

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
COMMUNITY SERVICES AGENCY OF SOUTH	§	TEXAS DEPARTMENT OF
TEXAS WITH RESPECT TO	§	HOUSING AND COMMUNITY
VILLA DE REPOSO SAN LUIS ASHERTON	§	AFFAIRS
(HOME FILE # 539110 / CMTS # 2730)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 9<sup>th</sup> day of February, 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 **COMMUNITY SERVICES AGENCY OF SOUTH TEXAS**, 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. On December 8, 2000, Respondent received a HOME loan in the amount of \$633,854 to build and operate Villa de Reposo San Luis Asherton (Property) (HTC file No. 539110 / CMTS No. 2730 / LLDL No. 148).

2. Respondent signed a Land Use Restriction Agreement (LURA) regarding the Property. The LURA was effective December 8, 2000, and filed of record on January 4, 2001 at Volume 279, Page 377 of the Official Public Records of Real Property of Dimmit County, Texas.
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. Respondent has a history of violations and previously signed two Agreed Final Orders for related property Villa de Reposo Encinal (HOME 530201 / CMTS 4002):
  - a. Agreed Final Order signed on May 5, 2016, agreeing to pay a \$1,000 administrative penalty, which was to be fully forgivable if Respondent submitted the following documentation on or before June 27, 2016: (i) a compliant Affirmative Marketing Plan, (ii) tenant income certification and supporting documentation for unit 602, and (iii) a gross rent refund for unit 600. Respondent violated the Order and paid the full \$1000 administrative penalty on July 20, 2017.
  - b. Agreed Final Order signed on August 5, 2019, agreeing to pay a \$5,000 administrative penalty, of which \$1,000 was paid at signing and the remainder was to be forgivable if Respondent attended HOME Compliance Training on or before January 31, 2020.
5. The TDHCA Compliance Division conducted an on-site monitoring review on February 16, 2022, to determine whether Respondent complied 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. TDHCA sent notification of noncompliance on February 18, 2022, setting a May 19, 2022 corrective action deadline. Respondent timely submitted corrective documentation on May 19, 2022. A TDHCA review found that the submission was incomplete, and provided a 10-day grace period expiring September 5, 2022. The following violations were not resolved, and were referred for an administrative penalty on September 30, 2022:
  - a. Respondent collected gross rents that exceeded allowable limits for units 3B and 8A due to failure to implement the TDHCA utility allowance. In accordance with 10 TAC §10.614(d)(3), on December 29, 2020, TDHCA calculated a utility allowance effective January 29, 2021 for use with all low-income units<sup>2</sup>. Failure

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

<sup>2</sup> Respondent must use the utility allowance calculated by TDHCA for the HOME Program, even if the household is receiving a Housing Choice Voucher from a Public Housing Authority. This may mean that one organization allows a higher rent than the other does; if that happens, Respondent must charge the lower tenant-paid rent amount in order to comply with both programs. Each organization will monitor its own requirements and require compliance.

to implement that utility allowance is a violation of 10 TAC §10.614(d)(3)(F) (Utility Allowances), which stipulates that the utility allowance must be implemented within thirty days of notice by TDHCA. Exceeding the maximum rent as a result of that failure to implement is a violation of 10 TAC §10.622(d) (Special Rules Regarding Rents and Rent Limit Violations), which stipulates that the amount of rent paid by the household, plus a utility allowance, plus any mandatory fees, plus any rental assistance, cannot exceed the designated applicable limit published by TDHCA. Respondent uploaded final evidence to the Compliance Monitoring and Tracking System (CMTS) to correct the findings on December 19, 2022.

- b. Respondent failed to provide tenant income certification documentation for unit 1B at initial occupancy on July 8, 2021. The household disclosed a checking account on the application that was not verified, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires supporting documentation for the Income Certification to include asset verifications. Checking accounts for the HOME program must be verified using either a third party verification or six months of bank statements, in accordance with Appendix 3 of HUD Handbook 4350.3. Unit is currently vacant.
  - c. Respondent failed to provide self-certifications of tenant income for unit 8A for the years 2020 or 2021, a violation of 10 TAC §10.612(c)(3) (Tenant File Requirements). 10 TAC §10.612(c)(3) requires HOME Developments to complete a recertification with verifications of each HOME assisted unit every sixth year of the Development's affordability period. In the intervening years, the Development must annually collect a self-certification of the household composition, income, and assets using the Department's Income Certification form. Respondent did not collect this self-certification for the years 2020 or 2021. A new household then occupied unit 8A on July 1, 2022, and Respondent uploaded their tenant file to CMTS on October 18, 2022. That new household file did not include a complete application, complete verifications of income and assets, or comply with current lease language requirements; accordingly, the original finding remains uncorrected.
6. The following violations remain outstanding at the time of this order:
- a. Tenant income certification violation described in FOF #5.b; and
  - b. Tenant income certification violation described in FOF #5.c.

### **CONCLUSIONS OF LAW**

- 1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.

2. Respondent is a “housing sponsor” as that term is defined in Tex. Gov’t Code §2306.004(14).
3. Pursuant to Tex. Gov’t Code Chapter 2306, Subchapter DD and Tex. Gov’t Code §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
4. Respondent violated 10 TAC §10.614(d) and 10 TAC §10.622(d) in 2021 and 2022 by failing to implement the TDHCA utility allowance, resulting in gross rents exceeding the allowable limits, and not making timely corrections once the violations were discovered.
5. Respondent violated 10 TAC §10.612 in 2021 by failing to collect complete tenant asset verifications for unit 1B.
6. Respondent violated 10 TAC §10.612 in 2020 and 2021 by failing to collect self-certifications of tenant income for unit 8A.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov’t Code §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov’t Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov’t Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov’t Code §2306.041.
10. An administrative penalty of \$7,500 is an appropriate penalty in accordance 10 TAC Chapter 2, which became effective on November 19, 2014.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov’t Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$7,500, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$3,500 portion of the assessed administrative penalty by cashier’s check payable to the “Texas Department of Housing and Community Affairs” on or before March 15, 2023.

