

|                                  |   |                     |
|----------------------------------|---|---------------------|
| ENFORCEMENT ACTION AGAINST       | § | BEFORE THE          |
| SBI LAKEWOOD GARDENS LP          | § | TEXAS DEPARTMENT OF |
| WITH RESPECT TO                  | § | HOUSING AND         |
| LAKWOOD GARDENS                  | § | COMMUNITY AFFAIRS   |
| (HTC FILE # 91059 / CMTS # 2305) | § |                     |

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 27<sup>th</sup> day of April, 2017, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **SBI LAKEWOOD GARDENS LP**, 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 Enforcement 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. During 1991, Richard W. Buck (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$38,910 to build and operate Lakewood Gardens (fka Bora Bora) (“Property”) (HTC file No. 91059 / CMTS No. 2305 / LDLD No. 656).
2. Prior Owner signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 11, 1991, and filed of record at Volume 91243, Page 0013 of the Official Public Records of Real Property of Dallas County, Texas (“Records”). 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.

3. Respondent took ownership of the Property in 1997 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. An on-site monitoring review was conducted on January 28, 2016, 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 11, 2016, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:
  - a. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Tenant Selection Criteria, now Written Policies and Procedures), which requires all developments to establish written policies and procedures, including tenant selection criteria, that meet minimum TDHCA requirements. Policies were submitted, but did not comply with minimum requirements and the finding is unresolved;
  - b. Respondent failed to submit pre-on-site documentation, a violation of 10 TAC §10.607 (Reporting Requirements) and 10 TAC §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. The violation was corrected on January 12, 2017, 185 days past the original deadline, after intervention by the Enforcement Committee;
  - c. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. No utility allowance has been submitted;
  - d. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to an administrative penalty informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to the disabled. A plan was

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC §§ 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.

submitted, but did not comply with minimum requirements and the finding is unresolved;

- e. Respondent failed to provide the Fair Housing Disclosure Notice for units 202 and 207, a violation of 10 TAC §10.612 (Tenant File Requirements), which, at the time of move-in for each unit during 2014, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a “Tenant Rights and Resources Guide”, which also has not been provided. The violation for unit 202 was corrected on January 12, 2017, 185 days past the original deadline, after intervention by the Enforcement Committee. The violation for unit 207 remains unresolved;
  - f. Respondent failed to provide a Notice of Amenities and Services to units 202 and 207 a violation of 10 TAC §10.613 (Lease Requirements), which, at the time of move-in for this unit during 2014, required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a “Tenant Rights and Resources Guide”, which also has not been provided. The violation for unit 202 was corrected on January 12, 2017, 185 days past the original deadline, after intervention by the Enforcement Committee. The violation for unit 207 remains unresolved;
  - g. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation was corrected on January 12, 2017, 185 days past the original deadline, after intervention by the Enforcement Committee; and
  - h. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 202 and 217, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violations were corrected on January 12, 2017, 185 days past the original deadline, after intervention by the Enforcement Committee.
6. The following violations remain outstanding at the time of this order:
- a. Written policies and procedures violation described in FOF #5.a;
  - b. Utility allowance violation described in FOF #5.c;
  - c. Affirmative marketing plan violation described in FOF #5.d;
  - d. Lease notice violation described in FOF #5.e;
  - e. Lease notice violation described in FOF #5.f.

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC §2.
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 TAC §10.610 in 2016, by not maintaining written policies and procedures, including tenant selection criteria, meeting TDHCA requirements.
5. Respondent violated 10 TAC §10.607 and §10.618 in 2016, by not submitting pre-onsite documentation in preparation for the monitoring review.
6. Respondent violated 10 TAC §10.614 in 2016 by failing to establish a utility allowance.
7. Respondent violated 10 TAC §10.617 in 2016, by failing to provide a complete affirmative marketing plan and evidence of outreach marketing.
8. Respondent violated 10 TAC §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 202 and 207.
9. Respondent violated 10 TAC §10.613 in 2014, by failing to execute the Notice of Amenities and Services for units 202 and 207.
10. Respondent violated leasing requirements in 10 TAC §10.613 in 2016, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.
11. Respondent violated leasing requirements in 10 TAC §10.613 in 2016, by failing to provide a Tenant Rights and Resources Guide to units 202 and 207, and have the households sign acknowledgment forms.
12. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, 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 § 2306.053 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 is an appropriate penalty in accordance with 10 TAC §2.

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, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$750 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 27, 2017.

**IT IS FURTHER ORDERED** that the onsite property manager and his/her supervisor shall attend First Thursday Income Eligibility Training offered by TDHCA and submit a completion certificate to the Agency on or before July 26, 2017.

**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 July 26, 2017.

**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 remaining assessed administrative penalty in the amount of \$750, which 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, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of \$750 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" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**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>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. Penalty payment(s) must be submitted to the following address:

| If via overnight mail (FedEx, UPS):   | If via USPS:   |
|---|--|
| TDHCA<br>Attn: Ysella Kaseman<br>221 E 11 <sup>th</sup> St<br>Austin, Texas 78701 | TDHCA<br>Attn: Ysella Kaseman<br>P.O. Box 13941<br>Austin, Texas 78711 |

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Attachment 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

*[Remainder of page intentionally blank]*





## Attachment 1

### **File Monitoring Violation Resources and Instructions**

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

2. Refer to the following link for copies of forms that are referenced below:

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

3. **All corrections must be submitted via CMTS:** See link for steps to upload documents <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
4. **Written tenant selection criteria** – Respondent submitted written tenant selection criteria, however, the criteria were incomplete.

