



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

PRESBYTERIAN RETIREMENT COMMUNITIES, INC.

D/B/A

WINTER PARK TOWERS

ISSUED

August 20, 2013

FLORIDA COMPANY CODE 88050

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PURPOSE AND SCOPE OF EXAMINATION

The Office of Insurance Regulation (Office), Market Investigations unit, conducted a routine market conduct examination of Presbyterian Retirement Communities, Inc., d/b/a Winter Park Towers (hereinafter "Winter Park Towers") pursuant to Section 651.105, Florida Statutes. The scope period of this examination was April 1, 2008 through March 31, 2012. The on-site and desk examination procedures were completed on May 2, 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 Winter Park Towers. 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

Winter Park Towers, a Florida not-for-profit corporation, was granted a certificate of authority by the Office to offer continuing care contracts on May 9, 1980. Winter Park Towers is located in Winter Park, Florida and is one of several affiliated Florida Continuing Care Retirement Communities operating under a management agreement with Westminster Services, Inc., an affiliated company. As of March 31, 2012, Winter Park Towers reported 316 Continuing Care Units, of which 243 were Independent Living Units and 73 Assisted Living Units. In addition, there were 8 Rental Units reported. Winter Park Towers also reported 120 Skilled Nursing Units of which 92 were classified as Community Beds and 28 as Sheltered Beds. As of the same date, there were 435 individuals residing at this facility.

AMENDED 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.

Winter Park Towers amended and restated its by-laws at the October 27, 2011 Board of Directors meeting and failed to notify the Office, as required by Section 651.026, Florida Statutes.

AMENDED BY-LAWS (Continued)

Winter Park Towers did not provide this information in the March 31, 2012 Annual Report filed with the Office. Furthermore, in the December 31, 2011 quarterly statement filed with the Office Winter Park Towers responded "NO" to interrogatory No. 2, which asks in pertinent part if there have been any changes to the organizational documents, including by-laws, since the last submission.

Recommendation: The Office recommends Winter Park Towers establish adequate procedures to ensure the Office is timely notified of changes to its organizational documents.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Winter Park Towers provided a list containing the 173 continuing care contracts executed during the scope period of the examination. A random sample consisting of 57 contracts was selected for testing from the list.

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. Of the 57 contracts in the sample, 24 contracts were executed on or after July 1, 2010. These 24 transactions were tested for compliance with Section 651.055(2), Florida Statutes.

In five instances, Winter Park Towers failed to maintain each of the resident's funds in the escrow account for the seven-day rescission period of the continuing care contract. The funds were deposited into the escrow account; however, the funds did not remain in the escrow account for the entire seven-day rescission period, in violation of Section 651.055(2), Florida Statutes.

Recommendation: The Office recommends Winter Park Towers establish adequate procedures to ensure that resident funds remain in escrow for the entire seven-day rescission period, as required by Section 651.055(2), Florida Statutes.

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 a facility shall report to the Office, in the annual report, the dates on which quarterly meetings with residents are held.

Winter Park Towers failed to accurately state in the 2009 through 2012 Annual Reports filed with the Office, the dates on which quarterly meetings with residents were held, as required by Section 651.085(1), Florida Statutes. Specifically, in response to question 14b of the four Annual Reports filed for the periods ending March 31, 2009 through March 31, 2012, Winter Park Towers provided the monthly dates on which resident council meetings were held, rather than the dates on which the resident quarterly meetings were held.

Recommendation: The Office recommends Winter Park Towers establish adequate procedures to ensure that the actual dates on which quarterly resident meetings are held, are properly reported in the annual reports filed with the Office.

REQUIRED DISCLOSURES

Winter Park Towers provided a list containing the 173 continuing care contracts executed during the scope period of the examination. A random sample consisting of 57 executed contracts was selected from the list and tested for compliance with Sections 651.055(4) and 651.091(3), Florida Statutes.

Findings:

Section 651.055(4), Florida Statutes, provides in pertinent part 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, Winter Park Towers failed to timely provide to the prospective residents and all parties to the contract a copy of the contract; and to secure a signed and dated statement from each party to the contract, certifying that a copy of the contract was received prior to the transfer of money or other property to the provider, as required by Section 651.055(4), Florida Statutes.

Recommendation: The Office recommends Winter Park Towers establish adequate procedures to ensure a signed and dated statement is secured from each party to the contract certifying that a copy of the contract was properly received.

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 Winter Park Towers in accordance with Section 651.105(1), Florida Statutes.

Findings:

There were three instances in which, Winter Park Towers failed to make certain documents available for examination. In the first instance, the documents pertained to the timely delivery of required disclosure documents to a prospective resident or their legal representative and timely delivery of the continuing care contract prior to the transfer of assets to the provider. In the second instance, the documents pertained to a resident's written notice to cancel their continuing care contract. In the third instance, the cancelled continuing care contract file was not available for examination.

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 Winter Park Towers 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 Presbyterian Retirement Communities, Inc., d/b/a Winter Park Towers.