

ENFORCEMENT ACTION AGAINST
AUTUMN APARTMENTS, L.P.
(LIHTC FILE # 70071)

§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 17th day of January, 2013, the Governing Board of the Texas Department of Housing and Community Affairs (“Board”) considered the matter of whether enforcement action should be taken against **AUTUMN APARTMENTS, L.P.**, a Texas limited partnership (“Autumn” or “Respondent”). The **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (“TDHCA” or “Department”) alleges that Respondent violated 10 TEX. ADMIN. CODE, CHAPTER 60 by failing to timely correct tenant file and reporting violations with respect to the following property owned by respondent: Autumn Creek Apartments (LIHTC File No. 70071 / CMTS No 906 / LDLD No. 104, (“Property”));

The Board has jurisdiction over this matter pursuant to TEX. GOV’T CODE § 2306.041 (Imposition of Penalty) and TEX. GOV’T CODE §§ 2306.261-2306.273 (Regulation of Housing Sponsors). The Board has the authority to dispose of this case by agreed order or otherwise pursuant to the provisions of TEX. GOV’T CODE § 2306.044 (Penalty to be Paid or Hearing Requested). The Department finds that Respondent engaged in acts or practices that violated the Land Use Restriction Agreement (“LURA”) and violated 10 TEX. ADMIN. CODE §§ 60.105 (Reporting Requirements), 60.108 (Determination, Documentation and Certification of Annual Income) and 60.111 (Annual Recertification)¹. The Department alleges that such conduct constitutes grounds for the imposition of an administrative penalty pursuant to TEX. GOV’T CODE § 2306.041, 10 TEX. ADMIN. CODE §1.13 (Adjudication Hearing procedures), 10 TEX. ADMIN. CODE § 1.14 (Administrative Penalties) and 10 TEX. ADMIN. CODE §§ 60.307-309 (Administrative Penalties)². In a desire to conclude this matter without further delay and expense, the Board and Respondent, through their respective signatures hereto, announce that they have compromised and settled all claims and they agree to the entry of this Agreed Final Order.

WAIVER

¹ All references to 10 TEX. ADMIN. CODE §§ 60.105, 60.108 and 60.111 refer to the version of the code in effect at the time of the November 16, 2011 compliance monitoring review that resulted in recording a violation. All past violations remain violations under the current code and all interim amendments.

² All references to 10 TEX. ADMIN. CODE §§ 1.13, 1.14 and 60.307 – 60.309 refer to the version of the code in place on November 27, 2012, when Respondent was warned that administrative penalties could be assessed for uncorrected violations.

Respondent acknowledges the existence of their right to request a hearing on the matters considered in this order, 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 the right to a hearing and to judicial review of this agreed order and acknowledges the jurisdiction of the Board over Respondent for these matters.

Upon investigation and recommendation of the Administrative Penalty Committee, the Board makes the following findings of fact and conclusions of law and enters this order:

FINDINGS OF FACT

Jurisdiction:

1. Autumn Creek Apartments, an 82 unit apartment complex located in Dallas, Texas, and currently owned by Autumn, is subject to a LURA dated to be effective December 12, 1990, filed of record on December 13, 1990, at Volume 90242, Page 1653 of the Official Public Records of Real Property of Dallas County, Texas. The LURA was signed by a prior owner, Rolling Creek Apartments, Ltd., in consideration for an allocation of low income housing tax credits in the total amount of Four Hundred Thirty Thousand Two Hundred Dollars and No/100 Cents (\$430,200.00) awarded by TDHCA. In accordance with Section 2(b) of the LURA, the agreement is a restrictive covenant / deed restriction encumbering the land and binding on all successors and assigns for the full term of the agreement.

Compliance Violations:

2. An on-site monitoring review was conducted on November 21, 2008, to determine whether Autumn Creek Apartments was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and the following violation was not corrected before the June 21, 2009 corrective action deadline and remained uncorrected as of the date of the TDHCA administrative penalty notice sent to Autumn on November 27, 2012:
 - a. Autumn failed to make unit 121 available for rent, instead using as an office, a violation of the LURA which requires all 82 units to be rented to qualified tenants and does not permit alternative usage. A material LURA amendment request was granted to allow the unit to be used as an office in the future, however, the amendment has not been signed and recorded because Autumn failed to maintain its corporate status with the Texas Secretary of State. Corporate status was reinstated in December 2012.
3. An on-site monitoring review was conducted on November 16, 2011, to determine whether Autumn Creek Apartments was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of

noncompliance were sent and the following violations were not corrected before the April 2, 2012 corrective action deadline and remained uncorrected as of the date of the TDHCA administrative penalty notice sent to Autumn on November 27, 2012:

