

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
RETIREMENT ACRES, LTD. WITH RESPECT	§	TEXAS DEPARTMENT OF
TO RETIREMENT ACRES	§	HOUSING AND COMMUNITY
(HTF FILE # 70104 / CMTS # 925)	§	AFFAIRS
	§	
	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 5th day of September 2019, 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 **RETIREMENT ACRES, LTD.**, 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:

1. During 1991, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$36,726 to build and operate Retirement Acres (Property) (HTC file No. 70104 / CMTS No. 925 / LDLD No. 196).

2. Respondent signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective November 13, 1991, and filed of record under Number 2035 on November 14, 1991 in the Official Public Records of Real Property of Falls County, Texas (Records).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. An on-site monitoring review was conducted on February 22, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 7, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. Missing documentation included an Affirmative Marketing Plan and written policies and procedures. An Affirmative Marketing Plan is further required by 10 TAC §10.617, which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. Written Policies and Procedures are further required by 10 TAC §10.610, which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. These findings remain outstanding.
 - b. Respondent issued lease nonrenewal notices to the households in units 28 and 47 that did not meet minimum language requirements of the rule relating to tenant selection requirements at 10 TAC §10.610. These findings remain outstanding.
5. The following violations remain outstanding at the time of this order:
 - a. Pre-onsite documentation finding described in FOF #4a; and
 - b. Tenant selection requirements finding described in FOF #4b.

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.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.607 and §10.618 in 2018, by not submitting pre-onsite documentation including an Affirmative Marketing Plan and written policies and procedures in preparation for the monitoring review.
5. Respondent violated 10 TAC §10.610 in 2018, by issuing nonrenewal notices that did not include required information relating to tenant selection requirements.
6. 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.
7. 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.
8. 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.
9. An administrative penalty of \$1,000 is an appropriate penalty in accordance 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 \$1,000, subject to deferral as further ordered below.

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 November 4, 2019.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the assessed \$1,000 administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$1,000 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, 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 September 5, 2019.

By: /s/ J.B. Goodwin
Name: J.B. Goodwin
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 5th day of September, 2019, personally appeared J.B. Goodwin, 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/ Ysella Kaseman
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 5th day of September, 2019, 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/ Ysella Kaseman
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:
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.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.

Instructions:

6. **Tenant Selection requirements violation relating to nonrenewal notices:**

How to prepare compliant lease nonrenewal notices: Update your Non-renewal and/or Termination Notice forms as required by 10 TAC §10.610, which states that your notices must include:

- The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" (*see "Forms" link above*)
- The HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." (*see "Forms" link above*)
- A specific and lawful reason for the termination or non-renewal;
- Instructions for how a person with a disability may request a reasonable accommodation in relation to such notice; and
- Information on the appeals process, if one is used by the property.

What to submit: Once the updated notice form(s) are ready, submit your revised template(s) for review, along with the signed Owner Certification enclosed at Attachment 2 via CMTS.

7. **Pre-onsite documentation:** Missing components include the written policies and procedures and affirmative marketing plan. Separate instructions are outlined for each below.

8. Written policies and procedures, including tenant selection criteria –

How to prepare compliant criteria: First watch the webinar presentation available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Then prepare updated written policies and procedures addressing all requirements at [10 TAC §10.610](#). Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy. The “10.610 (policy & procedures)” tab of this spreadsheet provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>

What to submit: Once your written policies and procedures are complete, the owner must review the criteria to verify that they are complete, then sign and upload a copy to CMTS.

9. Affirmative marketing plan –

Technical Support: First read the rule at 10 TAC §10.617 to gain a general understanding regarding affirmative marketing.

Steps to complete affirmative marketing plan:

- a. Get a copy of the plan form from <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. You can use any version of HUD Form 935.2A. Beginning in 2019, if you have a plan that has been approved by HUD or USDA, TDHCA will also accept that plan, provided that copies of outreach marketing materials are included that comply with section “f” below.
- b. Identify the appropriate housing market area in which outreach efforts will be made. A housing market area is the area from which you may reasonably expect to draw a substantial number of your tenants. As an example, the city in which your development is located may be an appropriate housing market area.
- c. Determine the groups that are least likely to apply and mark them in your plan.
To determine the groups, you must perform and document a reasonable analysis by which those groups were identified, and you must always include persons with disabilities. Some LURAs may also require marketing to veterans. This analysis must be included with the plan. If you use the current version of the HUD 935.2A, you will do this analysis by using Worksheet 1 to analyze your data versus the data for the census tract, housing market area, and (optional) expanded housing market area. See <https://factfinder.census.gov> for demographic data. When selecting groups, keep in mind that you typically would not market to groups that represent less than 1% of the population because they are not present in the marketing area.
- d. Identify and mark in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups that you have designated as least likely to apply. Specific examples:
 - i. Least likely to apply population - People with disabilities:
 - A. Local Center for Independent Living (“CIL”) – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
 - B. Aging and Disability Resource Center (“ADRC”) – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>
 - C. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: <https://www.dads.state.tx.us/contact/search.cfm>

- D. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: <https://www.dshs.texas.gov/mhservices-search/>
- E. Local non-profits in your area serving people with disabilities
- F. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
- ii. Least likely to apply population - White:
 - A. Examples of acceptable community contacts might include community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- iii. Least likely to apply population - Asian:
 - A. Local Asian real estate association
 - B. Local Asian Chamber of Commerce
 - C. Local Asian American Resource Center
 - D. Local organizations serving the Asian community
- iv. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- v. Least likely to apply population - Black/African American:
 - A. Local Black/African American Chamber of Commerce
 - B. Local Black/African American Professionals Social Network
 - C. Weekly Black/African American newspaper / website for a city
 - D. Local community center or YMCA in a historically black/African American neighborhood;
 - E. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- vi. Least likely to apply population - Hispanic:
 - A. Local Hispanic Chamber of Commerce
 - B. Local Young Hispanic Professional Association
 - C. The Hispanic Alliance
 - D. Mexican American Cultural Center
 - E. Local Spanish language publications
 - F. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group.
- vii. Least likely to apply population – Not Hispanic:
 - A. When this group is identified, no additional marketing is required, but the Development must refrain from targeting affirmative marketing efforts to Hispanic related groups.
- e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
- f. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Ensure that the addresses and send dates are included so that TDHCA can verify that you have performed the required marketing. Remember that 10 TAC §10.617(c)(2) requires marketing materials

to include the Fair Housing Logo and the contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms “reasonable accommodation” and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *“Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completer el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.”*

- g. Look over the “10.617 (affirmative marketing)” tab of the spreadsheet at the following link, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission:
<http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>
- h. Maintain all documentation in your files for future review. You must update the plan every 5 years.

What to submit: When your Affirmative Marketing plan *and* outreach materials are complete, the owner or a supervisor must review them, then you will upload the Plan, documentation regarding how you determined the groups that are least likely to apply, and evidence of outreach marketing efforts to CMTS.

Exhibit 2



debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with 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.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability 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 chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

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

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

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

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

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

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

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

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

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

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

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

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

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

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

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (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). The Development Owner, as 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 such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, 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.

(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 chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297