



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS

MARKET CONDUCT FINAL EXAMINATION REPORT

OF

THE MOORINGS, INCORPORATED

D/B/A

MOORINGS PARK

AS OF

December 31, 2012

FLORIDA COMPANY CODE 88033

TABLE OF CONTENTS

Purpose and Scope	1
Company Operations.....	1
Amended By-Laws	1
Required Escrow Deposits or Waivers	2
Required Disclosures	3
Contracts with Affiliates	3
Examination Final Report Submission	4

PURPOSE AND SCOPE OF EXAMINATION

The Office of Insurance Regulation (Office), Market Investigations unit, conducted a periodic market conduct examination of The Moorings, Incorporated d/b/a Moorings Park (hereinafter “Moorings Park”) 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 September 24, 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 Moorings Park. 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

Moorings Park, a Florida not-for-profit corporation, was granted a certificate of authority by the Office to offer continuing care contracts on June 20, 1980. Moorings Park is located in Naples, Florida and is one of several affiliated entities under the ownership of Moorings Park Institute, Inc. As of December 31, 2012, Moorings Park reported 446 Continuing Care Units, of which 384 were Independent Living Units and 62 Assisted Living Units. In addition, there were 11 Rental Units reported. Moorings Park also reported 106 Skilled Nursing Units at the facility, consisting of 60 Community Beds and 46 Sheltered Beds. As of the same date, there were 697 individuals residing at this community.

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.

AMENDED BY-LAWS (Continued)

Moorings Park amended and restated its by-laws effective January 25, 2012, but failed to notify the Office as required by Section 651.026, Florida Statutes.

Specifically, in the Request for Waiver Interrogatories filed with the Office for the period ending December 31, 2012, Moorings Park responded “NO” to interrogatory No. 1, which asks in pertinent part if there have been any changes to the information originally filed under 651.022(2), Florida Statutes.

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

REQUIRED ESCROW DEPOSITS OR WAIVERS

Moorings Park provided a list containing the 201 continuing care contracts executed during the scope period of the examination. A random sample consisting of 64 contracts was selected from the list. Of the 64 contracts in the sample, 38 contracts were executed on or after July 1, 2010. These 38 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, 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.

In 17 instances, Moorings Park failed to maintain each of the 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. The funds were either not deposited into the escrow account, or did not remain in the escrow account for the entire rescission period.

Recommendation: The Office recommends Moorings Park 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. The sample consisting of 64 contracts was tested for compliance with Section 651.091(3), Florida Statutes.

Findings:

1. **In 11 instances, Moorings Park failed to substantiate that any of the disclosure documents were delivered to the prospective resident or their legal representative, as required by Section 651.091(3), Florida Statutes.**
- 1a. **Recommendation:** The Office recommends Moorings Park establish adequate procedures to ensure all prospective residents and/or their legal representatives are afforded the required disclosure documents prior to entering into a continuing care contract and, obtain documentation to substantiate statutory compliance.

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." All 38 transactions entered into on or after July 1, 2010 were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

2. **In 25 instances, Moorings Park failed to provide as a required disclosure, a copy of Section 651.071, Florida Statutes, to the prospective residents or their legal representative, as required by Section 651.091(3)(h), Florida Statutes.**
- 2a. **Recommendation:** The Office recommends Moorings Park establish adequate procedures to ensure all required disclosures are properly afforded to prospective residents or their legal representatives.

CONTRACTS WITH AFFILIATES

The two Leased Employee Agreements entered into by the Moorings Park and its affiliates were reviewed for compliance with Section 651.1151(3), Florida Statutes.

CONTRACTS WITH AFFILIATES (Continued)

Findings:

Section 651.1151(3), Florida Statutes provides that, any contract with an affiliate, an entity controlled by the provider, or an entity controlled by an affiliate of the provider for administrative, vendor, or management services entered into or renewed after October 1, 1991, shall contain a provision that the contract shall be canceled upon issuance of an order by the Office pursuant to this section.

Moorings Park failed to include in its two Leased Employee Agreements entered into with affiliated entities, a provision that the agreement shall be cancelled upon issuance of an order by the Office, as required by Section 651.1151(3), Florida Statutes. Specifically, Moorings Park was a party to two separate and distinct Leased Employee Agreements between The Moorings Park Institute, Incorporated, (the parent company), and several affiliated entities. The agreements provide for said employees to oversee day-to-day activities of subsidiaries. Neither agreement contained a cancellation provision allowing the Office to cancel the contract upon the issuance of such order.

Subsequent Event: On September 24, 2013, Moorings Park revised the two Leased Employee Agreements to include the cancellation provision required by Section 651.1151(3), 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 Moorings Park.