- a. Autumn failed to provide documentation that household incomes were within prescribed limits upon initial occupancy and/or failed to maintain and provide tenant income certifications and qualification documentation for units 227 and 228, a violation of 10 TEX. ADMIN. CODE §60.108 and the LURA;
 - b. Autumn failed to maintain and provide annual eligibility certifications for sixty-one units (Building 1-101, 103, 105, 106, 107, 109, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, Building 2-112, 114, 115, 116, 117, 119, 211, 212, 214, 215, 217, Building 3-120, 121, 123, 124, 125, 220, 221, 222, 223, 224, 225, Building 4-126, 127, 226, Building 5-128, 130, 133, 134, 136, 228, 229, 230, 231, 232, 235, Building 6-137, 139, 140, 141, 142, 237, 239, 240, 242) a violation of 10 TEX. ADMIN. CODE §60.111, which requires annual certifications;
4. On May 23, 2012, TDHCA sent notice that Autumn had failed to submit the 2011 Annual Owner's Compliance Report which was due March 1, 2012, a violation of 10 TEX. ADMIN. CODE §60.105 which requires each development to submit an Annual Owner's Compliance Report. Parts A and B remained outstanding as of the date of the administrative penalty notice sent to Autumn on November 27, 2012;
 5. Between March 20, 2009, and November 27, 2012, at least twenty (20) notices of noncompliance and reminder notices were sent regarding the above violations but only some work toward compliance was achieved regarding the above violations.

CONCLUSIONS OF LAW

1. Pursuant to TEX. GOV'T CODE §2306.041 and §2306.177, the board has personal and subject matter jurisdiction over Autumn and is authorized to assess administrative penalties;
2. Pursuant to TEX. GOV'T CODE §2306.267, the Board may order Autumn to bring the Property into compliance with the law, Department rules and any contract or agreement, including a LURA, to which Autumn is a party;
3. Autumn violated 10 TEX. ADMIN. CODE § 60.108 by failing to collect documentation that household incomes were within prescribed limits upon initial occupancy and by failing to maintain tenant income certifications;
4. Autumn violated 10 TEX. ADMIN. CODE § 60.111 by failing to maintain annual eligibility certifications;

5. Autumn violated the LURA by not making all apartment units available to qualified tenants;
6. Autumn violated 10 TEX. ADMIN. CODE § 60.105 by failing to submit the 2011 Annual Owner's Compliance Report on or before the deadline;

Based upon the foregoing Findings of Fact and Conclusions of Law and an assessment of the statutory factors to be considered in assessing such penalties, 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 Autumn shall correct all outstanding violations indicated above and bring Autumn Creek Apartments into compliance with all laws, Department rules and provisions of the LURA;

IT IS FURTHER ORDERED that Autumn shall pay, and is hereby directed to pay, an administrative penalty of THREE THOUSAND AND 00/100 DOLLARS (\$3,000.00), of which FIVE HUNDRED DOLLARS (\$500.00) shall be due and payable within thirty (30) days of the date this Agreed Final Order is approved by the governing board of TDHCA. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs." The remaining TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) is fully probated, provided that Autumn fully complies with the terms and conditions of this Agreed Final Order. Provided that the violations are corrected as required below, such conduct shall be accepted in lieu of payment of the remaining probated penalty;

IT IS FURTHER ORDERED that Autumn must submit to TDHCA documentation to correct the violations for "failure to provide evidence that household incomes were within prescribed limits upon initial occupancy" for units 227 and 228. If unit is occupied by a qualified household, Autumn is required to submit a full tenant file as indicated in the instructions at *Attachments 1 and 2* within sixty (60) days of the approval date of this Agreed Final Order. If a unit is vacant, Autumn is required to submit evidence that the unit is ready for occupancy within sixty (60) days of the approval date of this Agreed Final Order. If Autumn does not timely submit the required documentation or the submitted documentation is insufficient and does not meet minimum TDHCA standards, the probated amount of the administrative penalty will immediately become due and payable without further process or hearing.

IT IS FURTHER ORDERED that Autumn must submit to TDHCA documentation to correct the violations for failure to maintain annual eligibility certifications for units: Building 1-101, 103, 105, 106, 107, 109, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, Building 2-112, 114, 115, 116, 117, 119, 211, 212, 214, 215, 217, Building 3-120, 121, 123, 124, 125, 220, 221, 222, 223, 224, 225, Building 4-126, 127, 226, Building 5-128, 130, 133, 134, 136, 228, 229, 230, 231, 232, 235, Building 6-137, 139, 140, 141, 142, 237, 239, 240 and 242 within sixty (60) days of the approval date of this Agreed Final Order. If Autumn does not timely submit the required documentation or the documentation is insufficient and does not meet minimum TDHCA standards, the probated amount of the administrative penalty will immediately become due and payable without further process or hearing. See *Attachments 1 and 2* for instructions;

IT IS FURTHER ORDERED that Autumn shall sign and record a LURA amendment to reduce the number of restricted units from 82 to 81 to accommodate use of one unit as an office. This amendment shall be signed and recorded with the Dallas County Clerk within ten (10) business days after receipt from TDHCA of notice that it finds that all violations outlined in this Agreed Final Order have been resolved. If Autumn does not sign and record the amendment within ten (10) days of receipt from TDHCA, the probated amount of the administrative penalty will immediately become due and payable without further process or hearing.

IT IS FURTHER ORDERED that if Autumn violates any provision of this order, then the probated administrative penalty in the amount of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) is immediately due and payable to the Department without further process or hearing. 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 of the written notice from the Department that Autumn has violated a provision of this order.

