



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

ACTS RETIREMENT-LIFE COMMUNITIES, INC.

D/B/A

EDGEWATER POINTE ESTATES

AS OF

December 31, 2013

FLORIDA COMPANY CODE 88006

Date Issued:
January 8, 2015

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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 ACTS Retirement-Life Communities, Inc. d/b/a Edgewater Pointe Estates (“Edgewater Pointe Estates”) pursuant to Section 651.105, Florida Statutes. The scope period of this examination was January 1, 2010 through December 31, 2013. The on-site and desk examination procedures were completed November 6, 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 Edgewater Pointe Estates. 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

ACTS Retirement-Life Communities, Inc., is a non-profit Pennsylvania corporation that owns and operates, Edgewater Pointe Estates, a continuing care retirement community located in Boca Raton, Florida. Edgewater Pointe Estates was granted a certificate of authority by the Office to offer continuing care contracts on August 5, 1982 and is one of four Florida continuing care retirement communities that is part of ACTS Retirement-Life Communities, Inc. As of December 31, 2013, Edgewater Pointe Estates reported: 375 Continuing Care Units comprised of 321 Independent Living Units and 54 Assisted Living Units; 101 Skilled Nursing Units comprised of 40 Community Beds and 61 Sheltered Beds; and 26 Rental Units. As of the same date, there were 439 individuals residing at the community.

ADVERTISING

Advertisements used during the scope period were examined, along with the Edgewater Pointe Estates website, for compliance with Rule 690-193.038, and Rule 690-193.040, Florida Administrative Code.

Finding:

Rule 690-193.038(7), Florida Administrative Code, provides that 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.

ADVERTISING (Continued)

Edgewater Pointe Estates 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 Edgewater Pointe Estates print advertisements make pledges or guarantees of financial and health care security. The advertisements contain statements such as: "You are also guaranteed residency should your financial resources become exhausted through no fault of your own." and, "Your future health care is prearranged and guaranteed." The website and other print advertisement also contain similar language: "In addition, you are guaranteed residency should your financial resources become exhausted through no fault of your own. In these ever-changing times, that's real security." The continuing care contracts contain provisions that may limit or restrict the benefits advertised by Edgewater Pointe Estates. **A similar finding was included in the last Market Conduct Report of Examination issued by the Office.**

Recommendation: The Office recommends Edgewater Pointe Estates establish adequate procedures and controls to ensure all advertisements including, print, electronic, broadcast media, etc., are in compliance with Rule 69O-193.038, Florida Administrative Code.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Edgewater Pointe Estates provided a list containing the 104 continuing care contracts executed during the scope period of the examination. A sample consisting of 50 contract files was selected and reviewed for compliance with Section 651.055(2), Florida Statutes.

Finding:

Section 651.055(2), Florida Statutes, provides that during the seven-day rescission period of the continuing care contract the resident's funds must be held in escrow unless otherwise requested by the resident for the provider to hold and not deposit the funds during the seven-day period, pursuant to Section 651.033(3)(c), Florida Statutes.

In 28 instances, Edgewater Pointe Estates failed to deposit resident funds into the escrow account for the seven-day rescission period of the contract or obtain authorization from the resident to hold and not deposit the funds for the seven-day period, as required by Section 651.055(2), Florida Statutes. Specifically, in two instances the funds were not deposited into escrow. In the remaining 26 instances, the funds posted to the escrow account between one and eleven days after the seven-day rescission period had expired.

Recommendation: The Office recommends Edgewater Pointe Estates establish adequate procedures and controls to ensure resident funds are timely deposited into the escrow account; or authorization to hold and not deposit the funds is obtained from the resident, in accordance with the provisions of Section 651.055(2), Florida Statutes.

REQUIRED DISCLOSURES

Edgewater Pointe Estates provided a list containing the 104 continuing care contracts executed during the scope period of the examination. A sample consisting of 50 contract files was selected and reviewed 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 shall make full disclosure, and provide copies of the specific disclosure documents to the prospective resident or their legal representative.

Effective July 1, 2010, Section 651.091(3)(h), Florida Statutes, required 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, 46 contracts were executed on or after July 1, 2010. All 46 transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

1. **In 15 instances, Edgewater Pointe Estates 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.**
2. **In three instances, Edgewater Pointe Estates failed to provide, to the prospective resident or their legal representative, copies of all required disclosure documents prior to entering into the continuing care contract, as required by Section 651.091(3), Florida Statutes.** Specifically, in two of the instances Edgewater Pointe Estates failed to provide documentation that disclosure documents were provided to the prospective residents; in the remaining instance, the prospective resident received the disclosure documents after the continuing care contract was executed.

Recommendation: The Office recommends Edgewater Pointe Estates establish adequate procedures and controls to ensure all required disclosures are timely provided to prospective residents or their legal representatives.

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 Edgewater Pointe Estates in accordance with Section 651.105, Florida Statutes.

Finding:

In 12 instances, Edgewater Pointe Estates failed to provide for examination documents necessary for the Office to determine compliance with applicable Statues and rules, as required by Section 651.105(1), Florida Statutes.

ACCESS TO RECORDS (Continued)

Specifically, Edgewater Pointe Estates did not maintain adequate examination records and thus failed to make available six waiting list contracts, three reservation contracts (i.e. unit selection forms), and three notices of cancellation.

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 Edgewater Pointe Estates establish adequate internal controls and procedures to ensure complete and adequate records are properly maintained and made accessible to the Office for examination, as required by Section 651.105, Florida Statutes.

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 ACTS Retirement-Life Communities, Inc. d/b/a Edgewater Pointe Estates.