



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

ACTS RETIREMENT-LIFE COMMUNITIES, INC.

D/B/A

ST. ANDREWS ESTATES

AS OF

December 31, 2013

FLORIDA COMPANY CODE 88042

**Report Issued:
March 20, 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 St. Andrews Estates (hereinafter "St. Andrews 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 December 2, 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 St. Andrews 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 St. Andrews Estates, a Continuing Care Retirement Community (CCRC) located in Boca Raton, Florida. St. Andrews Estates was granted a certificate of authority by the Office to offer continuing care contracts on January 17, 1980. St. Andrews Estates is one of four CCRCs in Florida that is part of ACTS Retirement-Life Communities, Inc. As of December 31, 2013, St. Andrews Estates reported: 544 Continuing Care Units comprised of 472 Independent Living Units and 72 Assisted Living Units; 89 Skilled Nursing Units comprised of 49 Community Beds and 40 Sheltered Beds; and 40 Rental Units. As of the same date, there were 561 individuals residing at the Community.

CANCELLATIONS AND REFUNDS

St. Andrews Estates provided a list of 202 contracts cancelled during the scope period of the examination. A sample of 47 cancellations was selected for compliance testing. Of the 47 cancellations selected for examination three were eligible for refunds.

Finding:

Section 651.055(1), Florida Statutes, requires that each continuing care contract and each addendum to such contract be submitted and approved by the Office prior to its use in this state. Section 651.055(1)(g), Florida Statutes, further requires that the continuing care contract provide the terms governing the refund of any portion of the entrance fee.

CANCELLATIONS AND REFUNDS (Continued)

St. Andrews Estates failed to issue one refund in accordance to the terms of the continuing care contract that was approved under section 651.055(1)(g), Florida Statutes. Specifically, the underlying contract provided the refund be based on a pro rata basis with St. Andrews Estates retaining up to one percent (1%) per month of occupancy. In calculating the refund amount, St. Andrews Estates improperly deducted a 4% processing fee from the paid entrance fee amount. As a result, the amount of the refund paid was less than the amount that would have otherwise been paid under the refund terms of the continuing care contract.

Recommendation: The Office recommends St. Andrews Estates establish adequate procedures to ensure applicable refunds are issued in accordance to the terms of the approved continuing care contract and Section 651.055(1)(g), Florida Statutes. The Office further recommends St. Andrews Estates recalculate the refund due and issue the remaining portion of the refund to the resident/representative or his or her estate, and provide to the Office, within 30 days of the date of the Final Report of Examination, documentation of the resulting refund amount and payment.

ADVERTISING

Advertisements used during the scope period were examined, along with the St. Andrews Estates website, for compliance with Rule 69O-193.038, and Rule 69O-193.040, Florida Administrative Code.

Finding:

Rule 69O-193.038(7), Florida Administrative Code states, "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."

St. Andrews 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 St. Andrews Estates advertisements make pledges or guarantees of financial and health care security. The advertisements contain statements such as: "If your financial resources ever become exhausted due to an unexpected and unavoidable hardship, our benevolence program provides a financial safety net for you, guaranteeing your residency."; "Your long term care is prearranged and guaranteed"; "It's difficult to overstate the tremendous relief of having your long-term care prearranged and guaranteed; "Your future healthcare is prearranged and guaranteed."; "Discover how ACTS prearranges and guarantees your long-term care"; "With ACTS Life Care, your long-term care is prearranged and guaranteed." The statements do not acknowledge the existence of limitations or exceptions in the contract that affect the guarantee.

ADVERTISING (Continued)

Recommendation: The Office recommends St. Andrews Estates establish adequate procedures and controls to ensure all advertisements including, print, electronic, broadcast media, etc., are in compliance with Rule 69O-193.038(7), Florida Administrative Code.

REQUIRED ESCROW DEPOSITS OR WAIVERS

St. Andrews Estates provided a list containing the 127 continuing care contracts executed during the scope period of the examination. A random sample consisting of 55 contract files was selected and reviewed for compliance with Section 651.055(2), Florida Statutes.

Finding:

Effective July 1, 2010, Section 651.055(2), Florida Statutes, required that during the seven-day rescission period of the continuing care contract the resident's funds must be held in an escrow account, unless the resident authorized the provider to hold and not deposit the check for the seven-day period rescission period.

In 25 instances, St. Andrews 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. In all 25 instances, the fund deposits posted to the escrow account after the seven-day rescission period had expired. Further, there were 19 instances wherein the residents fund deposits posted to the escrow account between the fifth and seventh day of the contract's rescission period.

Recommendation: The Office recommends St. Andrews 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

St. Andrews Estates provided a list containing the 127 continuing care contracts executed during the scope period of the examination. A sample consisting of 55 contract files was selected and tested for compliance with Section 651.091(3), Florida Statutes.

Finding:

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.

REQUIRED DISCLOSURES (Continued)

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. Of the 55 contracts in the sample, 49 contracts were executed on or after July 1, 2010. All 49 transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

In 22 instances, St. Andrews 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.

Recommendation: The Office recommends St. Andrews 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 St. Andrews Estates in accordance with Section 651.105, Florida Statutes.

Finding:

In 11 instances, St. Andrews Estates failed to provide for examination documents necessary for the Office to determine compliance with applicable Statutes and Rules, as required by Section 651.105(1), Florida Statutes. Specifically, St. Andrews Estates did not maintain adequate examination records and thus failed to make available nine waiting list contracts, one disclosure document receipt, and one resident's written notice of cancellation. **A similar finding was addressed in the last Market Conduct Report of Examination issued by the Office.**

Recommendation: In order for the Office to determine the degree of compliance with Chapter 651, Florida Statutes, and Rule 690-193, Florida Administrative Code, the Office recommends St. Andrews 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 St. Andrews Estates.