IT IS FURTHER ORDERED that all correspondence, including corrective documentation and administrative penalty payments, 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

[Remainder of page intentionally blank]

Given under my hand and seal of office this 11th day of February, 2013.

/s/ Steve E. Hazen
Signature of Notary Public

Steve E. Hazen
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My Commission Expires: 9/19/2015

Attachment 1

File monitoring letters including corrective instructions

[NOTE – THIS ATTACHMENT HAS BEEN OMITTED FROM THE VERSION OF THE AGREED FINAL ORDER TO BE UPLOADED TO THE WEB BECAUSE IT IS NOT AVAILABLE IN AN ACCESSIBLE FORMAT]

Attachment 2

Additional tenant file guidance

File Organization: When organizing tenant files, please ensure that they are in the following order: (a) tenant application, (b) verifications of all sources of income and assets, (c) tenant income certification, (d) tenant lease and lease addenda, (e) annual certification (if applicable) and (f) additional notes (if applicable).

A complete tenant file will include copies of the tenant application, verifications of all sources of income and assets disclosed on the application, Income Certification Form, lease, lease addendum and annual eligibility certification (if applicable). These forms are cross referenced by TDHCA staff during a tenant file review and it is imperative for you to include all parts in every file and ensure that all blanks have been completed or marked as non-applicable. Failure to include verifications of all sources of income and assets will delay review and cause further scrutiny of the file. See below for details regarding each of these forms.

FORMS: All TDHCA forms are available online at <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application** – A TDHCA example is online but there is no required format for an application except that it must:
 - a) Screen for all sources of income and assets;
 - b) Include all members; and
 - c) Be completed by the household, not the property manager (unless there are extenuating circumstances).

Have the household complete the application and sign Tenant Release and Consent forms. Review all applications for incomplete information. Ensure that all blanks are addressed, including those sections of the application that may not apply to the household by use of “none” or “n/a”, and ensure that all adult household members signed the application.

For files where an application has already been completed but did not include screening for income and assets, you must have the household complete a new application that includes the appropriate screening.

2. **Determination of household composition** – Determine the number of household members and select the appropriate income limit from <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm> based on the household size. If the household qualifies, continue the steps below. If the household does not qualify, submit the lease expiration date to the Department, then occupy the unit with a qualified household as soon as it becomes available.
3. **Tenant release & consent form** – This form must be signed by each adult household member so that you can verify income & assets;
4. **Employment & Asset Verification forms** – Every source of income and asset must be documented for each adult household member based on the information disclosed on the application. First hand verifications such as pay checks, bank statements and social security award letters are acceptable or you can collect third party verifications received via fax or mail. If you choose to collect first hand verifications, ensure that you consistently use a specified number of consecutive check stubs as defined in your management plan and use 6 consecutive months of bank statements. If you choose to complete third party verifications:
 1. **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 must 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;
 2. **Asset Certification Form (if tenant has under \$5,000 of assets)** – If a tenant has assets in the amount of \$5,000 or less, he or she may annually sign an “Under \$5,000 Asset Certification” form in lieu of the asset verification form. If the tenant has over \$5,000 assets, he or she must complete Asset Verification Forms as described below;
 3. **Asset Verification Form** – Part 1 of the form will be completed by you & signed by the tenant. Part 2 of the form will be completed by the banking institution. Again, the tenant must not hand deliver the verification. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
 4. **Oral Verifications** – An oral verification is only acceptable for clarifying discrepancies. Such verifications must include your name, the date, the name of the person with whom you spoke & your signature;
 5. **Social Security Verification** – If there is social security income, you must verify it. If you have a tenant release form, the following website can be used to request a social security award letter: <https://secure.ssa.gov/apps6z/BEVE/main.html>;
 6. **Child Support Income** – There is no form for this, but if there is child support income, you must verify it. A copy of a court order is one example of an acceptable type of child support verification.

5. **Income Certification form** – Upon verification of all income and asset sources disclosed on the application, the next step is to annualize the sources on the Income Certification Form, add them together and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Any income derived from assets must be included and the form must include (and be signed by) each adult household member;
6. **Lease** – The lease must conform with TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When calculating the rent, ensure that the tenant's rent plus the utility allowance plus any housing subsidies are below the maximum limits set by TDHCA. 10 TEX. ADMIN. CODE. §60.110 prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, HTC developments are prohibited from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. The Texas Apartment Association has an affordable lease addendum that has incorporated this required language and may be used if you are a TAA member. If you are not a member, you will need to prepare an addendum.
7. **Notes to the File** – File notes are not required, but should be included if there are unusual aspects to the file. As a hypothetical, applications should be completed by a prospective tenant, but there is an applicant who is handicapped and cannot write, so you helped them to complete the application. Make a note to the file, then sign & date the document.
8. **Annual Eligibility Certification** – This form must be completed each year for any tenants that will occupy the unit for more than one year. It is recommended that you add this step to your lease renewal process.

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

For income and rent limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

For eligibility FAQ: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm#EligibilitySection>