

ENFORCEMENT ACTION AGAINST § BEFORE THE
ANTHONY NG § TEXAS DEPARTMENT OF HOUSING
(NSP FILE # 770900156 / CMTS # 5167) § AND COMMUNITY AFFAIRS
§

AGREED FINAL ORDER

General Remarks and official action taken:

On this 9th day of May, 2024, 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 **ANTHONY NG** (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 2009, Inclusive Communities Housing Development Corporation, a Texas nonprofit corporation (Prior Owner) was awarded Neighborhood Stabilization Program funds to acquire and operate two scattered-site single-family homes located at 12429 Peak Circle and 11268 Creekwood Drive in Collin County, then collectively known as the Inclusive Communities Project (collectively, the Property) (HTC file No. 770900156 / CMTS No. 5167).

2. Prior Owner signed a land use restriction agreement (collectively LURAs) regarding each site at Property. The first was a Land Use Restriction Agreement, dated July 16, 2010, and filed of record on November 11, 2010 at Document Number 1234720 of the Official Public Records of Real Property of Collin County, Texas (“Records”). The second was a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low Income Housing Credits (HTC LURA), dated as of September 14, 2010, and filed of record on September 20, 2010 at Document Number 20100920001000840 of the Records.
3. Prior Owner transferred its interests in the Property to Respondent through a General Warranty Deed dated November 8, 2022, and filed in the Records at Document Number 2022000163841. In accordance with Section 7.7 of each LURA, the LURAs are restrictive covenants/deed restrictions encumbering the Properties and binding on all successors and assigns for the full term of the LURAs.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. Respondent failed to timely submit the 2022 Annual Owner’s Compliance Report that was due on April 30, 2023, a violation of 10 TAC §10.607 (Reporting Requirements), which requires submission of the annual report no later than April 30 of each year, reporting data as of December 31st of the prior year. The final report part was submitted November 22, 2023, after intervention by the Enforcement Committee.
6. The Department conducted a file monitoring review on January 13, 2023, 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, however, the following violations were not resolved before the corrective action deadline set by the Compliance Division:
 - a. Respondent failed to submit pre-onsite documentation, including an Entrance Interview Questionnaire and a Unit Status Report, a violation of 10 TAC §10.607 (Reporting Requirements) and 10 TAC §10.618 (Monitoring and Inspections), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. This finding was resolved on November 22, 2023, after intervention by the Enforcement Committee;
 - b. Respondent failed to implement a utility allowance for the Property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. This finding remains unresolved; and

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.

- c. Respondent failed to provide documentation proving that household incomes were within prescribed limits upon initial occupancy for the households at 12429 Peak Circle and 11268 Creekwood Drive, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2.4 of the LURAs, which require screening of tenants prior to occupancy to ensure qualification for the program. Owner did not submit a complete tenant file for 11268 Creekwood Drive; however, TDHCA closed the violation on March 19, 2024, after determining that the Department previously confirmed the household's eligibility during an onsite file monitoring review conducted with the Prior Owner in 2019. The finding for 12429 Peak Circle is unresolved.
7. The following violations remain outstanding at the time of this order:
 - a. Utility allowance violation described in FOF #6a; and
 - b. Household income violation for 12429 Peak Circle described in FOF #6b.

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. The Department is required to monitor for compliance with all program requirements for the Neighborhood Stabilization Program, authorized by the Housing and Economic Recovery Act of 2008, as a supplemental allocation to the Community Development Block Grant (CDBG) Program.
4. Respondent violated 10 TAC §10.607 in 2023, by failing to submit the Annual Owner's Compliance Reports for the 2022 reporting period.
5. Respondent violated 10 TAC §10.607 and §10.618 in 2023, by not submitting pre-onsite documentation including a unit status report and entrance interview questionnaire in preparation for the monitoring review;
6. Respondent violated 10 TAC §10.614 in 2023, by failing to implement a utility allowance;
7. Respondent violated 10 TAC §10.611 and Section 2.4 of the LURAs in 2023, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for units: 12429 Peak Circle and 11268 Creekwood Drive.
8. 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.

9. 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.
10. 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.
11. An administrative penalty of \$3,450.00 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 \$3,450.00, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$450.00 portion of the assessed administrative penalty by check payable to the "Texas Department of Housing and Community Affairs" within thirty days of the date this Agreed Final Order is approved by the Board.

IT IS FURTHER ORDERED that Respondent shall attend the Income Determination Training facilitated by the Texas Apartment Association on May 16, 2024, and submit a completion certificate to TDHCA on or before June 16, 2024. Training details are at: <https://www.taa.org/events/income-determination-training-aka-tdhcas-first-thursday-training-live-online-2/>.

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 June 16, 2024.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining administrative penalty in the amount of \$3,000.00, which will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$3,000.00 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: <https://www.tdhca.texas.gov/sites/default/files/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.texas.gov to inform her that the documentation is ready for review. Administrative penalty payment(s) 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 May 9, 2024.

By: /s/ Leo Vasquez

Name: Leo Vasquez

Title: Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles

Name: James "Beau" Eccles

Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §

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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 9th day of May, 2024, 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 9th day of May, 2024, 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

STATE OF TEXAS §
§
COUNTY OF Collin §

BEFORE ME, Chhavyvann Voth (notary name), a notary public in and for the State of Texas, on this day personally appeared Anthony Ng, known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Anthony Ng, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I am the owner of the Property, which is subject to Land Use Restriction Agreements monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
4. My mailing address is _____.
5. I knowingly and voluntarily enter into this Agreed Final Order, and agree with and consent to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

ANTHONY NG, Owner

By: /s/ Anthony Ng

Name: Anthony Ng

Title: Owner

Given under my hand and seal of office this 11 day of June, 2024.

