no signs were

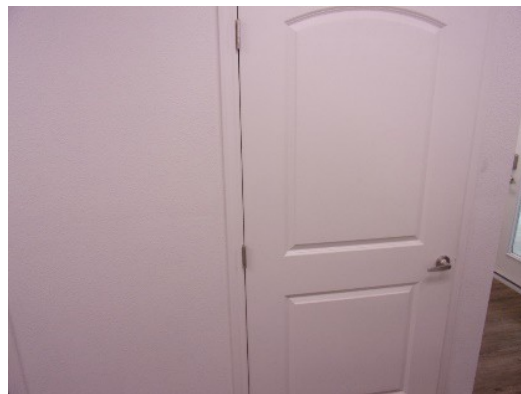


present.

- 1) **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected at the location cited and throughout the property. The certification must verify that all room and space signage, including egress route signs, and excluding exterior room and space signs not located at a

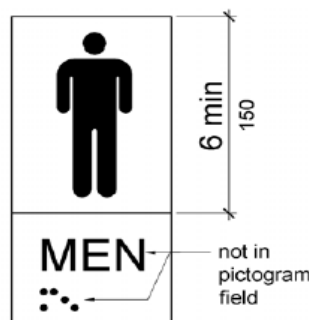
door, meets the technical specifications required under ADA 703, and specifically verifies the following conditions are provided: 1) a non-glare finish with text characters on a high-contrast background (light on dark or dark on light); 2) all room and egress route signs provide *tactile* text characters meeting ADA 703.2 and braille meeting ADA specifications 703.3 and installation height and location meeting ADA 703.4; 3) all room and egress route signs also provide *visual* text characters meeting ADA 703.5; 4) for any signs designating exterior rooms and spaces not located at a door and not accompanied by braille, text characters are *visual* meeting ADA 703.5; and 5) any egress route signs meet all local codes and ordinances.

Item #6 Deficiency: Pictograms (2010 ADA 216.2, 703.6.1) This development is subject to ADA design requirements. The signs using pictogram images at doors designating permanent interior rooms and spaces do not meet the pictogram field requirements for accessible signage.



The pictogram designating the accessible bathroom was not provided at Summit Oaks.

- **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected at the location cited and throughout the property. The certification must verify that signs with pictograms meet the technical specifications required under ADA 703, and specifically verifies that all pictogram signage provides the following: 1) a non-glare finish with pictogram and text characters on a high-contrast background (light on dark or dark on light); 2) pictogram symbol is located within a background field that is at least 6 inches high and is blank with no characters or braille located in the field; 3) text descriptors located directly below the symbol meet either the *tactile* requirements for raised characters and braille specified in ADA 703.2, 703.3,



703.4 and the installation height and location requirements specified in ADA 703.4, or the text descriptors below the symbol meet the *visual* character requirements specified under ADA 703.5.

Item #7 Deficiency: Door Threshold Height and Beveled Edge (2010 ADA 303, 404.2.5) The Office at Alexander Oaks is identified as a common use facility and subject to ADA requirements. The height of the entrance door threshold was greater than ¼ of inch on the right side where a gap between the threshold and the pavement existed.

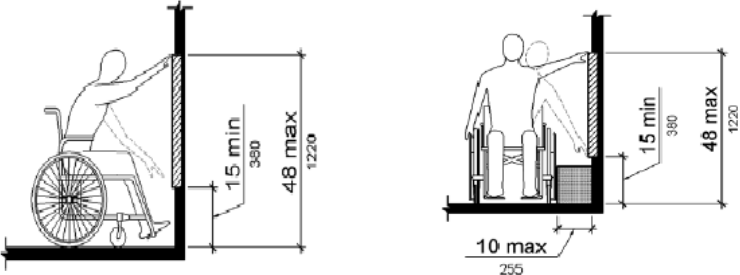


- **Corrective Action** – Provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected at this location and all passage doors on the accessible route. The certification must verify that the combined height of the threshold plus any change in floor level occurring at the threshold does not exceed ¼ inch for rehabs (measured from top of threshold to interior floor and exterior landing surfaces),. Threshold heights and other changes in level along an accessible route that are between ¼ inch and ½ inch must have a beveled edge with maximum 1:2 slope.

Item #8 Deficiency: Mailboxes (2010 ADA 205, 308-9) The mailboxes at Summit Oaks are identified as a common use facility and subject to ADA design requirements. The mobility accessible unit 1 mailbox lock is 50 inches above the ground surface and is not within accessible reach ranges.



