



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

BUENA VIDA ESTATES, INCORPORATED

AS OF

December 31, 2013

FLORIDA COMPANY CODE 88054

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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 Buena Vida Estates, Incorporated (hereinafter "Buena Vida") pursuant to Section 651.105, Florida Statutes. The scope period of this examination was from January 1, 2011 through December 31, 2013. The on-site and desk examination procedures were completed on April 22, 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 Buena Vida. 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

Buena Vida, a not-for-profit Continuing Care Retirement Community located in Melbourne, Florida, was granted a certificate of authority by the Office to offer continuing care contracts on February 23, 1982. Buena Vida is under a management agreement with two affiliated entities, ITG Management, L.L.C., f/k/a Buena Vida Management Company and BV Assisted Living. Skilled Nursing services are provided by West Melbourne Health & Rehab Center, a non-affiliated entity. As of December 31, 2013, Buena Vida reported 176 Continuing Care Units, all of which were classified as Independent Living Units. Buena Vida also reported one Rental Unit. As of the same date, Buena Vida reported 223 individuals residing at the community.

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. Buena Vida provided a list containing 88 continuing care contracts executed during the scope period of the examination. A sample consisting of 45 contract files was selected from the list; all of which also included a reservation contract. Of the 45 contract files examined, 39 files included reservation contracts that were executed on or after July 1, 2011. The 39 reservation contracts were tested for compliance with Section 651.022(2)(g), Florida Statutes.

Finding:

1. **In the 39 instances, Buena Vida utilized reservation contract forms that were not approved by the Office, as required by Section 651.022(2)(g), Florida Statutes.** Specifically, in each of the 39 instances, Buena Vida utilized variations of an unapproved reservation contract form.

FORMS (Continued)

- 1a. **Recommendation:** The Office recommends Buena Vida establish adequate procedures and controls to ensure all forms which require statutory approval are submitted to, and approved by the Office prior to use.

Subsequent Event: On March 26, 2014, Buena Vida submitted the reservation contract form to the Office for approval. The form was approved on April 11, 2014.

Finding:

Buena Vida provided a list of the 29 wait list contracts executed during the scope period. A sample consisting of 15 contracts was selected and tested for compliance with Sections 651.022(2)(g) and 651.033, Florida Statutes, and Rule 69O-193.018, Florida Administrative Code.

2. **In eight instances, Buena Vida utilized a wait list contract form that was not approved by the Office, as required by Section 651.022(2)(g), Florida Statutes.**

- 2a. **Recommendation:** The Office recommends Buena Vida establish adequate procedures and controls to ensure all forms which require statutory approval are submitted to, and approved by the Office prior to use.

Subsequent Event: On March 26, 2014, Buena Vida submitted the wait list form to the Office for approval. The forms were approved on April 11, 2014.

CANCELLATION AND REFUNDS

Buena Vida provided a list of 70 continuing care contracts cancelled during the scope period of the examination. A sample consisting of 43 contract cancellations was selected and tested to verify the amount of the refund paid, if any, and whether such refunds were properly issued. Of the 38 cancellations examined, 17 were eligible for refunds.

Finding:

Section 651.055(1), Florida Statutes, provides in pertinent part, required provisions for a continuing care contract and that each continuing care contract and each addendum to such contract be approved by the Office prior to its use in this state. Section 651.055(1)(g)2, Florida Statutes, further provides in pertinent part that, for a contract in which the resident does not receive a transferable membership or ownership right in the facility, "...the refund shall be calculated on a pro rata basis with the facility retaining up to 2 percent per month of occupancy by the resident and up to a 5 percent processing fee."

CANCELLATION AND REFUNDS (Continued)

Buena Vida failed to issue two refunds in accordance to the terms of the continuing care contract and the requirements of section 651.055(1)(g)2, Florida Statutes.

Specifically, the underlying contract provided the refund be based on a pro rata basis with Buena Vida retaining two percent (2%) per month of occupancy. In calculating the refund amount, Buena Vida incorrectly calculated the number of months of occupancy. As a result, the refunds on these two contracts were short two percent of the respective contract's entrance fee.

Recommendation: The Office recommends Buena Vida establish adequate procedures to ensure refunds are issued in accordance with the requirements of Florida Statutes. The Office further recommended Buena Vida recalculate refunds and, where applicable, issue the resulting unpaid portion.

Subsequent Event: Prior to the issuance of this report, Buena Vida reviewed the calculation of all refunds issued since January 2011. On May 30, 2014, Buena Vida provided the Office with documentation of issuance of the appropriate additional refunds.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Buena Vida provided a list containing the 88 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 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 facility, the provider may hold the check for the seven-day period and shall not deposit it during this time period.

In three instances, Buena Vida failed to hold resident funds in the escrow account for the entire seven-day rescission period of the contract, in violation of Section 651.055(2), Florida Statutes. In the three instances, the funds were deposited into the escrow account, but were withdrawn prior to the expiration of the rescission period.

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

REQUIRED DISCLOSURES

Buena Vida provided a list containing 88 continuing care contracts executed during the scope period of the examination. A random sample consisting of 45 contracts was selected from the list and tested for compliance with Section 651.055(4), Florida Statutes.

Finding:

Section 651.055(4), Florida Statutes, provides in pertinent part that before the transfer of any money or other property to a provider by or on behalf of a prospective resident, the provider shall present a copy of the contract to the prospective resident and all other parties to the contract. The statute further provides that the provider secure a signed and dated statement from each party to the contract certifying that a copy of the contract with the specified attachments was received.

In seven instances, Buena Vida either failed to timely provide a copy of the continuing care contract to the parties of the contract, or failed to obtain a signed statement from each party to the contract certifying that a copy of the contract had been provided prior to the transfer of money or other property, as required by Section 651.055(4), Florida Statutes. Specifically, in four of the seven instances a copy of the contract was generally provided within five days of the transfer of funds; except in one instance the contract was provided 124 days after the transfer of funds. In the remaining three instances Buena Vida failed to obtain a signed statement from the parties to the contract, certifying that a copy of the contract was received.

Recommendation: The Office recommends Buena Vida establish adequate procedures and controls to ensure a signed and dated statement is secured from each party to the contract certifying that a copy of the contract was properly received.

ADVERTISING

Buena Vida provided a list of 74 advertisements used during the scope period. The Buena Vida website and a sample of 32 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.”

Buena Vida failed to state in its 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.

ADVERTISING (Continued)

Specifically, the Buena Vida website contains a “Pledge for Life” which states “...To take care of you for life. Through the life care program, residents have the peace of mind in knowing that they will never be asked to leave the community, even if they outlive their assets...” However, the continuing care contracts utilized during the scope period included several provisions that limit or restrict the benefit advertised on Buena Vida’s website.

Recommendation: The Office recommends Buena Vida 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 Buena Vida.