/s/ Chhavyvann Voth
Signature of Notary Public

Chhavyvann Voth
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas
My Commission Expires: 11-05-25

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 in this Order:
[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:
<https://www.tdhca.texas.gov/compliance-forms>
3. **All corrections must be submitted via CMTS to the attention of Ysella Kaseman:** Refer to the following link for steps to upload documents
<https://www.tdhca.texas.gov/sites/default/files/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>
4. **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.

Instructions: Submit the following via CMTS upload to the attention of Ysella Kaseman by 6/17/2024:

5. **Utility Allowance noncompliance.** Update the 4/10/2024 Quarterly Vacancy Report / Unit Status Report in CMTS to show a utility allowance of \$458 for 12429 Peak Circle, and \$453 for 11268 Creekwood Drive. These amounts are from the letter issued by TDHCA via CMTS on 3/22/2024 regarding an approved utility allowance methodology change. Email Ysella Kaseman at ysella.kaseman@tdhca.texas.gov to notify her when this data entry is complete.
6. **Household income noncompliance for 12429 Peak Circle.** Upload complete documentation via CMTS following the instructions at either Option A or Option B, as applicable. Although the submission deadline is 6/17/2024, Option A is the easiest method to correct, and can only be done within 120 days of when the Housing Authority performed their last income certification for the household. Accordingly, TDHCA staff advises that you begin working with the household and housing authority immediately.

Option A: (Easiest method): If the housing authority certified the Caldwell household within the last 120 days - OR - if a new qualified household has occupied the unit, submit all of the following fully completed documentation:

- i. [TDHCA Intake Application](#);
- ii. [Section 8 Verification](#) signed by the Housing Authority;
- iii. [Tenant Income Certification](#);
- iv. Lease and lease addendum. See lease addendum form provided separately by TDHCA; and
- v. Tenant Rights and Resources Guide Acknowledgment. [See this link for the Guide](#), and [see this link for the required Acknowledgment Form](#)).

IMPORTANT: Items i – iii above must be dated within 120 days of each other because they are cross-referenced. The effective date in the Section 8 Verification (see red circle below) must also be within 120 days of Items i – iii. If any of those dates are more than 120 days apart, you must perform Option #2.

THE FOLLOWING TO BE COMPLETED BY THE PUBLIC HOUSING AUTHORITY:

Based on the last income certification/recertification effective on , the household consists
(Date)
of members whose combined gross annual income before any adjustments is \$.
(# of members) (Gross Annual Income)

Option #2: If the housing authority certified the Caldwell household more than 120 days ago - OR - if you cannot get the Section 8 Verification form signed, submit all of the following fully completed documentation:

- i. [TDHCA Intake Application](#);
- ii. Verifications of all sources of income and assets. See Exhibit 2 for Tenant File Guidance;
- iii. [Tenant Income Certification](#);
- iv. Lease and lease addendum (see attached lease addendum draft); and
- v. Tenant Rights and Resources Guide Acknowledgment. [See this link for the Guide](#), and [see this link for the required Acknowledgment Form](#)).

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. Attend Income Determination Training in order to get a full overview of the process.

Forms discussed below are available at: <https://www.tdhca.texas.gov/compliance-forms>.

A suggested tenant file checklist is available at this link:

<https://www.tdhca.texas.gov/sites/default/files/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. **Income Verification for Households with Section 8 Certificates:** If you use this form, you do not need to verify income further, but you do need to collect all other components of the tenant file. The Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification, signs this form. Since the housing authority performed the necessary verifications. The form must include the following information: a certification date from the housing authority that is within 120 days of that effective date, either at initial move-in or at recertification, number of household members and the gross annual income before any adjustments. This form must also be dated within 120 days of the application and Income Certification that you collect. If the housing authority certification is outside of that period, you must verify income yourself;
 - b. **First hand verifications:** Paystubs or payroll printouts 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’ (60 days) worth of check stubs is required for NSP*);
 - c. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit

the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it. If received by email, ensure the email address it was received from is evidenced and from the employer;

- d. **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;
 - e. **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;
 - f. **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. If using this method, the most current statement will be needed for both checking and savings accounts. MFDL programs require two months of source documentation.
 - b. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it, If received by email, ensure the email address it was received from is evidenced and from the financial institution.
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.

- a. With the changes from HOTMA, student income from financial assistance must be evaluated for inclusion/exclusion. A detailed training on this topic is available online: <https://www.tdhca.texas.gov/compliance-program-training-presentations>.
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 <https://www.tdhca.texas.gov/income-and-rent-limits>. 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 <https://www.tdhca.texas.gov/income-and-rent-limits>. [10 TAC §10.613](#) describes lease language requirements.
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 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.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed in lieu of foreclosure.

(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.

(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.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(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 chapter (relating to Non-Material LURA Amendments) 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 Chapter (relating to Material LURA Amendments).

(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) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital

expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

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

Source Note: The provisions of this §10.406 adopted to be effective February 3, 2022, 47 TexReg 266; amended to be effective February 1, 2023, 48 TexReg 348