- **Corrective Action** – Provide an architect’s or accessibility specialist’s certification with photographic evidence that the mailbox lock at this location and at other accessible unit



mailboxes have been corrected or are already correct. The certification should say that the height of the mailbox lock is 15- 48 inches above the ground surface for either a front approach or side approach.

Item #9 Deficiency: Trash Disposal (2010 ADA 205, 308-9) The garbage dumpster at Summit Oaks are identified as a common use facilities and subject to ADA design requirements. The sill height of the opening of the dumpster are greater than 48 inches above the ground surface and not within accessible reach ranges.



- **Corrective Action** – Provide an architect’s or accessibility specialist’s certification with photographic evidence that the garbage dumpsters at this location and other accessible dumpsters have been corrected or are already correct. The certification must verify that trash facilities are provided with the use of accessible common-use dumpsters or with separate accessible receptacles for use by residents with disabilities. If separate receptacles are used, note that it may be necessary to designate them as reserved for disabled use only. The certification must also verify that all accessible trash facilities meet the following conditions: trash facilities are on an accessible route, and, where the clear floor space is positioned for an unobstructed front (forward) approach, the height of the dumpster is 15- 48 inches above the ground surface.

Item #10 Deficiency: Laundry Machines (TDHCA/2010; ADA 214, 611) The laundry rooms at Summit Oaks and Alexander Oaks are identified as common use facilities serving accessible dwelling units and subject to ADA and TDHCA design requirements. The laundry rooms do not



provide accessible front- loading machines.

- **Corrective Action** – Provide an architect’s or accessibility specialist’s certification with photographic evidence that the laundry machines at Summit Oaks and Alexander Oaks have been corrected or are already correct. The certification must verify that applicable laundry

rooms and accessible laundry machines are on an accessible route, and that at least one accessible front-loading washer and dryer in laundry rooms with three or fewer washers and dryers, or at least two front-loading accessible washers and dryers in rooms with more than three washers and three dryers and that the clear floor space at each accessible machine is positioned for a side (parallel) approach with unobstructed controls and operable parts at 15-48 inches.

Dwelling Units The following item or items were found at the time of inspection to be in non-compliance or it was unclear if the item was in full compliance with applicable accessibility standard. As a reminder, only a selection of units were inspected, and some Corrective Action instructions below may require you to make corrections in the cited units, and also in units that were not inspected but are subject to the same requirement(s)

Item #11 Deficiency: Sight & Hearing Unit Doorbell (2010 ADA 809.5.5.1) Unit 6101B at Alexander Oaks is designated as a unit required to provide accessible communication features and subject to ADA design requirements. A hard-wired audible/visible doorbell button and signal was not provided. Additional dwelling units required to provide accessible communication features were not inspected but may also be affected.

- **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected in the cited unit and all units required to provide accessible communication features. The certification must verify that sight and hearing accessible units are equipped with notification systems that meet the following conditions: 1) an electric doorbell is hard-wired (not remote wireless) with a button or switch located outside the primary entrance door; 2) activation of the button or switch initiates an audible tone and visible signal within the dwelling; and 3) any visible doorbell signal located in sleeping areas have controls to deactivate the signal.

Item #12 Deficiency: Sight and Hearing Unit Peephole (ADA reference 809.5.5.2) Unit 15 at Summit Oaks and Unit 6101B at Alexander Oaks are designated as units required to provide accessible communication features and subject to ADA design requirements. A means for visually identifying a visitor that provides a full range of view was not provided. Additional dwelling units required to provide accessible communication features were not inspected but may also be affected.

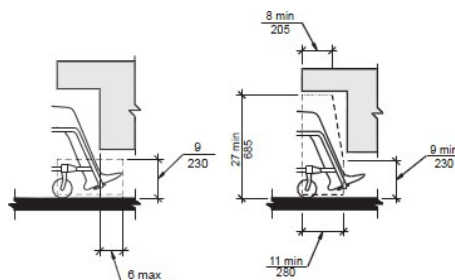
- **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected in the cited unit and all units required to provide accessible communication features. The certification must verify that sight and hearing accessible units are equipped with identification devices or other means for visually identifying a visitor without opening the door and allows for a minimum 180-degree range of view.

Item #13 Deficiency: Knee and Toe Clearance (2010 ADA 306) Unit 6113A at Alexander Oaks is designated as a mobility accessible dwelling unit and subject to ADA design requirements. The required clearance under the kitchen sink does not provide the minimum height. The height of



the knee space is 25 ¼ inches measured above the floor. Additional mobility accessible dwelling units were not inspected but may also be affected.

