

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
2013 TRAVIS OAK CREEK, LP	§	TEXAS DEPARTMENT OF
WITH RESPECT TO	§	HOUSING AND COMMUNITY
LUCERO (FKA OAK CREEK VILLAGE)	§	AFFAIRS
(HTC FILE # 13252 / CMTS # 4901)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 7th day of March, 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 **2013 TRAVIS OAK CREEK, LP**, a Texas limited partnership (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT (FOF)

Jurisdiction:

1. During 2013, 2013 Travis Oak Creek, LP (Respondent) was awarded an allocation of Low Income Housing Tax Credits by the Board to build and operate Lucero Apartments (Property) (HTC file No. 13252 / CMTS No. 4901).

2. Respondent signed a Declaration of Land Use Restrictive Covenants / Land Use Restriction Agreement for Low Income Housing Tax Credits (LURA) regarding the Property. The LURA was effective November 18, 2015, and filed of record on December 17, 2015 at Document Number 2015198495 of the Official Public Records of Real Property of Travis County, Texas (Records).
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. The ownership group controlled by Rene O. Campos has a history of violations and previously signed an Agreed Final Order on December 6, 2022, agreeing to a \$4,300.00 administrative penalty for noncompliance at related property, SA Union Pines II Apartments (HTC 02092 / CMTS 3243), and acknowledging the conditional dismissal of a debarment referral. As a condition of that dismissal, any penalty referral during a one-year probationary period would cause the Department to set an informal conference to consider a penalty and debarment.
5. TDHCA conducted an on-site monitoring review at the Property on March 24, 2022, to determine whether Respondent had 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, and the Department issued a notice of noncompliance setting an August 7, 2022, corrective action deadline. Owner representatives uploaded corrective documentation on August 8, 2022, but it was incomplete. Further corrective documentation was uploaded on May 1, 2023, and the Department set a 10-day cure period to submit remaining corrections by May 12, 2023. The following noncompliance was not resolved before that extended corrective action deadline and was referred for an administrative penalty on June 23, 2023:
 - a. Respondent failed to provide Annual Eligibility Certifications for units 1606 and 2505, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form for each household;
 - b. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 1512, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program;
 - c. Respondent failed to submit evidence of marketing to Veterans, a violation of a violation of 10 TAC §10.801 (Affirmative Marketing Requirements) 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.

Addendum B of the LURA, which require Owner to affirmatively market to veterans; and

- d. Respondent failed to provide evidence of material participation of the required Historically Underutilized Business in the operation of the Property, a violation of 10 TAC §10.620 (Monitoring for Non-Profit Participation, HUB, or CHDO Participation) which outlines requirements for material participation and a violation of Appendix B of the LURA, which require 2013 Travis Oak Creek GP, LLC to hold an ownership interest in the Property and materially participate in its operation and development, as defined by Section 469(h) of the Internal Revenue Code.

The owner submitted final evidence of correction on July 9, 2023.

6. TDHCA conducted a Uniform Physical Condition Standards (UPCS) inspection on August 15, 2023. The inspection report showed amenity noncompliance and numerous serious property condition violations, violations of Addendum D of the LURA and 10 TAC §10.621 (Property Condition Standards), respectively. The Department issued a notice of noncompliance setting a November 21, 2023, corrective action deadline. The Owner did not submit timely corrective documentation, and the noncompliance at Exhibit 1 was referred for an administrative penalty on November 30, 2023. Owner submitted final evidence of correction on December 21, 2023.
7. All violations listed above are considered resolved at the time of this Order.

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 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. 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.
5. Pursuant to 10 TAC §10.621(a), TDHCA has adopted HUD's Uniform Physical Condition Standards as the standard for its physical inspections.
6. Respondent violated 10 TAC §10.612 in 2022 by failing to collect Annual Eligibility Certifications for two units.

7. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2022, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for one unit.
8. Respondent violated 10 TAC §10.801 in 2022, by failing to submit evidence of affirmative marketing to veterans.
9. Respondent violated 10 TAC §10.620 and Appendix B of the LURA in 2022, by failing to provide evidence of material participation by a Historically Underutilized Business.
10. Respondent violated Addendum D of the LURA in 2023, by failing to provide required amenities.
11. Respondent violated 10 TAC §10.621 and I.R.C. §42, as amended, in 2023, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
12. 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.
13. 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.
14. 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.
15. A partially probated and forgivable administrative penalty of \$20,000.00 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 \$20,000.00, subject to deferral as further ordered below.

