

ENFORCEMENT ACTION AGAINST
HOLLAND APARTMENTS, LTD
WITH RESPECT TO HOLLAND
HOUSE APARTMENTS
(HTC EXCHANGE 15090009994 /
HOME 1001139)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 13th day of November, 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 **HOLLAND APARTMENTS, 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. Respondent was awarded an allocation of HOME funds by the Board during 2010, in the total amount of \$550,000.00 to acquire, rehabilitate, and operate Holland House Apartments (“Property”) (HTC Exchange No. 15090009994 / HOME No. 1001139 / CMTS No. 4471 / LDLD No. 463).
3. In addition to the HOME funds described above, Respondent was also awarded an allocation of Low Income Housing Tax Credits by the Board during 2010, which were returned in exchange for a cash grant under the Texas Tax Credit Exchange Program, awarding Exchange funds in the aggregate amount of \$3,622,969.00 to acquire, rehabilitate, and operate the Property.
4. Respondent signed two land use restriction agreements (collectively the “LURAs”) regarding the Property:
 - a. The HOME LURA was effective June 21, 2010, and filed of record at Document Number 2010-22123 of the Official Public Records of Real Property of Bell County, Texas (“Records”).
 - b. The HTC Exchange LURA was effective June 21, 2010, and filed of record at Document Number 2010-00022253 of the Official Public Records of Real Property of Bell County, Texas (“Records”), as amended by a First Amendment executed on November 28, 2011, and filed in the Records at Document Number 2011-00040897, as further amended by a Second Amendment executed on August 29, 2012, and filed in the Records at Document Number 2012-00035874.
5. 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:

1. A Uniform Physical Condition Standards (“UPCS”) inspection was conducted on February 18, 2014. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a May 25, 2014, corrective action deadline was set.

Corrective documentation was not received until September 18, 2014, 116 days past the deadline, after intervention by the Administrative Penalty Committee.

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.

2. An on-site monitoring review was conducted on January 29, 2014, to determine whether Respondent 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 a July 7, 2014, corrective action deadline was set, however, the following violations were not timely resolved:
 - a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), which requires all Developments with five or more total units to develop an Affirmative Fair Housing Marketing Plan.

The affirmative marketing finding was corrected on September 18, 2014, 73 days past the deadline.
 - b. Respondent failed to maintain written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires owners to develop written tenant selection criteria that meet minimum standards outlined in the rule.

Written tenant selection criteria was submitted August 18, 2014, 42 days past the deadline, but it was insufficient to resolve the finding because it did not include required language.
 - c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 112 and 221, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements) and the LURA, which require Respondent to maintain minimum file standards to verify eligibility for the program.

Corrective documentation was submitted on September 18, 2014, 73 days past the deadline. The file for unit 221 was acceptable to resolve the associated finding, but the file for unit 112 was insufficient and unacceptable.
 - d. Respondent failed to collect a tenant income certification for unit 112, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements) and the LURA.

Respondent submitted a tenant income certification on August 18, 2014, 42 days after the deadline, resolving the finding.
 - e. Respondent failed to provide the Amenities and Services Notice for unit 325, a violation of 10 TEX. ADMIN. CODE § 10.613 (Lease Requirements), which requires all developments to provide prospective households with a notice regarding amenities and services at the time of execution of the initial lease and whenever there is a subsequent change.

Respondent submitted a form notice of Amenities and Services on August 18, 2014, 42 days after the deadline, but the notice was unacceptable because it was unsigned and did not include language required by the rule.

- f. Respondent failed to provide the Fair Housing Disclosure Notice for units 221, 323, 324, 401, and 416, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period.

Respondent submitted multiple signed notices on August 18, 2014, 42 days past the deadline. The form submitted for unit 221 was acceptable, but the rest of the submitted forms were not signed during the appropriate period, leaving the finding unresolved for units 323, 324, 401, and 416.

- g. Respondent failed to ensure that the households in units 401 and 502 qualified for occupancy, by allowing the units to be occupied by non-qualified full time students and/or not maintaining evidence of an exception, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to screen for student status.

Respondent submitted corrective documentation on September 18, 2014, 73 days past the deadline. The finding was dropped for unit 502 and is considered resolved, but the documentation submitted for unit 401 was incomplete.

3. The following violations remain outstanding at the time of this order:

- a. Written tenant selection criteria violation described in FOF #2b;
- b. Housing income above limit upon initial occupancy violations for unit 112 described in FOF #2c;
- c. Amenities and Services Notice violation for unit 325, described in FOF #2e;
- d. Fair Housing Disclosure Notice violation for units 323, 324, 401, and 416, described in FOF #2f;
- e. Failure to screen for student status for unit 401, described in FOF #2g.

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 § 10.621 in 2014 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 § 10.617 in 2014 by failing to provide an affirmative marketing plan.

6. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2014 by failing to maintain written tenant selection criteria.
7. Respondent violated Article II of the HOME LURA, representations at page 1 of the HTC Exchange LURA, Section 4 of the HTC Exchange LURA, and 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for units 112 and 221.
8. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014 by failing to collect a tenant income certification for unit 112.
9. Respondent violated 10 TEX. ADMIN. CODE § 10.613 in 2014 by failing to provide the Amenities and Services Notice for unit 325.
10. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 221, 323, 324, 401, and 416.
11. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to screen for student status for units 401 and 502
12. 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.
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 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.
15. An administrative penalty of \$1,500.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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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 \$1,500.00, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that property manager and her supervisor shall attend Housing Tax Credit Compliance Training on or before January 1, 2015.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before January 1, 2015.

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, 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 \$1,500.00 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 corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. Once uploaded, Respondent must email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the uploads are complete. 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 November 13, 2014.

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 13th day of November, 2014, 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 13th day of November, 2014, 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

Attachment 1

Tenant File Instructions

[intentionally omitted from web version]

Attachment 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application:** The Department does not have a required form to screen households, but we make this form available for that purpose. It is required that households be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed.
2. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
 - a. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
 - b. **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 should 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;
 - c. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits;
 - d. **Telephone Verifications:** these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;
 - e. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

3. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
 - a. **Under \$5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
 - b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, 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 should 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.
4. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, 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>. Be sure to include any income derived from assets. The form must include (and be signed by) each adult household member.
5. **Lease:** Must conform with your LURA and 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 determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 Tex. Admin. Code §10.613(a) 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, 10 Tex. Admin. Code §10.613(e) prohibits HTC developments 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. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

6. **Fair Housing Choice Disclosure Notice:** Must be signed by all new adult applicants at the time of their application, and no more than 120 days prior to the effective date of their lease.

If a household was not provided this notice prior to move in or transfer, the property must ensure that the form is signed no more than 120 days and no less than 30 days prior to the date that each household is legally obligated to provide written notice of their intention to terminate or renew their lease. A calculator is available at <http://www.tdhca.state.tx.us/pmcdocs/FHDNoticeCalculator.xls> in order to help calculate the appropriate execution date.

7. **Amenities and Services Notice:** Must be provided to all tenants at the time that the initial lease is signed and whenever amenities and/or services change. There is no set form, but the notice must describe available and/or required amenities and services and must include the following language:
 - a. "The Texas Department of Housing and Community Affairs (the "Department") is responsible for monitoring this Development for compliance with any land use restriction agreement setting forth required common amenities, unit amenities, or services in connection with programs administered by the Department."; and
 - b. The Department contact information including the mailing address, website and toll free phone number.