



# **THE STATE OF FLORIDA**

## **OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS**

### **MARKET CONDUCT FINAL EXAMINATION REPORT**

**OF**

**BONITA SPRINGS RETIREMENT VILLAGE, INC.  
(d/b/a THE TERRACES AT BONITA SPRINGS)**

**AS OF**

**June 30, 2014**

**FLORIDA COMPANY CODE 88186**

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**Report Issued:  
October 21, 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 Bonita Springs Retirement Village, Inc. d/b/a The Terraces at Bonita Springs, (hereinafter “Bonita Springs”) pursuant to Section 651.105, Florida Statutes. The scope period of this examination was October 20, 2011 through June 30, 2014. This is the first market conduct examination of Bonita Springs. The on-site and desk examination procedures were completed on August 26, 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 Bonita Springs. 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**

Bonita Springs is a Florida non-profit corporation located in Bonita Springs, Florida. On October 20, 2011, Bonita Springs surrendered its Continuing Care Retirement Community Provisional Certificate of Authority and was granted a Certificate of Authority by the Office allowing the commencement of construction of the community. Bonita Springs began entering into continuing care contracts on July 1, 2013. The community is managed by SantaFe Senior Living, a subordinate company to SantaFe Health Care, Inc. As of December 31, 2013, Bonita Springs reported: 211 Continuing Care Units consisting of 144 Independent Living Units and 67 Assisted Living Units; 40 Skilled Nursing beds consisting solely of Sheltered Beds. There were no rental units reported. As of the same date, there were a total of 208 individuals residing at the community.

## **REQUIRED ESCROW DEPOSITS OR WAIVERS**

Bonita Springs provided a list containing the 124 continuing care contracts executed during the scope period of the examination. A sample consisting of 54 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, 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 community, the provider may hold the check for the seven-day period and shall not deposit it during this time period.

## **REQUIRED ESCROW DEPOSITS OR WAIVERS (continued)**

**In all 54 instances Bonita Springs failed to properly deposit and maintain resident funds in the escrow account for the entire seven-day rescission period of the contract or obtain authorization from the resident to hold and not deposit the check, in violation of Section 651.055(2), Florida Statutes.**

**Recommendation:** The Office recommends Bonita Springs establish adequate controls to ensure that resident funds are managed in accordance with Section 651.055(2), Florida Statutes.

**Subsequent Event:** When this matter was brought to management's attention during the on-site portion of the examination, an amended procedure was immediately adopted and enacted to ensure funds were timely deposited and maintained in the escrow account for a minimum of seven days after contract execution.

## **ADVERTISING**

The advertisements utilized by Bonita Springs during the scope period of the examination were reviewed for compliance with Rule 690-193.038, Florida Administrative Code.

### **Finding:**

Rule 690-193.038(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."

**Bonita Springs 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 690-193.038(7), Florida Administrative Code.** There were several instances noted wherein the advertisements and website utilized the phrase "Unlimited lifecare" without stating the existing exclusions or restrictions. In a separate instance, a direct mailing pamphlet stated "... lifetime use of your residence, even if you outlive your resources outside of your control." The restrictions and limitations were not stated in the pamphlet. The terms of the continuing care contract contain exceptions, limitations and/or reductions to the language cited above.

**Recommendation:** The Office recommends Bonita Springs amend its current advertising to include stating the existence of any exceptions, restrictions or limitations as required by Rule 690-138.038(7), Florida Administrative Code.

## POSTING OF RECORDS

### Finding:

Section 651.091(2)(c), Florida Statutes, provides that each continuing care community post in a prominent position in the community which is accessible to all residents and the general public; a summary of the latest annual statement, including in the summary where the full statement may be inspected in the community.

**Bonita Springs failed to post in a prominent position in the community, a summary or complete copy of the latest annual statement, as required by Section 651.091(2)(c), Florida Statutes.** Although a copy of the annual statement is contained in a binder which was available for inspection in the community's library, a summary or complete copy of the document was not prominently posted.

**Recommendation:** The Office recommends Bonita Springs establish adequate procedures and controls to ensure the required documents are posted and maintained as required by Section 651.091(2), Florida Statutes.

**Subsequent Event:** On August 28, 2014, Bonita Springs provided photographic documentation that the summary of the annual report has been properly posted in a prominent position in the community accessible to all residents and the general public.

## CHANGES TO ORGANIZATIONAL DOCUMENTS

The Florida Department of State, Division of Corporations website was reviewed for filings made by Bonita Springs during the scope period of examination for items of significance and items which require notification to the Office.

### Findings:

Bonita Springs is required to file quarterly reports with the Office, pursuant to Section 651.026(1), Florida Statutes. Quarterly report filings to the Office include interrogatories. Interrogatory No. 2 asks, "Have there been any changes to the organizational documents (articles of incorporation, by-laws, partnership agreement, articles of association, trust agreement, etc.) since the last submission?"

**Bonita Springs amended its articles of incorporation and failed to notify the Office, as required by Section 651.0261, Florida Statutes.** Specifically, "Articles of Amendment and Restated Articles of Incorporation" were filed with the Florida Department of State, Division of Corporations on January 31, 2014. Bonita Springs failed to inform the Office of this change either by direct correspondence or in its March 31, 2014 quarterly report filing. The response to Interrogatory No. 2 was "NO", regarding changes to its organizational documents, to include articles of incorporation.

## **CHANGES TO ORGANIZATIONAL DOCUMENTS**

**Recommendation:** The Office recommends Bonita Springs establish adequate procedures to ensure the Office is timely notified of changes to its organizational documents.

## **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 The Terraces at Bonita Springs.