- **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected in the cited unit and all mobility accessible units (one sample photo only). The certification must verify that an open space or a removable cabinet is independent of a self-supporting countertop, and once the cabinet is removed, provides knee, leg and toe clearance under the sink and meets the following conditions: 1) the minimum width of the space is 30 inches; 2) the minimum height at the top of the space is **27 inches above the floor**; 3) the minimum depth of the knee space at a point 27 inches above the floor extends 8 inches measured horizontally from the front edge of the sink; 4) the minimum depth of the space at a point at least 9 inches above the floor extends 11 inches measured horizontally from the front edge of the sink; and 5) the minimum depth of the toe space below a point at least 9 inches above the floor is 17 inches (see illustration below).



Item #14 Deficiency Threshold Height and Beveled Edge (2010 ADA reference 404.2.5) Unit 1 at Summit Oaks is designated as a mobility accessible dwelling unit and subject to the ADA design requirements. The door threshold was not beveled at the edge. Additional mobility accessible dwelling units were not inspected but may also be affected.



- **Corrective Action** – Provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected in the cited unit and all mobility accessible units (one sample photo only). The certification must verify that, for all passage doors along the accessible route, the combined height of any threshold plus any change in floor level occurring at the threshold does not exceed $\frac{3}{4}$ inch for rehabilitation developments (measured from top of threshold to interior floor and exterior landing surfaces). The certification must also verify that threshold heights and other changes in level along an accessible route that are between $\frac{1}{4}$ inches and $\frac{1}{2}$ inches have a beveled edge with maximum 1:2 slope.

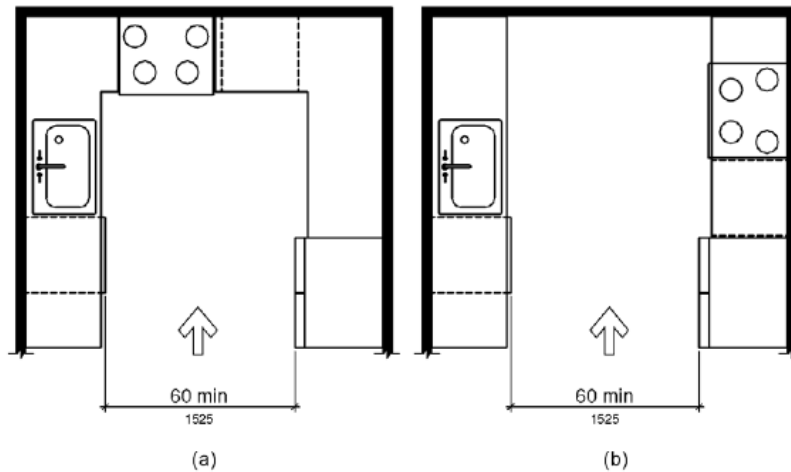
Item #15 Deficiency: Non-Pass-Through Kitchen Clearance (2010 ADA 804.2.2) Unit 6109A and Unit 6113A are designated as mobility accessible dwelling units and subject to ADA design requirements. The kitchen does not provide the clearance required for a kitchen that is not a pass-through with a separate entrance and exit. Clearance was measured at 56 inches in Unit 6109A and 57 inches at Unit 6113A inches between the counter edge and opposite facing counter edge. Additional mobility accessible dwelling units were not inspected but may also be



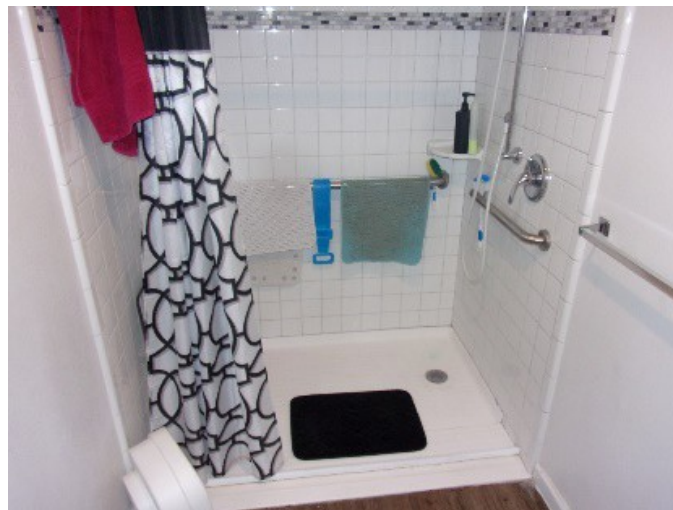
affected.

- **Corrective Action** – Please provide an owner’s statement with photographic evidence that the condition has been corrected in the cited unit and all other units with non-pass-through

(dead-end) kitchens. The certification must verify that a minimum clearance of 60 inches is provided between all opposing counters, walls and appliances (measured from counter edges, not including handles, see illustration below).



