ENFORCEMENT ACTION AGAINST	§	BEFORE THE
SA UNION PINES II, L.P.	§ §	TEXAS DEPARTMENT OF
(HTC 02092 / CMTS 3243)	§	HOUSING AND COMMUNITY
AND RENE O. CAMPOS	§	AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 10th day of November, 2022, 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 **SA UNION PINES II, L.P.,** a Texas limited liability company (Respondent) and **RENE O. CAMPOS**.

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 (FOF)

Jurisdiction:

1. During 2002, SA Union Pines II, L.P. was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$640,106 to acquire, rehabilitate, and operate SA Union Pines Apartments (HTC file No. 02092 / CMTS No. 3243).

- 2. SA Union Pines II, L.P. signed a land use restriction agreement (SA Union Pines II LURA) regarding the Property. The LURA was effective December 31, 2004, and filed of record on August 4, 2005 under Document Number 20050176920 in the Official Public Records of Real Property of Bexar County, Texas. 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. On July 1, 2009, 2008 South Antonio Pines GP, LLC acquired the general partnership interests, and 2021 S. Hackberry, LLC acquired the limited partnership interests in Respondent. Both entities are solely controlled by Rene O. Campos.
- 4. 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.
- 5. Altogether, Rene O. Campos controls five Actively Monitored Developments (collectively, the Eureka Portfolio), with a sixth property that will become active once TDHCA starts compliance monitoring:

	Property	Owner	Actively Monitored Development?
1	SA Union Pines II Apartments (HTC 02092 / CMTS 3243)	SA Union Pines II, L.P.	Yes.
2	The Village (HTC 0007T / CMTS 25)	2014 Baytown Village Lane, Ltd.	Yes.
3	Sterlingshire Apartments (HTC 03440 / CMTS 3427)	2015 Houston Sterlingshire, LP	Yes.
4	SA Union Park (HTC 02093 / CMTS 3244)	SA Union Park II, L.P.	Yes.
5	Lucero (HTC 13252 / CMTS 4901)	2013 Travis Oak Creek, LP	Yes.
6	Houston 150 Bayou (HTC 21038 / CMTS 5782)	2021 Houston 150 MF Housing, LP	No. New construction, pending completion.

- 6. Eureka Multifamily Group, L.P. manages the Eureka Portfolio, and is solely controlled by Rene O. Campos.
- 7. Respondent is subject to the regulatory authority of TDHCA.

*Compliance Violations*¹:

- 8. A Uniform Physical Condition Standards (UPCS) inspection was conducted at SA Union Pines II Apartments on July 7, 2021. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a December 20, 2021, corrective action deadline was set. No corrections were submitted and the violations at Exhibit 1 were referred for an administrative penalty on December 29, 2021. This was the third administrative penalty referral for the Eureka Portfolio after April 1, 2021, crossing the fifty percent debarment referral threshold under 10 TAC §2.401(e)(2)(a) (Debarment from Participation in Programs Administered by the Department). Final evidence of correction was submitted to the Department on January 24, 2022, fully correcting the noncompliance.
- 9. The above UPCS violations are considered fully resolved at the time of this order.

CONCLUSIONS OF LAW

- 1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, Tex. Gov't Code §2306.0504, and 10 TAC Chapter 2.
- 2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
- 3. Rene O. Campos is a "Responsible Party" as that term is defined in 10 TAC §2.102(1).
- 4. 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.
- 5. Pursuant to Tex. Gov't Code Chapter 2306, Subchapter DD and Tex. Gov't Code §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
- 6. Pursuant to 10 TAC §10.621(a), the Department has adopted HUD's Uniform Physical Condition Standards as the standard for its physical inspections.
- 7. Respondent violated 10 TAC §10.621 in 2021, 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.

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¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers 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.

