



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

KC PALM BEACH GARDENS LLC

D/B/A

LA POSADA

AS OF

JUNE 30, 2014

FLORIDA COMPANY CODE 88176

Report Issued:
March 19, 2015

PURPOSE AND SCOPE OF EXAMINATION

The Office of Insurance Regulation (Office), Market Investigations unit, conducted a periodic market conduct examination of KC Palm Beach Gardens LLC d/b/a La Posada, f/k/a Westport Holdings PBG Limited Partnership d/b/a La Posada ("La Posada") pursuant to Section 651.105, Florida Statutes. The scope period of this examination was from January 1, 2011 through June 30, 2014. The on-site and desk examination procedures were completed on November 17, 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 La Posada. 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

KC Palm Beach Gardens, LLC is a Delaware, for-profit limited liability company that owns and operates La Posada, a continuing care retirement community located in Palm Beach Gardens, Florida. La Posada was granted a Certificate of Authority by the Office to offer continuing care contracts on August 12, 2002. La Posada is affiliated with KC PBG Healthcenter, LLC, which provides on-site skilled nursing and assisted living to the residents of La Posada.

As of June 30, 2014, La Posada reported: 241 Continuing Care Units, which consisted of 193 Independent Living Units and 48 Assisted Living Units; 40 Skilled Nursing Units, all of which were classified as Community Beds; and no Rental Units. For the period ending December 31, 2013, there were 172 individuals reported residing at La Posada.

La Posada was formerly owned by Westport Holdings PBG, Limited Partnership d/b/a La Posada ("Westport Holdings"). On August 28, 2009, Westport Holdings entered into a forbearance agreement with Capmark Bank that allowed for a temporary suspension of debt and interest payments. The forbearance agreement was extended on several occasions. In August 2012, Horizon LP UV Lender, LLC ("Horizon") purchased the debt of the facility that resulted in a transfer of deed in lieu of foreclosure. On February 11, 2013 KC Palm Beach Gardens, LLC, a wholly owned subsidiary of Horizon, filed an application for the acquisition of La Posada with the Office, in accordance with Section 628.4615, Florida Statutes. The Office approved KC Palm Beach Gardens' acquisition application on May 24, 2013. KC Palm Beach Gardens obtained ownership of the facility effective August 1, 2013.

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. La Posada provided a list containing 127 continuing care contracts executed during the scope period of the examination. A sample consisting of 34 contract files was selected from the list; 26 of which also included a reservation contract executed on or after July 1, 2011. The 26 reservation contracts were tested for compliance with Section 651.022(2)(g), Florida Statutes.

Finding:

1. **In 19 instances, La Posada utilized a reservation contract form that was not approved by the Office, as required by Section 651.022(2)(g), Florida Statutes.** Of the 19 instances, five occurred after the effective change of ownership on August 1, 2013. It should be noted that after the change of ownership a reservation contract form was filed with the Office and approved on September 24, 2013.
 - 1a. **Recommendation:** The Office recommends La Posada establish adequate procedures and controls to ensure that forms requiring statutory approval by the Office are approved prior to use. The Office further recommends that La Posada promptly review all forms currently in use to ensure compliance with Section 651.022(2)(g), Florida Statutes.

Finding:

Section 651.022(2)(g), Florida Statutes also requires wait list contract forms be approved by the Office prior to use. La Posada provided a list containing the nine wait list fees collected during the scope period. The nine wait list contracts associated with the fees collected were examined and tested for compliance with Sections 651.022(2)(g) and 651.033, Florida Statutes, and Rule 690-193.018, Florida Administrative Code.

2. **In nine instances, La Posada utilized a wait list contract form that was not approved by the Office, in violation of Section 651.022(2)(g), Florida Statutes.** Six of the instances occurred prior to the effective change of ownership on August 1, 2013.
 - 2a. **Recommendation:** The Office recommends La Posada establish adequate procedures and controls to ensure all forms which require statutory approval are approved by the Office prior to use.

Subsequent Event: La Posada subsequently submitted a wait list contract form to the Office; the form was approved on September 23, 2014.

REQUIRED DISCLOSURES

La Posada provided a list containing 127 continuing care contract transactions executed during the scope period of the examination. A sample consisting of 34 transactions was selected and tested for compliance Sections 651.055(4), and 651.091(3), 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.

1. **In two instances, La Posada failed to timely provide a copy of the continuing care contract and 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 one instance, the copy of the contract was delivered after the funds were transferred to the provider. In the remaining instance, La Posada failed to obtain a signed statement from the parties to the contract, certifying that a copy of the contract was received. One violation occurred prior to the effective change of ownership on August 1, 2013.
 - 1a. **Recommendation:** The Office recommends La Posada 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.

Finding:

Section 651.091(3), Florida Statutes, provides 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 his or her legal representative.

2. **In 12 instances, La Posada 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 provided prior to the residents entering into the continuing care contracts. Nine violations occurred prior to the effective change of ownership on August 1, 2013.
 - 2a. **Recommendation:** The Office recommends La Posada establish adequate controls and procedures to ensure all required disclosure documents are properly delivered to the prospective resident or their legal representatives, pursuant to Section 651.091(3), Florida Statutes, and that such documentation is obtained and maintained for examination purposes.

REQUIRED DISCLOSURES (Continued)

Finding:

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.

3. **In 25 instances, La Posada failed to provide to the prospective residents or their legal representatives, a copy of Section 651.071, Florida Statutes, pursuant to Section 651.091(3)(h), Florida Statutes.** Of the 25 violations, 21 occurred prior to the effective change of ownership on August 1, 2013.
- 3a. **Recommendation:** The Office recommends La Posada establish adequate procedures to ensure all required disclosures are properly provided.

POSTING OF RECORDS

Section 651.091(2)(b), Florida Statutes, requires that each continuing care community “Post in a prominent position in the facility which is accessible to all residents and the general public a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the Office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.”

Finding:

La Posada failed to post a copy or summary of the last Market Conduct Report of Examination and Financial Report of Examination issued by the Office, as well as the actions taken to rectify the deficiencies noted, as required by Section 651.091(2)(b), Florida Statutes.

Recommendation: The Office recommends La Posada establish adequate procedures and controls to ensure the examination reports issued by the Office, and the actions taken to rectify the deficiencies are posted in a prominent position accessible to all residents and the general public.

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 La Posada.