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC §10.621(a).

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$5,000.00 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 must keep Lucero Apartments (HTC 13252 / CMTS 4901), Sterlingshire Apartments (HTC 03440 / CMTS 3427), and any other subsequently acquired TDHCA multifamily properties (collectively, the Eureka Portfolio), in compliance by timely submitting corrective documentation to fully resolve any compliance violations found by TDHCA during a three-year probationary period, beginning on the date this Order is signed by TDHCA.

IT IS FURTHER ORDERED that in the event of a Department-approved sale of either: (A) a property to an unaffiliated third party, or (B) general partner interests that results in a full change of the ownership structure and control of a property, the probationary period for that property shall terminate earlier, upon the date of sale consummation. However, the probationary period for the remainder of the Eureka Portfolio shall remain unaffected.

IT IS FURTHER ORDERED that timely resolution of future compliance violations shall be determined in accordance with 10 TAC §10.602 (Notice to Owners and Corrective Action Periods), a copy of which is included at Exhibit 2. Any corrective documentation not submitted on or before a compliance monitoring deadline shall be considered untimely, and shall constitute a violation of this Order unless Respondent timely requests and receives an extension in accordance with the rule.

IT IS FURTHER ORDERED that full resolution of future compliance violations shall be determined by whether or not a timely submission includes all documentation that was requested in an annual report, file monitoring, or physical inspection letter that is sent to Respondent by the TDHCA Compliance Division via the Compliance Monitoring and Tracking System (CMTS).

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, and remaining in compliance for the probationary period, the satisfactory performance under this Order shall be accepted in lieu of the assessed administrative penalty and the remaining \$15,000.00 administrative penalty 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, then the remaining administrative penalty in the amount of \$15,000.00 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” within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order.

IT IS FURTHER ORDERED that in the event that the probated \$15,000.00 portion of the administrative penalty becomes due as a result of future compliance violations that are not timely and fully resolved, those future violations may be referred for a separate enforcement action in accordance with normal monitoring and enforcement procedures at Tex. Gov't Code §§2306.041-.0504, 10 TAC Chapter 2, and 10 TAC Chapter 10.

IT IS FURTHER ORDERED 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 (Ownership Transfers), 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.

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Approved by the Governing Board of TDHCA on March 7, 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 7th day of March, 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 §

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COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 7th day of March, 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 TRAVIS §

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

1. "My name is Rene O. Campos, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Manager of the General Partner for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. The Taxpayer ID for Respondent is _____.
4. The mailing address for Respondent is _____.
5. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

2013 TRAVIS OAK CREEK, LP, a Texas limited partnership

2013 TRAVIS OAK CREEK GP, LLC, a Texas limited liability company, its general partner

TRAVIS OAK CREEK GP OWNER, LLC, a Delaware limited liability company, its manager

By: /s/ Rene O. Campos

Name: Rene O. Campos

Title: Manager

Given under my hand and seal of office this 2nd day of April, 2024.

/s/ Erika Palacios
Signature of Notary Public

Erika Palacios
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas

My Commission Expires: 5/12/25

Exhibit 1 Physical Inspection Deficiency Report

Amenity Noncompliance:

- Business / computer learning center: inoperable computers
- Community theater: no seating and inoperable screen

UPCS Noncompliance:

