



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

ARC VILLAGES IL, LLC

D/B/A

FREEDOM POINTE AT THE VILLAGES

AS OF

December 31, 2013

FLORIDA COMPANY CODE 88182

**Report Issued:
December 1, 2014**

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PURPOSE AND SCOPE OF EXAMINATION

The Office of Insurance Regulation (Office), Market Investigations unit, conducted a periodic market conduct examination of ARC Villages IL, LLC d/b/a Freedom Pointe at The Villages (hereinafter “Freedom Pointe at The Villages”) pursuant to Section 651.105, Florida Statutes. The scope period of this examination was from January 1, 2011 through December 31, 2013. The desk examination procedures were completed on September 5, 2014.

The objective of the examination was to determine the extent of compliance with the provisions of Chapter 651, Florida Statutes and Chapter 690-193, Florida Administrative Code Rules. This market conduct examination did not encompass a financial compliance examination.

This final report is based upon information from the examiner’s draft report, additional research conducted by the Office, and additional information provided by Freedom Pointe at The Villages. This report is a report by exception, and the information within has been limited to identification of exceptions, errors or unusual problems noted during the examination.

COMPANY OPERATIONS

Freedom Pointe at The Villages, a Delaware for-profit limited liability company located in The Villages, Florida was granted a Certificate of Authority by the Office to offer continuing care contracts on December 7, 2007. As of December 31, 2013, Freedom Pointe at The Villages reported 283 Continuing Care Units, consisting of 238 Independent Living Units and 45 Assisted Living Units. Freedom Pointe at The Villages also reported 72 Skilled Nursing Units, all of which are classified as Sheltered Beds. As of the same date, Freedom Pointe at The Villages reported 444 individuals residing at the community.

REFINANCING

The Management Affidavit, audited financial statements, and other pertinent documents were reviewed for items of significance which require notification to the Office and the Residents’ Council.

Finding:

In addition to the reporting requirements noted above, Section 651.091(2)(e), Florida Statutes further requires that every continuing care facility, “Notify the residents’ council of any plans filed with the Office to obtain new financing, additional financing, or refinancing for the facility and of any applications to the office for any expansion of the facility.”

Freedom Pointe at The Villages failed to notify the Residents’ Council of the refinancing plan filed with the Office on February 26, 2013, as required by Section 651.091(2)(e) Florida Statutes.

REFINANCING (Continued)

Recommendation: The Office recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure the Residents' Council is properly notified of any plans or applications filed with the Office to obtain financing or for any expansion of the facility, as required by Section 651.091(2)(e), Florida Statutes.

FORMS

Effective July 1, 2011, Section 651.022(2)(g), Florida Statutes, was amended to require wait list contract and reservation contract forms be approved by the Office prior to being used. Freedom Pointe at The Villages provided a list containing 78 wait list deposits collected during the scope period of the examination. A sample consisting of 28 wait list deposit transactions was selected from the list; 19 of the wait list transactions were executed on or after July 1, 2011. The 19 wait list contracts were tested for compliance with Section 651.022(2)(g), Florida Statutes.

Finding:

1. **In 12 instances, Freedom Pointe at The Villages utilized a wait list contract form that was not approved by the Office, as required by Section 651.022(2)(g), Florida Statutes.**

1a. **Recommendation:** The Office recommends Freedom Pointe at The Villages promptly submit the wait list form to the Office for approval. The Office further recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure all forms which require statutory approval are approved by the Office prior to use.

Finding:

In conjunction with the finding above, Section 651.055(1), Florida Statutes, also requires that each continuing care contract and each addendum to such contract is approved by the Office before its use in this state. Freedom Pointe at The Villages provided a list containing the 138 continuing care contracts executed during the scope period. A sample consisting of 45 transactions was selected and tested for compliance with Section 651.055 (1), Florida Statutes.

2. **In ten instances, Freedom Pointe at The Villages utilized an addendum to a continuing care contract that was not approved by the Office, as required by Section 651.055(1), Florida Statutes.** The unapproved addendum primarily addressed the payment of a supplemental entrance fee in exchange for a reduced monthly maintenance fee.

2a. **Recommendation:** The Office recommends Freedom Pointe at The Villages promptly submit the addendum form to the Office for approval.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Freedom Pointe at The Villages provided a list containing the 138 continuing care contracts executed during the scope period of the examination. A sample of 45 contract files was selected and tested for compliance with Sections 651.055(2) and 651.033(3)(c), Florida Statutes.

Finding:

Section 651.055(2), Florida Statutes, provides that during the seven-day rescission period of the contract, the resident's funds must be held in escrow unless otherwise requested by the resident, pursuant to Section 651.033(3)(c), Florida Statutes. Section 651.033(3)(c), Florida Statutes, further provides that, at the request of an individual resident of a facility, the provider may hold the check for the seven-day period and shall not deposit it during this time period.

