



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

ST. MARK VILLAGE, INC.

AS OF

December 31, 2012

FLORIDA COMPANY CODE 88043

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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 St. Mark Village, Inc. pursuant to Section 651.105, Florida Statutes. The scope period of this examination was January 1, 2010 through December 31, 2012. The onsite and desk examination procedures were completed on September 27, 2013.

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. Mark Village. 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

St. Mark Village, a not for-profit Florida corporation, was granted a certificate of authority by the Office to offer continuing care contracts on December 12, 1980. St. Mark Village is located in Palm Harbor, Florida. As of December 31, 2012 St. Mark Village reported 368 Continuing Care Units consisting of 281 Independent Living Units, 87 Assisted Living Units; 44 Rental Units and 80 Skilled Nursing Units consisting of 60 community beds and 20 sheltered beds. As of the same reporting period, there were 479 individuals residing at this community.

FORMS

St. Mark Village provided a listing of 52 waiting list deposits received during the scope period of the exam. A random sample consisting of 19 deposits was selected from the list. The 19 waiting list deposits were tested for compliance with Section 651.022(2)(g), Florida Statutes.

Findings:

For wait list contacts entered into after July 1, 2011, Section 651.022(2)(g), Florida Statutes requires the wait list contract be approved by the Office prior to being used. Six of the 19 wait list deposits in the sample occurred after July 1, 2011.

In all six instances wherein the wait list contract was entered into after July 1, 2011, St. Mark Village utilized a wait list contract form that was not approved by the Office in as required by Section 651.022(2)(g), Florida Statutes.

Subsequent Event: On September 23, 2013 St. Mark Village filed the wait list contract form with the Office for approval.

FORMS (Continued)

Recommendation: The Office recommends St. Mark Village establish adequate procedures and controls to ensure that all forms which require statutory approval are approved by the Office prior to use.

REQUIRED ESCROW DEPOSITS OR WAIVERS AND DISCLOSURES

St. Mark Village provided a list containing the 102 continuing care contracts executed during the scope period of the examination. A random sample consisting of 50 contracts was selected from the list. Of the 50 contracts in the sample, 43 contracts were executed on or after July 1, 2010. The 43 contracts were tested for compliance with Section 651.055(2), Florida Statute and 651.091(3)(h), Florida Statutes.

Findings:

For continuing care contracts executed on or after July 1, 2010, Section 651.055(2), Florida Statutes, 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 Section 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.

1. **In eight instances wherein the continuing care contract was executed on or after July 1, 2010, St. Mark Village failed to deposit resident funds into an escrow account for the seven-day rescission period of the contract or obtain authorization from the resident to hold and not deposit the check for the seven-day rescission period, in violation of Section 651.055(2), Florida Statutes.** Specifically, in two of the eight instances the funds were not deposited into an escrow account and in the remaining six instances the funds were deposited in the escrow account after the seven-day rescission period had lapsed.

- 1a. **Recommendation:** The Office recommends St. Mark Village establish adequate procedures and controls to ensure that resident funds are managed in accordance with Section 651.055(2), Florida Statutes.

Findings:

In addition, 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."

REQUIRED ESCROW DEPOSITS OR WAIVERS AND DISCLOSURES (Continued)

2. In six instances St. Mark Village 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 entering into a continuing care contract as required by Section 651.091(3)(h), Florida Statutes.
- 2a. **Recommendation:** The Office recommends St. Mark Village 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.

RESIDENTS' COUNCIL

Section 651.085(3), Florida Statutes, states "The designated representative shall be notified at least 14 days in advance of any meeting of the full governing body at which proposed changes in resident fees or services will be discussed. The representative shall be invited to attend and participate in that portion of the meeting designated for the discussion of such changes."

Findings:

In one instance St. Mark Village failed to invite the designated representative of the Residents' Council to attend and participate in that portion of the calendar year 2010 meetings of the full governing body where proposed changes in the resident fees were discussed.

Recommendation: The Office recommends St. Mark Village establish adequate procedures and controls to ensure compliance with Section 651.085(3), Florida Statutes.

ACCESS TO RECORDS

Records necessary to conduct the examination and determine the degree of compliance with Chapter 651, Florida Statutes and Rule 69O-193, Florida Administrative code were requested from St. Mark Village in accordance with Section 651.105(1), Florida Statutes.

In six instances St. Mark Village failed to make certain documents available for examination in violation of Section 651.105, Florida Statutes. In five instances, various documents related to the cancellations and refunds were not available. In the remaining instance, the executed waiting list contract was altogether missing.

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 St. Mark Village establish adequate procedures and controls to ensure documentation is maintained and made available for examination purposes.

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. Mark Village.