

ENFORCEMENT ACTION AGAINST
AUSTIN GATEWAY, LTD. WITH
RESPECT TO GATEWAY
APARTMENTS (HTC FILE # 94093)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 18th day of December, 2014, 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 **AUSTIN GATEWAY, LTD.**, 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 Administrative Penalties 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

Jurisdiction:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov’t Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. In 1994, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in the amount of \$25,404.00 to acquire and rehabilitate Gateway Apartments (“Property”) (HTC file No. 94093 / CMTS No. 1246 / LDLD No. 331).

3. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective March 6, 1997, and filed of record at Volume 13041, Page 0323 of the Official Public Records of Real Property of Travis County, Texas.
4. Respondent is a Texas limited partnership 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 Violations¹:

5. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted on December 6, 2012. Inspection reports showed numerous serious property condition violations as indicated at Attachment 1, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Notifications of noncompliance were sent and an April 16, 2013, corrective action deadline was set. Partial corrective action was received to resolve exigent health and safety violations but fourteen violations were not corrected before the deadline. Additional work orders resolving those violations were received on September 22, 2014, 564 days after the deadline.
6. On May 1, 2013 and June 10, 2013, TDHCA sent notice that Respondent had failed to timely submit their 2012 Annual Owner’s Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report.

The final parts were submitted on September 24, 2014, 512 days past the deadline.
7. On May 1, 2014 and June 16, 2014, TDHCA sent notice that Respondent had failed to timely submit their 2013 Annual Owner’s Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner’s Compliance Report.

The final parts were submitted on September 22, 2014, 145 days past the deadline.
8. All findings indicated above have been resolved.
9. An informal conference with the Respondent was held September 23, 2014.

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.

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 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.
5. Respondent violated 10 TEX. ADMIN. CODE § 10.603 in 2013, and 10 TEX. ADMIN. CODE § 10.607 in 2014, by failing to submit Annual Owner's Compliance Reports for the years 2009, 2010, 2011, 2012, and 2013;
6. 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.
7. 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.
8. 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.
9. An administrative penalty of \$500 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 \$500.

IT IS FURTHER ORDERED that Respondent's submission of acceptable corrective action documentation between September 22, 2014 and September 24, 2014, is hereby accepted in lieu of payment of the administrative penalty.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

Attachment 1

UPCS Violations

Texas Department of Housing and Community Affairs List of Deficiencies Found

Printed On: January 14, 2013

Inspectable Area Inspectable Item	Deficiency	5	3	3	Comments
Gateway Apartments 505 Swanee Dr Austin, TX 78752					
Building:					
Unit:					
Grounds	Overgrown/Penetrating Vegetation		L2		tree is growing onto the roof
Health & Safety	Hazards - Tripping			L3	sidewalk leading from the parking area to the laundry has a change in height > 3/4"
Parking/Drives	Potholes/Loose Material		L1		parking area & driveway has loose materials and potholes
Building: Bldg 1					
Unit:					
Building Systems					
Domestic Water	Leaking Central Water Supply			L3	water heater by unit 106 has a leaking pipe
Fire Protection	Missing/Damaged/Expired Extinguishers			L3	fire extinguishers have no tags in units 206 and 201
Health & Safety					
Health & Safety	Hazards - Other			L3	other plug cover in laundry is missing/ has no exposed wires
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels			L3	inside laundry room/ missing a plug cover
Building Exterior					
Roofs	Damaged Soffits/Fascia		L1		fascia is peeling on the backside of the bldg and the soffit is water damaged on the front side of the building
Unit: 101					
Bathroom	Water Closet - Damaged/Clogged/Missing		L2		toilet is leaking water into the bowl
Kitchen	Range/Stove - Missing/Damaged/Inoperable		L2		left rear burner is missing the control knob
Smoke Detector	Missing/Inoperable			L3	missing smoke alarm - Fixed Onsite
Unit: 106					
Bathroom	Water Closet - Damaged/Clogged/Missing		L2		toilet is leaking water into the bowl
Kitchen	Range Hoods/Exhaust Fans -Excessive Grease/Inoperable		L1		missing filter screen
Kitchen	Cabinets - Missing/Damaged		L2		missing cabinet door
Kitchen	Refrigerator-Missing/Damaged/Inoperable		L1		seal damaged
Unit: 201					
Smoke Detector	Missing/Inoperable			L3	missing - Fixed Onsite
Unit: 206					
Bathroom	Lavatory Sink - Damaged/Missing		L1		missing stopper
Doors	Damaged Frames/Threshold/Lintels/Trim			L3	front door/ can see daylight on the side of the door
Doors	Damaged Hardware/Locks		L2		bedroom door lock does not function as designed