



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

PENNEY RETIREMENT COMMUNITY, INC.

AS OF

June 30, 2012

FLORIDA COMPANY CODE 88170

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EXECUTIVE SUMMARY

Pursuant to the provisions of Section 651.105, Florida Statutes, an examination was conducted of the books, records, and affairs of Penney Retirement Community, Inc. (“Penney Retirement Community”). The scope period of the examination was July 1, 2008 through June 30, 2012. The following table represents general findings; however, specific details are found in each section of the report.

TABLE OF TOTAL VIOLATIONS

Statute or Rule Cite	Description	Total Files (for scope period)	Files Reviewed	Number of Violations
Section 651.055(2), Florida Statutes	During the seven day contract rescission period Penney Retirement Community failed to deposit the resident’s funds into an escrow account or obtain authorization from the resident to hold and not deposit the check.	100	6	6
Section 651.091(3), Florida Statutes	Penney Retirement Community failed to timely provide prospective residents or their legal representatives the required disclosure documents prior to entering into a continuing care contract.	100	49	11
Section 651.091(3)(h), Florida Statutes	Penney Retirement Community failed to provide prospective residents or their legal representatives who executed a continuing care contract after July 1, 2010, a required disclosure, a copy of Section 651.071, Florida Statutes.	100	6	6

PURPOSE AND SCOPE OF EXAMINATION

The Office of Insurance Regulation (Office), Market Investigations unit, conducted a routine market conduct examination of Penney Retirement Community, Inc. (hereinafter “Penney Retirement Community”) pursuant to Section 651.105, Florida Statutes. The scope period of the examination was July 1, 2008 through June 30, 2012.

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 Penney Retirement Community. 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

Penney Retirement Community is a Florida not-for-profit corporation located in Penney Farms, Florida. Penney Retirement Community was granted a certificate of authority by the Office to offer continuing care contracts on February 23, 1996. As of December 31, 2010, Penney Retirement Community reported: 364 continuing care units that were comprised of 289 independent living units and 75 assisted living units. As of that date, there were 519 individuals reported residing at this facility: 516 residing under a continuing care contract and 3 were non-continuing care patients in skilled nursing.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Penney Retirement Community provided a list containing the 100 continuing care contracts executed during the scope period of the examination. A random sample consisting of 49 contracts was selected from the list. Of the 49 contracts in the sample, six contracts were executed on or after July 1, 2010. The six contracts were tested for compliance with Section 651.055(2), Florida Statutes.

Findings:

Section 651.055(2), Florida Statutes, provides that a resident has a right to rescind a continuing care contract and receive a full refund of any funds paid, without penalty or forfeiture, within seven days after executing the contract. For continuing care contracts executed on or after July 1, 2010, Section 651.055(2), Florida Statutes, also 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 s. 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

REQUIRED ESCROW DEPOSITS OR WAIVERS (continued)

1. **In six instances Penney Retirement Community failed to deposit resident funds into an escrow account for the rescission period of the contract or document a request from the resident to hold and not deposit the check for the rescission period of the contract.** Specifically, in all six instances, Penney Retirement Community held funds without depositing them for the required seven day rescission period; however, they failed to document that the resident requested the facility hold the funds in lieu of depositing them to escrow for the rescission period.
- 1a. **Recommendation:** The Office recommends Penney Retirement Community establish adequate internal controls and procedures to ensure any entrance fees are handled in accordance to the applicable statutes.

REQUIRED DISCLOSURES

Penney Retirement Community provided a list containing the 100 continuing care contracts executed during the scope period of the examination. A sample consisting of 49 contracts was selected 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 specific disclosure documents to the prospective resident or his or her legal representative.

1. **In 11 instances Penney Retirement Community failed to timely provide to the prospective resident or their legal representative any of the disclosure documents prior to entering into a continuing care contract, a violation of Section 651.091(3), Florida Statutes.** Specifically, in all 11 instances residents who entered the facility into the assisted living directly were not provided the required disclosure documents.
- 1a. **Recommendation:** The Office recommends Penney Retirement Community establish adequate internal controls and procedures to ensure that all prospective residents or legal representatives are given all appropriate disclosure documents prior to entering into a continuing care contract and obtain documentation that the required disclosure documents were timely provided.

Findings:

Of the six continuing care contracts entered into after July 1, 2010, all six transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes which became effective July 1, 2010. Section 651.091(3), Florida Statutes, provides in pertinent part that before entering into a contract to furnish continuing care, the

REQUIRED DISCLOSURES (continued)

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. 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.”

2. **In all six instances Penney Retirement Community failed to provide as a required disclosure, a copy of Section 651.071, Florida Statutes, entitled “Contracts as preferred claims on liquidation or receivership”, to prospective residents or their legal representative prior to their entering into a continuing care contract as required by Section 651.091(3)(h), Florida Statutes.**

- 2a. **Recommendation:** The Office recommends Penney Retirement Community establish adequate procedures to ensure all statutory disclosure requirements to prospective residents or their legal representatives are met, to include providing a copy of Section 651.071, Florida Statutes. Additionally, pursuant to Section 651.091(4), Florida Statutes, “A true and complete copy of the full disclosure document to be used must be filed with the Office before use.”

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 Penney Retirement Community.