

ENFORCEMENT ACTION	§	BEFORE THE
AGAINST COOPER	§	TEXAS DEPARTMENT OF
REDEVELOPMENT, LLC WITH	§	HOUSING AND
RESPECT TO SPANISH PARK	§	COMMUNITY AFFAIRS
APARTMENTS (HTC FILE # 93038)	§	

AGREED FINAL ORDER

On this 12th day of September, 2013, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) considered the matter of whether enforcement action should be taken against **COOPER REDEVELOPMENT, LLC**, a Texas limited liability company (“Cooper” or “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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TAC §1.14 and 10 TAC, Chapter 60.
2. On December 27, 1993, GSSW-REO Westwoods Arlington, L.P. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$196,065 to build and operate Spanish Park Apartments (“Property”) (HTC file No. 93038 / CMTS No. 2304 / LDLD No. 31).
3. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 27, 1993, and filed of record at Volume 1388, Page 565 of the Official Public Records of Real Property of Tarrant County, Texas (“Records”), as amended by a First Amendment executed on April 1, 1997, and filed in the Records at Document Number D200238016. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.

4. Respondent took ownership of the Property and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective May 24, 2007, and filed the same in the Records at Document Number D207181663, thereby binding Respondent to the terms of the LURA.
5. Respondent is a Texas limited liability corporation that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations:

6. An on-site monitoring review was conducted on January 5, 2012, to determine whether Respondent had resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. Prior monitoring reviews in 1998, 2000, and 2003 had identified violations, and the January 5, 2012 onsite review was intended to verify correction of past noncompliance. A monitoring letter was sent, and Respondent answered. However, several issues remained uncorrected, and Respondent was requested to reply a second time, no later than September 5, 2013. The following were not corrected before the September 5, 2012, corrective action deadline:
 - a. Respondent failed to meet the property's minimum set aside requirement, a violation of Section 4(a) of the LURA. Minimum set aside elections are required pursuant to Internal Revenue Code §42(g)(1), which requires tax credit properties to make such an election regarding how the property shall be monitored by TDHCA, and the making of such an election is further addressed in 10 TEX. ADMIN. CODE § 60.101. Spanish Park has a total of 362 units. Prior Owner selected a minimum set aside of 40% of units to be leased to residents with income levels at or below 60% of area median income ("AMI"). Therefore, at all times, at least 145 units must be leased to households with an income and rent below the 60% AMI limits. Respondent failed to maintain that minimum set aside election in 2003 and the violation cannot be resolved until all other violations indicated below have been corrected.
 - b. Respondent failed to provide documentation that household incomes are within prescribed limits upon initial occupancy for the following 17 units: C116, C126, C226, C244, E102, E109, E115, E117, E126, E131, E201, E207, E217, E229, M110, T206 and T250, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA.
7. On July 19, 2013, TDHCA became aware that units C118 and C126 are being used for non-residential use, a violation of the LURA which requires 100% of the units to be leased to individuals or families whose income is 60% or less of the area median gross income. It came to the attention of the Department that Units C126 and C118 have been used as the maintenance shop and management office since prior to Respondent's purchase of the property in 2007.

8. The following violations remain outstanding at the time of this order:
 - a. Minimum set aside violation described in FOF #6a;
 - b. Household initial occupancy income limit violations for units: C244, E126, E207, E109, E131, T206, C126, C226 and E201, described in FOF #6b.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
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 Section 4(a) of the LURA in 2009 by failing to meet the property set-aside requirement on or before the associated deadline in violation of 10 TEX. ADMIN. CODE §§ 60.101 and 60.117.
5. Respondent violated representations made in the LURA, Section 4 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2012 by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for the following 17 units: C116, C126, C226, C244, E102, E109, E115, E117, E126, E131, E201, E207, E217, E229, M110, T206 and T250.
6. Respondent violated the representations in the LURA by using Units C118 and C126 for non-residential use as a maintenance shop and management office.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
8. Because Respondent is a housing sponsor TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
9. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
10. An administrative penalty of \$1700.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 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 \$1,700.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that all onsite property staff at Spanish Park Apartments, with the exception of maintenance personnel, shall attend at least 8 hours of income eligibility training offered by TDHCA and submit a completion certificate to the Agency on or before September 30, 2013.

IT IS FURTHER ORDERED that Respondent shall correct the file monitoring violations as indicated in Attachment 1 and submit documentation of the corrections to TDHCA on or before September 30, 2013.

IT IS FURTHER ORDERED that Respondent shall convert units C118 and C126 to residential use and provide evidence of the conversion on or before January 1, 2014 if the material LURA amendment request to permit a reduction in the number of restricted units is not approved by the Board prior to January 1, 2014.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, and the violations are corrected as required, the satisfactory performance under this order will be accepted in lieu of the assessed 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, then the full administrative penalty in the amount of \$1,700 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 corrective documentation must be emailed to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us or mailed to one of the addresses below. 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

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Approved by the Governing Board of TDHCA on September 12, 2013.

By: /s/ J. Paul Oxe
Name: J. Paul Oxe
Title: Chair of the Board of TDHCA

By: /s/ Barbara B. Deane
Name: Barbara B. Deane
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 16th day of September, 2013, personally appeared J. Paul Oxe, 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/ Leah Sargent Rosas
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 16th day of September, 2013, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

/s/ Leah Sargent Rosas
Notary Public, State of Texas

Given under my hand and seal of office this 16th day of Sept, 2013.

/s/ Brian Fisher
Signature of Notary Public

Brian Fisher
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 3-27-2017

Attachment 1

Tenant File Instructions

Minimum set aside violation will be considered resolved when all tenant file violations indicated below have been corrected.

Household income above limit upon initial occupancy violations for units C244, E126, E207, E109, E131, T206, C126, C226 and E201 must be resolved as indicated below:

Circumstance with respect to units listed above	Required Action
If unit is occupied by a qualified household	Follow the instructions in the attached letter dated 8/6/2012. Note that you must also complete the Fair Housing Choice Disclosure Notice for any households completing tenant file paperwork after 12/27/2012.
If unit is occupied by a new qualified household	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none">1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.2. Upon occupancy by a qualified household, you will be required to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after September 30, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none">1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.2. Upon occupancy by a qualified household, you will be required to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after September 30, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.
If unit is vacant	<ol style="list-style-type: none">1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.2. Upon occupancy by a qualified household, you will be required to submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. Receipt after September 30, 2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.