In seven instances, Freedom Pointe at The Villages failed to properly deposit and maintain resident funds in the escrow account for the entire seven-day rescission period of the contract, as required by Section 651.055(2), Florida Statutes.

Specifically, in two instances the entrance fee funds were deposited into escrow after the rescission period had lapsed; in another two instances a portion of the entrance fee funds were not deposited into escrow during the rescission period; and in the remaining three instances the documentation to substantiate funds remained in escrow for the entire rescission period was inadequate.

Recommendation: The Office recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure that resident funds are managed in accordance with Section 651.055(2), Florida Statutes.

REQUIRED DISCLOSURES

Freedom Pointe at The Villages provided a list containing the 138 continuing care contracts executed during the scope period of the examination. A sample consisting of 45 contract files was selected and tested for compliance with Section 651.091(3), Florida Statutes.

Finding:

Section 651.091(3), Florida Statutes, provides that, before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of the specific disclosure documents to the prospective resident or his or her legal representative.

In all 45 instances, Freedom Pointe at The Villages failed to provide to the prospective resident or their legal representative a copy of the last report of examination and the list of actions taken by the provider to rectify the deficiencies in the report, as required by Section 651.091(3)(b), Florida Statutes.

REQUIRED DISCLOSURES (continued)

Recommendation: The Office recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure all disclosure documents are properly delivered to the prospective residents or his or her legal representative, as required by Section 651.091(3), Florida Statutes.

POSTING OF RECORDS

Section 651.091(2)(b), Florida Statutes, requires each continuing care community to “Post in a prominent position in the facility, which is accessible to all residents and the general public, a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility. Section 651.091(2)(c), Florida Statutes, further requires that, “... a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility.”

Finding:

Freedom Pointe at The Villages failed to post in a prominent position in the facility, a copy or summary of the last examination report issued by the Office along with the actions taken by the provider to rectify the deficiencies; and a copy or summary of the latest annual statement, as required by Sections 651.091(2)(b) and 651.091(2)(c), Florida Statutes. Although copies of the documents were available in the community’s library, the summaries of the documents, to include a notation where the full documents may be inspected in the facility, were not prominently posted.

Recommendation: The Office recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure compliance the required information is posted in accordance with Section 651.091(2), Florida Statutes.

ACCESS TO RECORDS

Records necessary to conduct the examination and determine the degree of compliance with Chapter 651, Florida Statutes and Rule 690-193, Florida Administrative Code were requested from Freedom Pointe at The Villages, in accordance with Section 651.105(1), Florida Statutes.

Finding:

In 12 instances, Freedom Pointe at The Villages failed to make certain documents available for examination, as required by Section 651.105(1), Florida Statutes. Specifically, in eight instances documents pertaining to refunds were missing; to include documentation to support the cancellation date of the contract, refund checks, and/or the continuing care contracts containing the cancellation terms. In the remaining four

ACCESS TO RECORDS (continued)

instances documents pertaining to wait list contracts, copies of the wait list checks or receipts were not made available for the examination.

Recommendation: In order for the Office to determine the degree of compliance with Chapter 651, Florida Statutes and Rule 69O-193, Florida Administrative Code, the Office recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure documentation is maintained and made available for examination purposes.

ADVERTISING

Freedom Pointe at The Villages provided a list of approximately 344 advertisements used during the scope period of the examination. Freedom Pointe at The Villages' internet website was examined; and a sample of 45 print advertisements were selected and tested for compliance with Rule 69O-193.038, and Rule 69O-193.040, Florida Administrative Code.

Finding:

Rule 69O-193.038(7), Florida Administrative Code states, "When an advertisement states a dollar amount, a period of time for any benefit, or the conditions for which the benefit is covered, the advertisement shall also state the existence of exceptions, reductions, and limitations affecting the basic provisions of the contract, without which reference, the advertisement might tend to mislead or deceive."

Freedom Pointe at The Villages failed to state in its print and website advertisements the existence of exceptions, restrictions or limitations affecting the provisions of the continuing care contract, as required by Rule 69O-193.038(7), Florida Administrative Code. Specifically, the print advertisements stated that Freedom Pointe at The Villages, "... guarantees your care and accommodations for the rest of your life, even if your assets are exhausted through no fault of your own." The website also stated "Freedom Pointe at The Villages also offers you care-for-life which guarantees that no matter what happens to you physically or financially, you will always have a home." In contrast to the statements in the advertisements, the continuing care contracts utilized during the scope period included several provisions that limit or restrict the benefit advertised by Freedom Pointe at The Villages.

Recommendation: The Office recommends Freedom Pointe at The Villages establish adequate procedures and controls to ensure all advertisements, to include print, electronic, broadcast media, etc. are in compliance with Rule 69O-193.038(7), Florida Administrative Code.

EXAMINATION FINAL REPORT SUBMISSION

The Office hereby issues this Final Report based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by ARC Villages IL, LLC.