Item #16 Deficiency: Grab Bar Height & Clearance (2010 ADA 609.3) Unit 6113A is designated as a mobility accessible dwelling unit and subject to ADA design requirements. A projecting object (soap dish) is mounted in an inaccessible position related to the grab bars in the shower in the accessible bathroom. The soap dish is mounted 4 inches above the grab bar. Additional mobility accessible dwelling units were not inspected but may also be affected.



- **Corrective Action** – Please provide an architect's or accessibility specialist's certification with photographic evidence that the condition has been corrected in the cited unit and all mobility accessible dwelling units. The certification must verify that grab bars meet each of the following conditions: 1) grab bars are securely-mounted and do not rotate in their fittings; 2) are 1¼ inches to 1½ inches in diameter; 3) grab bars located in the positions that are specified for grab bars at toilets, showers and bathtubs are mounted with the center of the bars at 33 inches to 36 inches above the floor (except the lower grab bar at the back wall of bathtubs); 4) all grab bars located in the positions that are specified for grab bars at toilets, showers and bathtubs are mounted horizontally; and 5) all specified and non-specified grab bars provide at least 1½" of clearance between the grab bar and any obstruction (e.g., soap dish, spray unit bar, valve, and other bars). The space between the grab bar and projecting objects above shall be 12 inches minimum. Recessed objects are

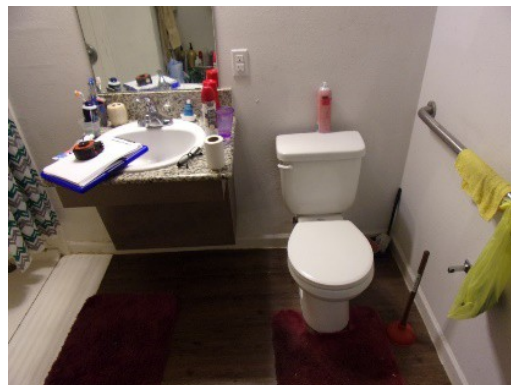
acceptable.

Item #17 Deficiency: Toilet Placement (2010-ADA 604.2). Unit #13 at Summit Oaks and Unit 6109A at Alexander Oaks are designated as a mobility accessible dwelling unit and subject to ADA design requirements. The toilet position in the accessible bathroom does not have the flush control on the open side of the toilet. Additional mobility accessible dwelling units were not inspected but may also be affected.



- **Corrective Action:** Please provide an architect's or accessibility specialist's certification with photographic evidence that the condition has been corrected at the locations cited (one sample photo only). The certification must verify that every mobility unit has at least one fully accessible bathroom that provides each of the following conditions: 1) toilet is located in the corner of the bathroom; 3) grab bar reinforcement is provided in the back wall for a minimum 36 inch grab bar and extends to at least 42 inches from the corner; 3) grab bar reinforcement is provided in the sidewall for a 42 inch grab bar and extends to at least 54 inches from the corner; 4) the centerline of the toilet is positioned is 18 inches from the sidewall (ADA allows for a range of 16-18 inches) from the sidewall; **5) the flush control is on the open side of the toilet.**

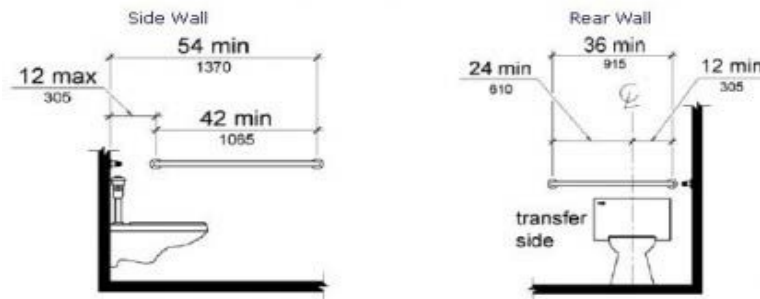
Item #18 Deficiency: Toilet Grab Bars (2010 ADA 604.5) Unit 1 is designated as a mobility accessible dwelling unit and subject to ADA design requirements. The grab bar located at the back of the toilet in the accessible the bathroom was not provided while a side grab was provided. When a grab bar is provided all grab bars must be provided in the required accessible locations. Additional mobility accessible dwelling units were not inspected but may also be



