



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

PELICAN BAY COOPERATIVE HOUSING CORPORATION

D/B/A

THE GLENVIEW AT PELICAN BAY

AS OF

December 31, 2012

FLORIDA COMPANY CODE 88160

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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 Pelican Bay Cooperative Housing Corporation d/b/a The Glenview at Pelican Bay (hereinafter "Glenview at Pelican Bay") pursuant to Section 651.105, Florida Statutes. The scope period of this examination was January 1, 2008 through December 31, 2012. The on-site and desk examination procedures were completed on October 14, 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 Glenview at Pelican Bay. 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

Glenview at Pelican Bay is a not-for-profit Continuing Care Retirement Community located in Naples, Florida. Glenview at Pelican Bay was issued a certificate of authority on December 12, 1991. As of December 31, 2012, Glenview at Pelican Bay reported 118 Continuing Care Units consisting solely of Independent Living Units. Glenview at Pelican Bay also reported 35 Skilled Nursing Beds, all of which were classified as Community Beds. As of the same reporting period, there were 186 individuals residing at this community.

FORMS

Effective July 1, 2011, Section 651.022(2)(g), Florida Statutes, was amended to require wait list contract forms to be approved by the Office. Glenview at Pelican Bay provided a listing of 57 wait list deposits received during the scope period of the exam. A random sample consisting of 36 deposits was selected from the list for examination. Of the 36 wait list contracts, nine were executed after July 1, 2011, and were examined and tested for compliance with Section 651.022(2)(g), Florida Statutes.

Findings:

In four instances wherein the wait list contract was entered into on or after July 1, 2011, Glenview at Pelican Bay utilized a wait list contract form that was not approved by the Office, in violation of Section 651.022(2)(g), Florida Statutes.

Recommendation: The Office recommends Glenview at Pelican Bay establish adequate procedures and controls to ensure that all forms requiring statutory approval by the Office have been approved prior to being used.

AMENDED ARTICLES OF INCORPORATION AND BY-LAWS

Minutes from the Board of Directors meetings held during the scope period of examination were reviewed for items of significance and items which require notification to the Office.

Findings:

Section 651.026, Florida Statutes sets forth the requirements for the filing and content of Annual Reports to be submitted to the Office by Providers. Section 651.026(2)(a), Florida Statutes provides in pertinent part that the Annual Report shall contain any change of status with respect to the information required to be filed under Section 651.022(2), Florida Statutes. Section 651.022(2)(a), Florida Statutes, addresses organizational documents to include by-laws.

Glenview at Pelican Bay failed to notify the Office of amendments to its Articles of Incorporation and by-laws that were adopted on January 24, 2012, as required by Section 651.026(2)(a), Florida Statutes.

Subsequent Event: On September 23, 2013 Glenview at Pelican Bay provided the Office copies of the 2012 amendments to its Articles of Incorporation and by-laws.

Recommendation: The Office recommends Glenview at Pelican Bay establish adequate procedures to ensure the Office is timely notified of changes to its organizational documents.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Glenview at Pelican Bay provided a list containing the 61 continuing care contracts executed during the scope period of the examination. A random sample consisting of 38 contracts was selected from the list. Of the 38 contracts in the sample, 21 contracts were executed on or after July 1, 2010. These 21 contracts were tested for compliance with Section 651.055(2), 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 s. 651.033(3)(c), Florida Statutes. Section 651.033(3)(c), Florida Statutes, 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.

In five instances, Glenview at Pelican Bay failed to maintain resident's funds in the escrow account for the continuing care contract's seven-day rescission period as required by Section 651.055(2), Florida Statutes.

REQUIRED ESCROW DEPOSITS OR WAIVERS (Continued)

Specifically, in one instance the funds were not deposited into the escrow account; in the remaining four instances funds were deposited in the escrow account, but were withdrawn from the escrow account prior to the execution of the continuing care contract when the seven-day rescission period commenced.

Recommendation: The Office recommends Glenview at Pelican Bay review and amend as necessary, its procedures to ensure that resident funds remain in escrow for the entire seven-day rescission period of the continuing care contract, as required by Section 651.055(2), Florida Statutes.

REQUIRED DISCLOSURES

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. 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." Of the 38 contracts sampled, 21 were entered into after July 1, 2010 and were tested for compliance with Section 651.091(3)(h), Florida Statutes.

Findings:

In five instances, Glenview at Pelican Bay failed to provide to the prospective resident or their legal representative prior to their execution of the continuing care contract a copy of Section 651.071, Florida Statutes, as required by Section 651.091(3)(h), Florida Statutes. In each instance the disclosure was provided to the resident, between four and 11 months after their execution of the continuing care contract.

Recommendation: The Office recommends Glenview at Pelican Bay establish adequate procedures to ensure all required disclosures are properly afforded to prospective residents or their legal representatives.

QUARTERLY MEETINGS WITH RESIDENTS

The quarterly meeting agendas, notices to residents, minutes, and the dates of the meetings contained in the Annual Reports filed for the scope period were reviewed for compliance with Section 651.085, Florida Statutes.

QUARTERLY MEETINGS WITH RESIDENTS (Continued)

Findings:

Section 651.085(1), Florida Statutes, provides that, the governing body of the provider or its designated representative hold quarterly meetings with residents and provide residents at least seven days' advance notice of the meetings.

1. **In two instances Glenview at Pelican Bay failed to provide at least seven days' notice for quarterly meetings with residents, as required by Section 651.085(1) Florida Statutes.** Specifically, residents were not provided at least seven days' advance notice of the quarterly meetings held on January 25, 2008 and January 28, 2010.
 - 1a. **Recommendation:** The Office recommends Glenview at Pelican Bay establish adequate procedures and controls to ensure that the quarterly meetings with residents are properly noticed and maintain documentation of compliance with this requirement.

Findings:

Section 651.085(1), Florida Statutes, provides that a facility shall report to the Office, in the Annual Report, the dates on which quarterly meetings with residents are held.

2. **Glenview at Pelican Bay failed to accurately report in the Annual Reports filed with the Office, the dates on which the quarterly meetings with residents were held, as required by Section 651.085(1), Florida Statutes.** The examination revealed that all meeting dates provided in response to item 14 b of the 2008, 2009, 2010, 2011 and 2012 Annual Reports pertaining to the dates of resident meetings conflicted with the dates the meetings were actually held.
 - 2a. **Recommendation:** The Office recommends Glenview at Pelican Bay establish adequate procedures and controls to ensure that the actual dates on which quarterly meetings with residents are held are properly reported in the Annual Reports filed with the Office.

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 Glenview at Pelican Bay.