How to prepare compliant criteria: Prepare updated written policies and procedures addressing all requirements at 10 TAC §10.610. Staff recommends using that rule as a checklist. A webinar presentation is available at: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>. A cheat sheet for further verification is available at <http://www.tdhca.state.tx.us/pmcdocs/15-AOCR-TSC.pdf>, however, please note that the cheat sheet was only published as an aide for annual reporting and, as such, should not be relied upon as a primary resource; you are required to follow all requirements of the rule.

What to submit: Once your written policies and procedures are complete, the owner must review the criteria, then submit them via CMTS along with the applicable signed Owner Certification included at Attachment 2.

6. **Utility Allowance** – Respondent has not submitted a utility allowance. There are many methods to calculate a utility allowance. See <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm> and 10 TAC §10.614. The easiest method, but not the only acceptable method, would be to use the utility allowance published by the applicable housing authority, the City of Dallas Housing Authority. Their website is at <http://www.dhadal.com> and their published utility allowance is currently available at <http://www.dhadal.com/Business/2/Utility%20Allowances>.

What to submit: Calculate a utility allowance in accordance with 10 TAC §10.614 and submit a copy of the new utility allowance via CMTS. Also submit the development's updated Unit Status Report within CMTS to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days outside of this Agreed Final Order.

7. **All lease notice violations, including Fair Housing Disclosure Notice, and Notice of Amenities and Services.**

What to submit: The owner must review the applicable Owner Certification at Attachment 2, verify that all requirements described by the certification have been met, then submit the applicable signed Owner Certification via CMTS.

## 5. Affirmative marketing plan –

How to prepare a compliant plan and marketing materials: Respondent submitted a plan, but it did not comply with minimum requirements. First read the rule at 10 TAC §10.617, then watch the webinar at <http://www.tdhca.state.tx.us/pmcomp/presentations.htm> to gain a general understanding regarding affirmative marketing. Next, review the following list of frequent problems observed, which include, but are not limited to:

- Not using HUD Form 935.2A;
- Not correctly identifying populations “least likely to apply”. In general, those populations that are least likely to apply *might* include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, families with children, and the disabled. Analysis is required to determine which of these groups are least likely to apply;
- Not affirmatively marketing to the disabled. All properties must market to the disabled population;
- Not correctly identifying organizations that are specifically associated with groups identified as “least likely to apply”. For example, marketing to the Housing Authority or placing ads in Craigslist would be considered general marketing, not affirmative marketing, because both serve all persons living in the area. One exception would be if “Not Hispanic” is identified as a group that is least likely to apply;
- Not including evidence of special outreach efforts, such as marketing letters, to those “least likely to apply” populations through specific media, organizations, or community contacts that work with “least likely to apply” populations or work in areas where “least likely to apply” populations live; and
- Not including a sentence in English and Spanish in the outreach marketing materials that prospective tenants can access if reasonable accommodations are needed to complete the application process.

### Steps to complete affirmative marketing plan:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply. The Affirmative Marketing Web Tool referenced at 10 TAC §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. The groups *currently* identified by the tool are Persons with Disabilities, Black/African American, not Hispanic, and Asian. Persons with disabilities must always be selected as a group least likely to apply. *You must run the Tool yourself to ensure that the data remains the same.* If you use this Tool and save a copy with your Plan in your files, you may rely upon its results. Alternatively, you may perform your own analysis to determine groups that are considered least likely to apply, but you must perform and document a reasonable analysis by which those groups were identified.

If “not Hispanic” is identified as a group that is “least likely to apply”, this group will be marked in your plan as “Other” and you would write in “Not Hispanic”. Many owners assume that the “Not Hispanic” group identified in the Affirmative Marketing Web Tool means “White”. This is not necessarily the case. TDHCA’s Compliance Division

- explains the “Not Hispanic” category like this: Each household member has a Race *and* an Ethnicity. The Race could be White, American Indian or Alaskan Native, Asian, Black or African American, or Native Hawaiian or Other Pacific Islander. The Ethnicity could be either Hispanic or Not Hispanic. In other words, a person could be Black/African American *and* Hispanic. Likewise, a person could be White *and* Hispanic. In other words, the “Not Hispanic” demographic is not just “White”, it is literally everyone who is “Not Hispanic”.
- c. Identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials. The organizations must specifically reach those groups designated as least likely to apply, including organizations that assist persons with disabilities. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing *unless* you are required to market to Not-Hispanic populations, in which case more general marketing of this type would be acceptable to market to that group. An Asian Chamber of Commerce or local Asian publication could be an avenue to market to the Asian population if that group is identified as one that is least likely to apply. Similarly, local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc, could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association.
  - d. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
  - e. Comply with all requirements of 10 TAC §10.617, which we recommend using as a checklist;
  - f. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms “reasonable accommodation” and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: *“Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completar el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.”*
  - g. Maintain all documentation in your files for future review.

What to submit: Once your Affirmative Marketing plan *and* outreach materials are complete, the owner must review them, then sign and upload to CMTS the applicable Owner Certification included at Attachment 2.

**Attachment 2**

**Owner Certifications**

(see attached)

The rules at 10 TAC §10 that are referenced in the attached certifications are available at this link  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

*[attachment omitted from web version – not in accessible format]*

**Attachment 3:**

**Texas Administrative Code**

|              |   |
|--------------|---|
| TITLE 10     | COMMUNITY DEVELOPMENT                             |
| PART 1       | TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS |
| CHAPTER 10   | UNIFORM MULTIFAMILY RULES                         |
| SUBCHAPTER E | POST AWARD AND ASSET MANAGEMENT REQUIREMENTS      |
| RULE §10.406 | Ownership Transfers (§2306.6713)                  |

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

**Source Note:** The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518