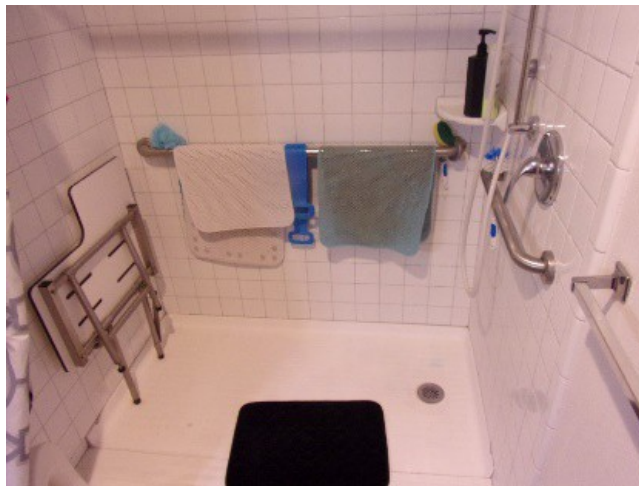
affected.

- **Corrective Action** – Please provide an architect's or accessibility specialist's certification with photographic evidence that the condition has been corrected in the cited unit and all

mobility accessible dwelling units. The certification must verify that all of the following installation requirements have been met for toilet grab bars that are currently installed, or, if not installed, that reinforcement has been installed in walls and located so as to permit the installation of grab bars that meet all of the following features: 1) grab bars are mounted horizontally, securely and will not rotate in their fittings; 2) bars are 1¼ inches to 1½ inches in diameter; 3) the center of the bars is 33 inches to 36 inches above the floor; 4) bars have at least 1½ inches clearance and are not obstructed by any dispenser, any other inaccessible grab bar, fixture or architectural element; 5) the sidewall bar is at least 42 inches long with one end positioned no more than 12 inches, and with the other end no less than 54 inches from the corner; **6) bar at the back is at least 36 inches long and positioned so that the end nearest to the sidewall is no less than 12 inches from the centerline of the toilet, and the other end is no less than 24 inches from the toilet centerline.**



Item #19: Deficiency: Roll-in Shower Grab Bars (2010 ADA 608.3.2) Unit #6113A at Alexander Oaks is designated as a mobility accessible dwelling unit and subject to ADA design requirements. The grab bar located at the back wall extends beyond the edge of a fixed seat. Additional mobility accessible dwelling units were not inspected but may also be affected.



- **Corrective Action** – Please provide an architect’s or accessibility specialist’s certification with photographic evidence that the condition has been corrected in the cited unit and all mobility accessible dwelling units. The certification must verify that all of the following installation requirements have been met for roll-in shower grab bars that are currently installed, or, if not installed, that wall reinforcement has been installed in walls and located so as to permit the installation of accessible grab bars that meet all of the following features: 1) grab bars are mounted horizontally, securely and will not rotate in their fittings; 2) grab bars are 1¼ inches to 1½ inches in diameter; 3) the center of the bars is 33 inches to 36 inches above the floor; 4) bars provide 1½ inches of spacing between the grab bar and the wall; 5) bars provide at least 1½ inches of spacing between the grab bar and projecting objects below, at the ends, and to any shower controls, shower fittings, and other grab bars above; 6) where a permanent seat is not provided, grab bars extend across the back wall and both of the side walls; **7) where a permanent seat is provided, grab bars extend across the side wall opposite the seat, and across the back wall to a point up to, but not beyond the edge of seat;** and 8) grab bars are installed no more than 6 inches from the corner of adjacent walls.

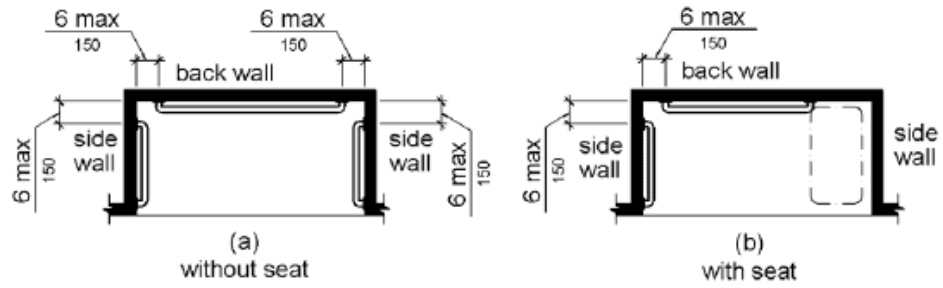


Exhibit 2:

Texas Administrative Code

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10 UNIFORM MULTIFAMILY RULES
SUBCHAPTER E POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406 Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter (relating to Amendments and Extensions).

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement

Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

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

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this subchapter has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this subchapter.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

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

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) of this subchapter (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this subchapter.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

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