

ENFORCEMENT ACTION AGAINST
CALVERT ARMS, LTD AND MARLIN
SQUARE, LTD. WITH RESPECT TO
CALVERT ARMS AND MARLIN
SQUARE APARTMENTS (HTC FILES
92096 AND 94060)

§
§
§
§
§
§
§

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 10th day of October, 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 **CALVERT ARMS, LTD.**, a Texas limited partnership, and **MARLIN SQUARE, LTD.**, a Texas limited partnership, (jointly, “Respondents”).

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 Respondents agree to resolve this matter by this Agreed Final Order. The Respondents 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

Jurisdiction:

1. On May 5, 1994, Calvert Arms, Ltd. was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$33,582 to construct and operate Calvert Arms Apartments (“Calvert”) (HTC file No. 92096 / CMTS No. 1064 / LDLD No. 242).
2. On November 10, 1995, Marlin Square, Ltd. was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$35,658 to acquire, rehabilitate, and operate Marlin Square (“Marlin”) (HTC file No. 94060 / CMTS No. 1234 / LDLD No. 222).

3. Respondents each signed a land use restriction agreement (“LURA”) regarding Calvert and Marlin (jointly, the “Properties”). The Calvert LURA was effective July 12, 1994, and filed of record at Volume 615, Page 496 of the Official Public Records of Real Property of Robertson County, Texas (“Records”), as amended by a First Amendment executed on July 12, 1994, and filed in the Records at Volume 615, Page 503. The Marlin LURA was effective November 10, 1995, and filed of record at Volume 72, Page 212 of the Official Public Records of Real Property of Falls County, Texas (“Records”).
4. Both Respondents are Texas limited partnerships that are 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 Violations¹:

CALVERT AND MARLIN:

5. On May 1, 2013, June 28, 2013, and July 3, 2013, TDHCA sent notice that Respondents had failed to timely submit their 2012 Annual Owner’s Compliance Reports, a violation of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report on or before April 30 of each year. Both reports remain outstanding.

MARLIN ONLY:

6. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted at Marlin on April 17, 2009. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards). Reports were mailed to Respondents and, in conformance with 10 TEX. ADMIN. CODE § 60.117 (Notice to Owner), as amended, a 90-day corrective action deadline of September 3, 2009 was set to provide Respondents a reasonable opportunity to respond to the report and bring the property into compliance. The following violation was not sufficiently documented as being corrected before the final August 12, 2013 deadline to avoid an informal conference with the Administrative Penalty Committee: insect infestation in unit 705, but has since been resolved.

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer 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.

7. An on-site monitoring review was conducted at Marlin on January 17, 2012, to determine whether Respondents were in compliance with LURA requirements to lease units to low income households, maintain records demonstrating eligibility and keep the properties in good condition. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent, however, the following violations were not corrected before the final August 12, 2013 deadline to avoid an informal conference with the Administrative Penalty Committee:
 - a. Respondents failed to provide documentation that household incomes are within prescribed limits upon initial occupancy for the following 3 units at Marlin Square: 504, 514 and 729, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) and the LURA.
 - b. Respondents failed to provide documentation that supportive services were being provided, a violation of 10 TEX. ADMIN. CODE §60.116 (Monitoring for Social Services) and Appendix A of the Marlin LURA.
8. A UPCS inspection was conducted at Marlin on February 22, 2012. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Respondents and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notice to Owner), as amended, a 90-day corrective action deadline of July 18, 2012 was set to provide Respondents a reasonable opportunity to respond to the report and bring the property into compliance. Violations listed at Attachment 1 were not corrected before the final August 12, 2013 deadline to avoid an informal conference with the Administrative Penalty Committee.
9. The following violations remain outstanding at the time of this order:
 - a. 2012 Annual Owner's Compliance Report Violations described in FOF #5;
 - b. 2012 file monitoring violations described in FOF #7;
 - c. 2012 UPCS violations described in FOF #8.

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. Respondents are both considered 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. Respondents violated 10 TEX. ADMIN. CODE §10.603 in 2012 by failing to submit Annual Owner's Compliance Reports for Calvert or Marlin for the period ending 12/31/2012;

5. Respondents violated representations made on page 1 of the Marlin LURA, Section 4 of the Marlin 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 3 units at Marlin Square Apartments: 504, 514, and 729.
6. Respondents violated 10 TEX. ADMIN. CODE §10.603 and Appendix A of the Marlin LURA in 2012 by failing to provide evidence that required supportive services are being provided.
7. Respondents violated 10 TEX. ADMIN. CODE § 60.116 in 2009, and 10 TEX. ADMIN. CODE § 60.118 in 2012, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
8. Because Respondents are housing sponsors with respect to the Properties, and have violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondents pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
9. Because Respondents are housing sponsors, TDHCA may order Respondents 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 Respondents and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
10. Because Respondents have violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 and have violated agreements with the Agency to which Respondents are a party, the Agency may impose an administrative penalty pursuant to TEX. GOV'T CODE §2306.041.
11. An administrative penalty of \$3,000 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 Respondents are assessed an administrative penalty in the amount of \$3,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondents shall pay and are hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's 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 Respondents shall correct the reporting violations, file monitoring violations, and UPCS violations, as indicated in the attachments and submit documentation of the corrections to TDHCA on or before December 9, 2013.

