



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

ARC FREEDOM SQUARE, LLC

AS OF

December 31, 2013

FLORIDA COMPANY CODE 88059

**Date 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 ARC Freedom Square, LLC (“Freedom Square”) pursuant to Section 651.105, Florida Statutes. The scope period of this examination was January 1, 2011 through December 31, 2013. The on-site and desk examination procedures were completed October 2, 2014.

The objective of the examination was to determine the extent of compliance with the provisions of Chapter 651, Florida Statutes and Chapter 69O-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 Freedom Square. 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

Freedom Square, a for-profit, Delaware Limited Liability Company, was granted a certificate of authority by the Office to offer continuing care contracts on November 24, 1982. Freedom Square is located in Seminole, Florida and is affiliated with Brookdale Senior Living, Inc. As of December 31, 2013, Freedom Square reported: 410 Continuing Care Units, comprised of 348 Independent Living Units and 62 Assisted Living Units; 236 Skilled Nursing Units, comprised of 56 Community Beds and 180 Sheltered Beds; and 86 Rental Units. As of the same date, there were 643 individuals residing at Freedom Square.

CANCELLATIONS AND REFUNDS

Freedom Square provided a list of 150 continuing care contracts cancelled during the scope period of the examination. A sample of 49 cancellations was selected and reviewed to verify the amount of the refund due, if any, and whether refunds were properly issued. Of the 49 cancellations selected, 40 were eligible for refunds.

Findings:

Section 651.055(1)(g), Florida Statutes, requires that the continuing care contract state the terms governing the refund of any portion of the entrance fee. In addition, Section 651.055(1)(h), Florida Statutes, provides that the continuing care contract state the terms under which the contract is cancelled by the death of the resident, to include refunds of entrance fees.

1. In two instances, Freedom Square failed to issue entrance fee refunds within the timeframe specified by the terms of the underlying continuing care contract, as required by Section 651.055(1)(g), Florida Statutes.

CANCELLATIONS AND REFUNDS (Continued)

In one instance, the refund terms of the contract provided for the payment of the refund within 30 days of the sale of the unit; the refund was paid 50 days beyond the specified 30-day timeframe. In the remaining instance, the refund terms of the contract provided for the payment of the refund within 120 days from the date the unit is vacated; the refund was paid four days beyond the specified 120-day timeframe.

2. **In two instances, Freedom Square failed to timely issue refunds within the period specified by the terms of the underlying continuing care contract pursuant to Section 651.055(1)(h), Florida Statutes.** The terms of the contracts provide that, upon death of the resident, the contract automatically terminates. In one instance, the refund terms of the contract provided for the payment of the refund within 120 days of contract termination; the refund was paid three days beyond the specified 120-day timeframe. In the second instance, the refund terms of the contract provided for the payment of the refund within 45 days of contract termination; the refund was paid four days beyond the specified 45-day timeframe. **A similar finding was addressed in the last Market Conduct Report of Examination issued by the Office.**

Recommendation: The Office recommends Freedom Square establish adequate procedures and controls to ensure applicable refunds are timely issued.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Freedom Square provided a list containing the 73 continuing care contracts executed during the scope period of the examination. A sample consisting of 28 contracts was selected and reviewed for compliance with Section 651.055(2), Florida Statutes.

Finding:

Section 651.055(2), Florida Statutes, provides that during the seven-day rescission period of the continuing care contract the resident's funds must be held in escrow unless otherwise requested by the resident that the provider hold and not deposit the funds during the seven-day period, pursuant to Section 651.033(3)(c), Florida Statutes.

In 18 instances, Freedom Square failed to timely 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 the 18 instances the resident funds deposits posted to the escrow account between one and nine days after the seven-day rescission period had expired.

REQUIRED ESCROW DEPOSITS OR WAIVER (Continued)

Recommendation: The Office recommends Freedom Square establish adequate procedures and controls to ensure resident funds are timely deposited in 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

Freedom Square provided a list containing 73 continuing care contracts executed during the scope period of the examination. A sample consisting of 28 contracts files was selected from the list and reviewed for compliance with Section 651.055(4), Florida Statutes.

Finding:

Section 651.055(4), Florida Statutes, provides 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.

In nine instances, Freedom Square failed to 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.

Recommendation: The Office recommends Freedom Square 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 timely received.

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 Freedom Square.