



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

FOUNTAINS LAKE POINTE SL, LLC

D/B/A

THE FOUNTAINS AT LAKE POINTE WOODS

AS OF

December 31, 2014

FLORIDA COMPANY CODE 88096

**Report Issued:
September 10, 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 Fountains Lake Pointe SL, LLC d/b/a The Fountains at Lake Pointe Woods (hereinafter "The Fountains") pursuant to Section 651.105, Florida Statutes. The scope period of this examination was January 1, 2012 through December 31, 2014. The desk examination procedures were completed on March 13, 2015.

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. 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 The Fountains. 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

The Fountains, a Delaware limited liability company located in Sarasota, Florida, was granted a certificate of authority by the Office to offer continuing care contracts on December 23, 1983. The Fountains purportedly discontinued offering continuing care contracts approximately ten years ago in order to surrender the Certificate of Authority. As of December 31, 2014, The Fountains reported one Continuing Care Unit classified as an Independent Living Unit and no Assisted Living or Skilled Nursing Units. There were 281 Rental Units reported. The Fountains also reported one continuing care resident living at the community.

MARKETING OF CONTRACTS

The Fountains represents that CCRC contracts have not been marketed to the general public for the past ten years. Accordingly, a list containing all non-CCRC contracts executed during the examination period was requested from The Fountains. The contract forms were examined to ensure that the marketing of such forms was not subject to the regulations of Chapter 651, specifically section 651.055(1), Florida Statutes, and to ensure the accuracy of entrance fees and other similar or related information reported to the Office.

Finding:

The examination found that the purported non-CCRC rental contract, titled "Independent Living Residency Agreement," is very similar in context and language to continuing care contracts and is therefore misleading; if the purported non-CCRC rental contract is in fact a CCRC contract, it lacks sufficient provisions to comply with section 651.055(1), Florida Statutes.

MARKETING OF CONTRACTS (Continued)

Specifically, the Independent Living Residency Agreement form omits many of the provisions required to comply with section 651.055(1), Florida Statutes. The Fountains contends that the Independent Living Residency Agreement is not a CCRC contract; however, the context and terminology used within the form imply that the rental resident will transition from one level of health care to another. Specifically, a resident can transfer to assisted living at The Inn at The Fountains, which is located within the facility and operated by Watermark Retirement Communities, Inc. (“Watermark”) - the same entity that operates The Fountains. The contract implies that the resident is entitled to a continuum of care.

The Independent Living Residency Agreement, which The Fountains purports is a rental contract for independent living contains, in the “Definition” section of the contract, references to assisted living and skilled nursing. The contract specifically references: The Inn at The Fountains as, “The assisted living portion of The Fountains at Lake Pointe Woods...”, and The Springs at The Fountains as, “The health care center at The Fountains at Lake Pointe Woods...” The contract includes health-related services and routinely uses phraseology and context similar to a CCRC contract, which may mislead a consumer into believing she or he is entering into a continuing care contract.

The Independent Living Residency Agreement also uses words that are commonly used in CCRC contracts and defined in Chapter 651, Florida Statutes. Rather than using the word tenant, as is commonly used in rental contracts, the Independent Living Residency Agreement uses the word “Resident” throughout the contract. The contract also uses the term Entrance Fee and requires the payment of an entrance fee in order to reside at the community.

Although the contract does not directly provide health care, it does provide various routine health-related services that are generally included in CCRC contracts. The contract also includes observation of “...your health status for changes in physical, mental, emotional or social functioning and any health needs or special services you may require...” Further, the contract states that, “The Community offers assisted living at The Inn and has health care available at The Springs. To transfer to another level of care, you must meet the following terms and conditions...” The contract also includes a provision addressing the resident’s failure to voluntarily move to another level of care, a provision commonly found in CCRC contracts; specifically, under this contract, the community’s director will consult with the resident’s physician and family members prior to terminating the contract.

Recommendation: The Office recommends The Fountains immediately revise its rental and other similar non-CCRC contracts and establish adequate procedures and controls to ensure such contracts are not advertised or marketed to the general public through the use of such terms as “life care,” “continuing care,” or “guaranteed care for life,” or **similar** terms, words, or phrases, and that such contracts are not in violation of Chapter 651, Florida Statutes, and Rule Chapter 690-193, Florida Administrative Code.

ADVERTISEMENTS

Advertisements used during the scope period were examined, along with The Fountains' website, for compliance with Rule 69O-193.038, and Rule 69O-193.040, Florida Administrative Code. Rule 69O-193.038(8)(a), Florida Administrative Code prohibits the use of words, phrases, or illustrations in a manner which misleads or tends to deceive or mislead.

Finding:

The Fountains is advertising and marketing to the general public, rental contracts using terms, words, or phrases in its advertisements that are very similar to "life care" and "continuing care, in violation of Chapter 69O-193.038(8)(a), Florida Administrative Code. Inasmuch as Fountains is a licensed CCRC Provider, it can use such terms under section 651.095(4), F.S. to promote continuing care contracts. However, the advertising and marketing of rental contracts using terms and phrases that are similar to those found in continuing care contracts may confuse, deceive, or mislead consumers.

Recommendation: The Office recommends The Fountains immediately revise its advertisements and establish adequate procedures and controls to ensure all advertisements including, print, electronic, broadcast media, etc., are not in violation of Chapter 651, Florida Statutes, and Rule Chapter 69O-193, Florida Administrative Code.

QUARTERLY MEETINGS WITH RESIDENTS

The quarterly meeting agendas, notices to residents, minutes, and meeting dates contained in the annual reports filed for the scope period were reviewed for compliance with Section 651.085, Florida Statutes.

Findings:

Section 651.085(1), Florida Statutes, provides that the facility hold quarterly meetings with the residents of the continuing care facility for the purpose of free discussion of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility, as well as a discussion on proposed changes in policies, programs, and services.

The Fountains failed to properly hold resident meetings in 2012, 2013, and 2014, as required by Section 651.085(1), Florida Statutes. Specifically, the quarterly resident meetings held on July 10, 2012, September 10, 2013, and June 10, 2014, were not open to discussion on the subject regarding the increase of the monthly maintenance fee. Questions on the increase were either not taken at the meeting or, a suggestion was given to arrange for a private meeting with management to discuss the increase.

QUARTERLY MEETINGS WITH RESIDENTS (Continued)

Recommendation: The Office recommends The Fountains establish adequate procedures and controls to ensure quarterly resident meetings are held in full compliance with section 651.085, 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 The Fountains.