Inspectable Area Inspectable Item	Deficiency	L1	L2	L3	Comments
Lucero 2301 Durwood Street Austin, TX 78704					
Building:					
Unit:					
Health & Safety	Hazards - Tripping			L3	Extension cord in breezeway
Health & Safety	Hazards - Sharp Edges			L3	Glass on steps going down to Durwood street
Building: Bldg 1					
Unit: 1310					
Health & Safety	Infestation - Insects			L3	Roaches
Unit: 1313					
Bathroom	Cabinets - Damaged/Missing	L1			under sink cabinet doors unable to shut
Health & Safety	Infestation - Insects			L3	Insects throughout
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Front left burner inoperable
Kitchen	Range Hoods/Exhaust Fans -Excessive Grease/Inoperable			L3	Inoperable
Kitchen	Cabinets - Missing/Damaged		L2		drawer face missing and under counter cabinet door misaligned
Unit: 1504					
Kitchen	Refrigerator-Missing/Damaged/Inoperable	L1			Deteriorated gasket
Unit: 1510					
Bathroom	Plumbing - Clogged Drains	L1			
Unit: 1613					
Ceiling	Mold/Mildew/Water Stains/Water Damage	L1			Forming around HVAC supply vent
Building: Bldg 2					
Unit: 2201					
Bathroom	Lavatory Sink - Damaged/Missing			L3	No water at master bath faucet
Health & Safety	Infestation - Insects			L3	Roaches
Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Bedroom window blocked by dresser
Health & Safety	Hazards - Other			L3	Existing stovetop burners covered in grease and drip pans rusted through
Kitchen	Cabinets - Missing/Damaged		L2		Several cabinets missing handles and doors misaligned
Kitchen	Range/Stove - Missing/Damaged/Inoperable		L2		Front right burner missing.
Unit: 2204					
Health & Safety	Infestation - Insects			L3	Roaches
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			front right and back left burners inoperable
Unit: 2307					
Health & Safety	Infestation - Insects			L3	Roaches
Health & Safety	Hazards - Sharp Edges			L3	Master bath medicine cabinet mirror broken
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Back left burner inoperable
Building: Bldg 3					
Unit:					
Building Systems					
Fire Protection	Missing Sprinkler Head			L3	Sprinkler taped over and another missing escutcheon in theater room
Health & Safety	Hazards - Other			L3	
Unit: 3301					
Bathroom	Shower/Tub - Damaged/Missing			L3	Roll in shower missing shower basin
Kitchen	Range/Stove - Missing/Damaged/Inoperable			L3	Stovetop inoperable, front right burner and all drip pans missing
Unit: 3309					
Bathroom	Shower/Tub - Damaged/Missing			L3	Master bath showerhead missing
Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing			L3	Toilet clogged
Floors	Hard Floor Covering Missing/Damaged Flooring/Tiles			L3	Vinyl flooring planks coming up, bulging throughout unit, especially master bath
Unit: 3406					
Floors	Hard Floor Covering Missing/Damaged Flooring/Tiles	L1			Floor tiles bulging and coming up in kitchen
Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable			L3	Bedroom windows blocked by window unit and stacked items
HVAC System	Not Operable			L3	Does not cool, resident using window units

Inspectable Area Inspectable Item	Deficiency	L	S	C	Comments
Unit: 3411 Kitchen	Plumbing - Leaking Faucet/Pipes	L1			Faucet leaking at base of neck
Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing		L3		Clogged with feces, water on floor from overflowing
Smoke Detector	Missing/Inoperable		L3		2 inoperable
Unit: 3501 Kitchen	Dishwasher/Garbage Disposal - Inoperable		L2		Sink does not drain as well
Unit: 3610 Health & Safety	Infestation - Insects		L3		Roaches
Building: Bldg 4 Unit: Other Community Spaces Ceiling	Holes/Missing Tiles/Panels/Cracks		L2		Ceiling damage in business center area
Building Systems Health & Safety	Hazards - Other		L3		
Halls/Corridors/Stairs Stairs	Broken/Missing Hand Railing		L3		Hand rail on second floor of Stair four North
Unit: 4200 Bathroom	Ventilation/Exhaust System - Inoperable		L2		Master bath
Unit: 4207 Bathroom	Ventilation/Exhaust System - Inoperable		L2		Master bathroom
Ceiling	Mold/Mildew/Water Stains/Water Damage		L3		Hall bathroom ceiling
Doors	Damaged Hardware/Locks	L1			Left laundry closet door missing handle
Health & Safety	Infestation - Insects		L3		Roaches
Unit: 4304 Kitchen	Range/Stove - Missing/Damaged/Inoperable	L1			Front left burner inoperable
Unit: 4402 Walls	Damaged	L1			Hall bathroom at bottom right of shower door
Walls	Mold/Mildew/Water Stains/Water Damage	L1			Master bathroom below window
Unit: 4403 Walls	Mold/Mildew/Water Stains/Water Damage		L3		Living room above window

Exhibit 2:
Texas Administrative Code

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10 UNIFORM MULTIFAMILY RULES
SUBCHAPTER F COMPLIANCE MONITORING
RULE §10.602 Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will notify Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

Source Note: The provisions of this §10.602 adopted to be effective February 11, 2019, 44 TexReg 560; amended to be effective May 17, 2020, 45 TexReg 3036; amended to be effective November 3, 2022, 47 TexReg 7271

Exhibit 3:
Texas Administrative Code

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

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

(b) Exceptions. The 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