- 8. 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.
- 9. 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.
- 10. 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.
- 11. An administrative penalty of \$4,300 is an appropriate penalty in accordance with 10 TAC Chapter 2.
- 12. Pursuant to Tex. Gov't. Code §2306.0504(B), the Department may debar a person from participation in a Department program on the basis of the person's past failure to comply with any condition imposed by the Department in the administration of its programs.
- 13. Conditional dismissal of the debarment referral with a one-year probationary period that if any property in the Portfolio is referred for an administrative penalty during the probationary period, the Department shall set an informal conference with the Enforcement Committee for consideration of debarment in accordance with 10 TAC §2.401 is appropriate in accordance with 10 TAC Chapter 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 Governing 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 \$4,300 for noncompliance at SA Union Pines Apartments.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay the \$4,300 administrative penalty by check payable to the "Texas Department of Housing and Community Affairs" on or before December 12, 2022, to the following address:

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

IT IS FURTHER ORDERED that the debarment referral under 10 TAC §2.401(e)(2)(A) is conditionally dismissed in accordance with 10 TAC §2.401(i)(5).

IT IS FURTHER ORDERED that as a condition of the debarment dismissal, properties in the Portfolio must not be referred for an administrative penalty for file monitoring or Uniform Physical Condition Standards (UPCS) noncompliance during a one-year probationary period, beginning on the date the TDHCA Board approves this Agreed Final Order.

IT IS FURTHER ORDERED that timely correction of future compliance violations shall be determined in accordance with 10 TAC §10.602 (Notice to Owners and Corrective Action Periods). Any corrective documentation that is not submitted on or before a compliance monitoring deadline will be considered untimely and will be referred for an administrative penalty, provided that Respondent did not request and receive an extension from the TDHCA Compliance Division in accordance with the above rule.

IT IS FURTHER ORDERED that if any property in the Portfolio is referred for an administrative penalty during the probationary period, the Department shall set an informal conference with the Enforcement Committee for consideration of debarment in accordance with 10 TAC §2.401.

IT IS FURTHER ORDERED that for purposes of Previous Participation Reviews conducted by the Department, the probationary period herein shall not be considered for new Department financing and assistance opportunities unless there is a new administrative penalty referral during that period.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, 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.

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Approved by the Governing Board of TDHCA on November 10, 2022.

By: /s/ Leo Vasquez

Name: Leo Vasquez

Title: Chair of the Board of TDHCA

By: /s/ James "Beau" Eccles

Name: James "Beau" Eccles

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 November 2022, personally appeared Leo Vasquez, 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/ Nancy N. Dennis
Notary Public, State of Texas

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 10th day of November, 2022, personally appeared James "Beau" Eccles, 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/ Nancy N. Dennis

Notary Public, State of Texas

STATE OF TEXAS	§
	§
COUNTY OF TRAVIS	§

BEFORE ME, <u>Erika Palacios</u>, a notary public in and for the State of <u>Texas</u>, on this day personally appeared Rene O. Campos, known to me or proven to me through <u>circle one: personally known</u> <u>/ driver's license / passport</u> 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, who being by me duly sworn, deposed as follows:

- 1. "My name is Rene O. Campos, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
- 2. I am the managing member of 2008 South Antonio Pines GP, LLC, the general partner for Respondent, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized to execute this document.
- 3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

SA UNION PINES II, L.P., a Texas limited partnership

2008 SOUTH ANTONIO PINES GP, LLC, a Texas limited liability company, its general partner

	Ву:	/s/ Rene O. Campos
	Name:	Rene O. Campos
	Title:	Managing Member
Given under my hand and seal of office this	<u>6th</u> d	ay of <u>December</u> , 2022.
/s/ Erika Palacios	_	
Signature of Notary Public		
/s/ Erika Palacios	_	
Printed Name of Notary Public		
NOTARY PUBLIC IN AND FOR THE STATE OF	<u>Texas</u>	

My Commission Expires: 5-12-2025

STATE OF TEX	XAS	§
		§
COUNTY OF	TRAVIS	§

BEFORE ME, <u>Erika Palacios</u>, a notary public in and for the State of <u>Texas</u>, on this day personally appeared Rene O. Campos, known to me or proven to me through <u>circle one: personally known</u> <u>/ driver's license / passport</u> 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, who being by me duly sworn, deposed as follows:

- 1. "My name is Rene O. Campos, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
- 2. I control the properties listed in Finding of Fact 5 of this Agreed Final Order.
- 3. I understand and consent to the one-year probationary period for the Eureka Portfolio, as outlined in this Agreed Final Order."

