

ENFORCEMENT ACTION AGAINST
SAN MARCOS SENIOR
COMMUNITY II, LLP WITH
RESPECT TO SUNRISE VILLAGE II
(HOME FILE # 536265 /
HTC FILE # 96113)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 31st day of July, 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 **SAN MARCOS SENIOR COMMUNITY II, LLP**, 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:

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 1996, San Marcos Senior Community II, LLP (“Respondent”) was awarded an allocation of HOME funds by the Board, in the amount of \$450,000.00 to build and operate Sunrise Village II (“Property”) (HOME File No. 536265 / CMTS No. 1574 / LDLD No. 403).
3. In 1996, San Marcos Senior Community II, LLP (“Respondent”) was awarded an allocation of Housing Tax Credit funds by the Board, in the annual amount of \$250,558.00 to build and operate Sunrise Village II (“Property”) (HOME File No. 536265 / CMTS No. 1574 / LDLD No. 403).

4. Respondent signed two land use restriction agreements (collectively, "LURA's") regarding the Property. The HOME LURA was effective May 30, 1997, and filed of record at Volume 1326, Page 247 of the Official Public Records of Real Property of Hays County, Texas ("Records"). The HTC LURA was effective August 12, 1999, and filed of record at Document Number 9924728 in the Records.
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. An on-site monitoring review was conducted on May 11, 2012, 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 August 13, 2012, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide required pre-onsite documentation requested by the Department in accordance with 10 TEX. ADMIN. CODE § 60.115 (Onsite Monitoring), which requires Respondent to provide requested documentation. Specifically, TDHCA requested a complete copy of Form 8609, complete with all attachments.
 - b. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114 (Requirements Pertaining to Households with Rental Assistance).
 - c. Respondent failed to provide evidence of material participation by a nonprofit organization, a violation of Appendix A of the HTC LURA and 10 TEX. ADMIN. CODE §60.117 (Monitoring for Non-Profit Participation or HUB Participation), which require a nonprofit organization to materially participate.
 - d. Respondent failed to provide supportive services to tenants, a violation of Appendix A of the HTC LURA and 10 TEX. ADMIN. CODE §60.116, which require Respondent to provide specific supportive services and maintain sufficient documentation to prove that the services are being provided.

An acceptable affirmative marketing plan, evidence of supportive service provision, and evidence of material participation by a nonprofit were submitted on July 11, 2013, 332 days late, after intervention by the Administrative Penalty Committee. Respondent has also submitted documentation multiple times regarding the pre-onsite documentation violation, but it has omitted the required Form 8609 attachments that are needed to clear this violation. The owner elected on Form 8609

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.

to treat the buildings as part of a multiple building project, and attachments should have been filed with the IRS along with Form 8609 to define the project. A "Schedule A Summary" was submitted to TDHCA; however, it does not meet the requirements outlined in <http://www.irs.gov/pub/irs-pdf/i8609.pdf>. Owner indicates that they have no further information and that the violation cannot be resolved.

2. An on-site monitoring review was conducted on May 30, 2013, 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 September 10, 2013, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 2512 or 2618 a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation and Certification of Annual Income) and the LURA.

Both household income violations remain unresolved. The lease for the tenant in unit 2512 expired in April of 2014, and the unit is currently vacant but ready for occupancy. The lease for the tenant in unit 2618 will expire on August 31, 2014.

3. A UPCS inspection was conducted on August 26, 2013. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 10.616 (Property Condition Standards). Notifications of noncompliance were sent and a January 28, 2014, corrective action deadline was set. Fully acceptable work orders were received on May 1, 2014, 93 days late, after intervention by the Administrative Penalty Committee.
4. The following violations remain outstanding at the time of this order:
 - a. Pre-onsite documentation violation described in FOF #1a, which cannot be corrected;
 - b. Household income above limit upon initial occupancy violations described in FOF #2, which cannot currently be corrected and are incorporated into a letter issued by the Compliance Division on May 13, 2014, regarding their April 24, 2014 onsite review.

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 §60.115 in 2012, by failing to submit pre-on-site documentation.
5. Respondent violated 10 TEX. ADMIN. CODE § 60.114 in 2012, by failing to provide an affirmative marketing plan;
6. Respondent violated Appendix A of the HTC LURA and 10 TEX. ADMIN. CODE §60.117 in 2012, by failing to provide evidence of material participation by a nonprofit organization.
7. Respondent violated Appendix A of the HTC LURA and 10 TEX. ADMIN. CODE §60.116 in 2012, by failing to provide required supportive services.
8. Respondent violated representations made on page 1 of the LURA, Section 4 of the LURA and 10 TEX. ADMIN. CODE §10.606 in 2013, by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for two units.
9. Respondent violated 10 TEX. ADMIN. CODE § 10.616 and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards in 2013, when major violations were discovered and not timely corrected.
10. 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.
11. 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.
12. 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.
13. An administrative penalty of \$250.00 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §§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 \$250.00, to be submitted to the address below on or before August 30, 2014, in the form of a cashier's check payable to the "Texas Department of Housing and Community Affairs".

IT IS FURTHER ORDERED THAT the \$250.00 assessed penalty does not include the household income above limit upon initial occupancy violations described in FOF #2. Those violations cannot currently be corrected and are incorporated into a letter issued by the Compliance Division on May 13, 2014, regarding on onsite review conducted on April 24, 2014. If the violations found during that review are not timely resolved in a manner acceptable to the Compliance Division, Respondent may be referred back to the Administrative Penalty Committee and an additional penalty may be considered for submission to the Board.

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>. 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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