**IT IS FURTHER ORDERED** that all executive and key staff for Respondent must attend Income Determination Training conducted by TDHCA, and then submit completion certificates via CMTS on or before March 15, 2023. At minimum, attendees must include David Ojeda Jr. and Sixto Ortega. Registration for online training is available at <https://www.taa.org/events/>.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before March 15, 2023.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, attending training and correcting all violations as required, the satisfactory performance under this order shall be accepted in lieu of the remaining administrative penalty in the amount of \$4,000, which shall 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 \$4,000 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, Respondent must email an email 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. Respondent must remit penalty payment(s) 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 February 9, 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 9th day of February, 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/ Christopher Salguero  
Notary Public, State of Texas

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 9th day of February, 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/ Christopher Salguero  
Notary Public, State of Texas



## Exhibit 1

### File Monitoring Violation Resources and Instructions

#### Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. Technical support and training presentations are available at the following links:

Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFags.htm>

4. **All corrections must be submitted via CMTS:** See link for steps to upload documents <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

5. **Important notes -**

- i. Do not backdate any documents listed below.
- ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

*[Remainder of page intentionally blank. Instructions continue on the next page]*



**Instructions:**

6. **Tenant Income Certification noncompliance for units 1B and 8A.** Follow the applicable instruction below, and upload documentation via CMTS on or before March 15, 2023. A response is required even if the unit is vacant.

<b>Circumstance with respect to units 1B and 8A</b>	<b>Instruction</b>
I. If unit is occupied by a new qualified household.	<p>Certify household using their current circumstances, and upload the full tenant file*.</p> <p>If the unit is vacant or the household does not qualify, follow alternate instructions below.</p>
II. If unit is occupied by a nonqualified household on a month-to-month lease	<p>A. Follow your normal procedures for terminating residency** and upload a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available.</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after March 15, 2023 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
III. If unit is occupied by a nonqualified household with a non-expired lease	<p>A. Issue a nonrenewal notice** and provide a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. If the tenant is protected by another program such as Section 8 or USDA-RD and the property cannot issue a nonrenewal notice as a result, submit a letter stating which program protects the household and committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available;</p> <p>B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after March 15, 2023 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>

<p>V. If unit has been vacant <i>more than 30 days</i></p>	<p>A. Unit must be made ready for occupancy and a letter certifying that it is ready for occupancy must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after March 15, 2023 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>VI. If unit has been vacant <i>less than 30 days</i></p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after March 15, 2023 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>

*\*A full tenant file must include:*

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

*Items A-C above must be dated within 120 days of one another. Backdating is not permitted.*

*You must use current forms; Respondent's recent tenant file submissions included forms from 2007, which are obsolete and may not be used.*

*Exhibit 2 provides further details regarding basic tenant file guidelines.*

*\*\* If a notice of nonrenewal or notice of termination is sent, ensure that it complies with requirements of the rule at 10 TAC 10.802(g)*

## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as basic technical support. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. A suggested tenant file checklist is available at this link: <https://www.tdhca.state.tx.us/pmcdocs/Suggested-File-Checklist.docx>.

*\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 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, and student status. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” Applications must be signed and dated using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. 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 MFDL<sup>3</sup> programs is required*);
  - b. **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) are acceptable for social security and/or unemployment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

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<sup>3</sup> Multifamily Direct Loan Programs include HOME, National Housing Trust Fund, TCAP, TCAP RF, and NSP.

- c. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - d. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets, including assets such as checking or savings accounts. 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. MFDL programs require six months of statements for verification of checking accounts, and the two most current statements for savings accounts.
5. **Verify Student Status:** Must screen for student status; can be collected on the Annual Eligibility Certification, the Certification of Student Eligibility Form, or the Income Certification Form. If the household indicates they are students, there are two forms that *must* be used: the Certification of Student Eligibility form must be completed by the household, and the Student Verification form is used to verify and document their student status.
6. **Verify Special Needs:** This form is generally optional, but is a great way to screen households for special needs. It is required if there is a Special Needs occupancy requirement under your LURA, unless there is another form of special needs verification in the file.
7. **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.
8. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm> Generally speaking, when determining the rent for MFDL programs, you must ensure that the tenant-paid rent,

plus the TDHCA utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limit set by TDHCA. [10 TAC §10.613\(a\)](#) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, [10 TAC §10.613\(e\)](#) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per [10 TAC 10.613\(f\) and \(h\)](#). TAA has an affordable housing lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.

9. **Written Policies and Procedures / Tenant Selection Criteria:** Written policies and procedures requirements are at [10 TAC §10.802](#).
10. **Violence Against Women Act of 2013 (VAWA):** The property is required to provide all prospective tenants the VAWA forms 5380 and 5382 at the time of application, at the time they are approved, at the time of denial, and at the time the household is given a notice to vacate or non-renewal. Forms are available at the Forms link above.
11. **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:
  - a. Information about Fair Housing and tenant choice; and
  - b. Information regarding common amenities, unit amenities, and services.

Additionally, a representative of each household must receive a copy of the guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date. A copy of the signed acknowledgment must be maintained in the tenant file.

**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)

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(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