IT IS FURTHER ORDERED that if Respondents timely and fully comply 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 remaining assessed administrative penalty and the remaining \$2,500 portion of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondents fail to satisfy any conditions or otherwise violate any provision of this order, then the remaining administrative penalty in the amount of \$2,500 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 Respondents that it has violated a provision of this order.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS"), 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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on 10/10/2013.

By: /s/ J. Paul Oxer
Name: J. Paul Oxer
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 10TH day of October, 2013, personally appeared J. Paul Oxer, 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 10TH day of October, 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 October, 2013.

/s/ Wanda Weber Doxier
Signature of Notary Public

Wanda Weber Doxier
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas
My Commission Expires: 8/19/2016

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

/s/ Wanda Weber Doxier
Signature of Notary Public

Wanda Weber Doxier
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Texas
My Commission Expires: 8/19/2016

Attachment 1

File Monitoring Instructions

1. **2012 Annual Owner's Compliance Reports** – Submit online for Calvert Arms and Marlin Square via CMTS at: <https://pox.tdhca.state.tx.us/aims2/pox>.
2. **Supportive Services** – Submit evidence, such as calendars, flyers, and sign-in sheets, proving that tutoring, adult literacy, and parenting programs have been provided to residents.
3. **Tenant Files for units 504, 514, and 729** – Follow the instructions below.

Circumstance with respect to units listed above	Required Action
If unit was occupied by a qualified household during the time of the onsite review	Submit the full 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. 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 for any households completing tenant file paperwork after 12/27/2012.
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. As soon as the unit is occupied by a qualified household, you must 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 12/9/2013 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. As soon as the unit is occupied by a qualified household, you must 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 12/9/2013 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. As soon as the unit is occupied by a qualified household, you must 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 12/9/2013 is acceptable for this circumstance provided that Requirement 1 is fulfilled.

Attachment 2:

2012 UPCS Violations

Partial corrective documentation was submitted late on 8/23/2013. After reviewing the corrections, TDHCA staff inserted the corrected dates to the left of violations that are now considered resolved. Violations without a date to the left are considered uncorrected.

See attached list, then provide work orders and/or contractor invoices as indicated in the UPCS guidelines at Attachment 3 for all violations that TDHCA considers to be uncorrected.

[NOTE – VIOLATION LIST HAS BEEN OMITTED FROM THE VERSION OF THIS AGREED FINAL ORDER THAT IS PUBLISHED ONLINE BECAUSE THERE IS NO ACCESSIBLE VERSION]

Attachment 3

UPCS Work Order Instructions:

Each uncorrected violation listed at Attachment 2 must be resolved and Respondents must submit sufficient documentation in order for the Department to consider the item corrected.

Ideally, a separate work order is created by Building or unit for deficiencies found in each area. For example, the work order for a single unit may indicate all identified deficiencies listed in that unit if each correction is individually described. However, most developments generate a separate work order for each deficiency to ensure the response is adequately complete and the description of each corrective action is clearly detailed. **Five pieces of information are needed** on work orders, or invoices accompanied by the scope of work, to verify that a deficiency has been corrected:

1. **The location** of the deficiency, i.e. Bldg. 5 Unit 502 or Site- near outside gate, etc.
2. **The deficiency**, i.e. Damaged Doors, Hardware, locks – Bedroom door won't latch properly. Site-Hazards Other- Broken Glass.
3. **How the deficiency is corrected**. Just a few quick words are sufficient, i.e. "replaced bedroom door latch" or "adjusted bedroom door latch". "Removed broken glass." "Sheetrock repair, taped, floated, and painted". Conversely, words such as "fixed", "done", and "complete" are inadequate and are not acceptable.
4. **The date the deficiency was corrected**. The Department requires a correction date in order to accept the documentation. Additionally, the IRS requires a correction date for Tax Credit properties on form 8823. If there is no date of correction listed, the deficiency is not considered corrected.
5. **The signature** of the person who either performed the repair or acknowledges that the repair was performed satisfactorily.

Organization: Please submit the work orders in the same order that they appear in Attachment 2. This facilitates faster processing and increases the chances that all violations will be fully addressed.

For repairs such as concrete repairs, roofing, etc. where outside contractors are hired instead of using onsite maintenance staff, please include the scope of work with the dated invoice of the contractor that performed the work.

For pest control, the Structural Pest Control Act (Chapter 1951 of the Occupations Code) requires licensing of businesses and individuals that perform structural pest control for hire. Additionally, persons performing pest control at an apartment building must be licensed. As a result, you must submit a pest control invoice by a licensed contractor that includes a date, contractor signature, units treated and the type of pest treated. Self-treatment is unacceptable.

Finally, you may submit photographs in support of the above, but photographs by themselves are not acceptable documentation of correction. If you do submit photographs, please ensure that they are labeled and that the supporting work orders and/or invoices are attached.