Ву:	/s/ Rene O. Campos
Name:	Rene O. Campos

Given under my hand and seal of office this 6th day of December, 2022.

/s/ Erika Palacios
Signature of Notary Public
/s/ Erika Palacios
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF <u>Texas</u>

My Commission Expires: <u>5-12-2025</u>

Exhibit 1
UPCS Violations at SA Union Pines II

Building	Unit	Inspectable Item	Deficiency	Level	Note
Bldg 1	105	Walls	Peeling/Needs Paint	L1	Bdr wall
Bldg 11	Building Exterior	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	Fixture hanging outside unit (RDI)
Bldg 11	1102	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Front door
Bldg 13	1303	Doors	Damaged Hardware/Locks	L3	Strike pl front door
Bldg 13	1303	Doors	Damaged Surface (Holes/Paint/Rusting)	L3	Front door
Bldg 13	1303	Kitchen	Cabinets - Missing/Damaged	L2	Drawer facing
Bldg 14	1404	Ceiling	Peeling/Needs Paint	L2	Bdr 3 and bath 2
Bldg 16	1601	Health & Safety	Infestation - Insects	L3	Roaches bdrm
Bldg 16	1601	Walls	Peeling/Needs Paint	L1	Hall
Bldg 19	1903	Ceiling	Peeling/Needs Paint	L2	Ceiling kitchen
Bldg 2	202	Kitchen	Countertops - Missing/Damaged	L2	Damaged
Bldg 21	2101	Ceiling	Mold/Mildew/Water Stains/Water Damage	L3	Hall bath
Bldg 21	2101	Health & Safety	Hazards - Tripping	L3	Cable cord
Bldg 22	2201	Ceiling	Peeling/Needs Paint	L2	Living room
Bldg 22	2201	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1 (RDI)
Bldg 22	2201	Walls	Damaged	L2	Bath
Bldg 24	2403	Ceiling	Peeling/Needs Paint	L2	Kitchen
Bldg 24	2403	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Front door
Bldg 24	2403	Doors	Damaged Surface (Holes/Paint/Rusting)	L3	Hall bath
Bldg 24	2403	Walls	Damaged	L2	Hall
Bldg 31	3104	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Front door
Bldg 31	3104	Health & Safety	Infestation - Insects	L3	Kitchen
Bldg 31	3104	Kitchen	Dishwasher/Garbage Disposal - Inoperable	L2	Disposal
Bldg 9	908	Ceiling	Peeling/Needs Paint	L1	Kitchen

Exhibit 2

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)

- (a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.
- (b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.
- (1) 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 Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.
- (2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.
- (3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.
- (4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information. (c) General Requirements.
- (1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).
- (2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter (relating to Amendments and Extensions).
- (3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.
- (4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.
- (d) Transfer Actions Warranting Debarment. 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 or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement

Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

- (e) Transfers Prior to 8609 Issuance or Construction Completion. 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), an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.
- (f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit 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 Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.
- (2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.
- (3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) (5) of this subchapter. The Board must find that:
- (A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;
- (B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and
- (C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.
- (g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this subchapter has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this subhapter.
- (h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:
- (1) A written explanation outlining the reason for the request;

- (2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;
- (3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);
- (4) A list of the names and contact information for transferees and Related Parties;
- (5) Previous Participation information for any new Principal as described in §11.204(13)(C) of this title (relating to Required Documentation for Application Submission);
- (6) Agreements among parties associated with the transfer;
- (7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;
- (8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;
- (9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 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; and
- (10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.
- (i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).
- (j) 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 years prior to the transfer request date.
- (k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) of this subchapter (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this subchapter.

(I) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective February 3, 2022, 47 TexReg 266