



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

DEVONSHIRE AT PGA NATIONAL, LLC

AS OF

March 31, 2014

FLORIDA COMPANY CODE 88168

**Report issued
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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 Devonshire at PGA National, LLC (hereinafter "Devonshire") pursuant to Section 651.105, Florida Statutes. The scope period of this examination was from January 1, 2009 through March 31, 2014. The on-site and desk examination procedures were completed on August 1, 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.

On September 19, 2013, Devonshire PGA Holdings, LLC ("Holdings"), the parent company of Devonshire, and its subsidiaries filed for bankruptcy. Devonshire's debt was subsequently acquired by ELP West Palm Beach, LLC ("ELP"). Under the plan of reorganization confirmed by the Bankruptcy Court on December 2, 2013, Erickson Living, as designee of ELP, acquired 100% of the equity interests in Holdings and its subsidiaries. On January 3, 2014, Erickson Living Properties, LLC filed an acquisition application with the Office for the indirect acquisition of Devonshire; the acquisition application was approved on May 16, 2014. Devonshire subsequently entered into a management agreement with Erickson Living Management, LLC. Accordingly, the January 1, 2009 to December 31, 2013, portion of the examination period was limited in scope to the documentation and information accessible to the new management.

This final report is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by Devonshire. 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

Devonshire is a Delaware, for-profit limited liability company located in Palm Beach Gardens, Florida. Devonshire was granted a Certificate of Authority by the Office to offer continuing care contracts on May 15, 1997. Devonshire wholly owns Chatsworth at PGA National, LLC and Chatsworth PGA Properties, which provide assisted living and skilled nursing services to the residents of Devonshire and the general public.

As of March 31, 2014, Devonshire reported 360 Continuing Care Units; of which, 327 were classified as Independent Living Units and 33 as Assisted Living Units. There were also nine Rental Units reported. Devonshire also reported 76 Skilled Nursing Units of which, 40 were classified as Community Beds and 36 classified as Sheltered Beds. For the period ending December 31, 2013, there were 349 individuals residing at Devonshire.

REQUIRED DISCLOSURES

Devonshire provided a list containing 90 continuing care contracts executed during the scope period of the examination. A random sample consisting of 50 contracts was selected from the list and tested for compliance with Section 651.091(3), Florida Statutes.

Findings:

Section 651.091(3), Florida Statutes, provides in pertinent part 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 disclosure documents to the prospective resident or to his or her legal representative...”

1. **In five instances, Devonshire failed to timely provide the required disclosure documents to prospective residents or their legal representative, as required by Section 651.091(3), Florida Statutes.** Specifically, the disclosure documents were not delivered prior to the execution of the continuing care contract, as required by statute; instead, the disclosures were provided after the execution of the continuing care contract.
 - 1a. **Recommendation:** The Office recommends Devonshire establish adequate controls and procedures to ensure all required disclosure documents are properly delivered to the prospective resident or their legal representatives and that documentation is obtained and maintained pursuant to Section 651.091(3), Florida Statutes.

Findings:

Effective July 1, 2010, Section 651.091(3)(h), Florida Statutes, requires the provider to include, as a required disclosure document, a copy of Section 651.071, Florida Statutes, entitled “Contracts as preferred claims on liquidation or receivership”. Of the 50 contracts in the sample, 33 contracts were executed on or after July 1, 2010. All 33 transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

2. **In three instances, Devonshire failed to provide as a required disclosure to the prospective resident or their legal representative, a copy of Section 651.071, Florida Statutes, as required by Section 651.091(3)(h), Florida Statutes.**
 - 2a. **Recommendation:** The Office recommends Devonshire establish adequate procedures to ensure all required disclosures are properly afforded to prospective residents or their legal representatives.

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 Devonshire.