



# **THE STATE OF FLORIDA**

## **OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS**

### **MARKET CONDUCT FINAL EXAMINATION REPORT**

**OF**

**ORLANDO LUTHERAN TOWERS, INC.**

**AS OF**

**December 31, 2012**

**FLORIDA COMPANY CODE 88036**

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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 Orlando Lutheran Towers, Inc. pursuant to Section 651.105, Florida Statutes. The scope period of this examination was January 1, 2010 through December 31, 2012. The on-site and desk examination procedures were completed on November 1, 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 Orlando Lutheran Towers, Inc. 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

Orlando Lutheran Towers, Inc. is a Florida not-for-profit Continuing Care Retirement Community located in Orlando, Florida that was granted a certificate of authority by the Office to offer continuing care contracts on October 20, 1980. As of December 31, 2012, Orlando Lutheran Towers reported 337 Continuing Care Units consisting of 242 Independent Living Units and 95 Assisted Living Units. In addition, there were 135 Skilled Nursing Units consisting of 60 Community Beds and 75 Sheltered Beds. In addition, there were 16 Rental Units reported. As of the same date, there were 425 individuals residing at this community.

## CANCELLATIONS AND REFUNDS

Orlando Lutheran Towers provided a list of 152 continuing care contracts that were cancelled during the scope period of the examination. A sample consisting of 54 contract cancellations was selected and tested to verify the amount of the refund paid, if any, and whether refunds were properly issued.

### Findings:

Section 651.055(1)(h), Florida Statutes, provides in pertinent part that the continuing care contract state the terms under which the contract is cancelled by the death of the resident.

1. **In three instances, Orlando Lutheran Towers failed to timely issue refunds within the period specified by the terms of the underlying continuing care contract, as required by Section 651.055(1)(h), Florida Statutes.** In each of the three instances, the terms of the underlying continuing care contract provided that upon death of the resident, the continuing care contract terminates.

## CANCELLATIONS AND REFUNDS (Continued)

In all three instances, the contract terms also provided for the refund to be issued within 120 days after the contract terminated. The three refunds were issued from one to two days beyond the 120-day refund period.

- 1a. **Recommendation:** The Office recommends Orlando Lutheran Towers establish adequate procedures to ensure applicable refunds are issued in accordance to the terms of the approved continuing care contract.

### **Findings:**

Section 651.055(2), Florida Statutes, provides for the right of the resident to rescind a continuing care contract and receive a full refund of any funds paid, without penalty or forfeiture, within seven days after executing the contract.

2. **In one instance, Orlando Lutheran Towers failed to issue a full refund of funds paid for a continuing care contract that was cancelled during the rescission period, as required by Section 651.055(2), Florida Statutes.** Rather than issuing the refund amount in its entirety, the refund paid was reduced by an administrative charge.
- 2a. **Recommendation:** The Office recommends Orlando Lutheran Towers establish adequate procedures to ensure applicable refunds are issued in accordance with the applicable provisions of Chapter 651, Florida Statutes.

**Subsequent Event:** On November 5, 2013, Orlando Lutheran Towers provided documentation to the Office indicating that the refund shortage was subsequently paid.

## REQUIRED ESCROW DEPOSITS OR WAIVER

Orlando Lutheran Towers provided a list containing the 205 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, 53 contracts were executed on or after July 1, 2010. The 53 contracts were tested for compliance with Section 651.055(2), Florida Statute 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 of the continuing care contract, 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.

## REQUIRED ESCROW DEPOSITS OR WAIVER (Continued)

In 22 instances wherein the continuing care contract was executed on or after July 1, 2010, Orlando Lutheran Towers failed to deposit resident funds into the escrow account for the entire 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, as required by Section 651.055(2), Florida Statutes. In all 22 instances the funds were deposited into the escrow account, but did not remain in escrow for the entire rescission period of the continuing care contract.

**Recommendation:** The Office recommends Orlando Lutheran Towers establish adequate procedures and controls to ensure that resident funds are managed in accordance with Section 651.055(2), Florida Statutes.

## REQUIRED DISCLOSURES

Orlando Lutheran Towers provided a list containing the 205 continuing care contracts executed during the scope period of the examination. A random sample consisting of 64 contracts was selected from the list and tested for compliance with Section 651.091(3), Florida Statutes.

### **Findings:**

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, shall make full disclosure, and provide copies of the specific disclosure documents to the prospective resident or his or her legal representative.

1. **In 19 instances, Orlando Lutheran Towers failed to timely deliver to the prospective residents or their legal representative the disclosure documents required by Section 651.091(3), Florida Statutes.** The examination revealed that the required disclosure documents were delivered after the date the prospective residents executed the continuing care contracts.
  - 1a. **Recommendation:** The Office recommends Orlando Lutheran Towers 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 compliance.

### **Findings:**

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 64 contracts in the sample, 53 contracts were executed on or after July 1, 2010. The 53 transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

### **REQUIRED DISCLOSURES (Continued)**

2. **In 33 instances, Orlando Lutheran Towers failed to provide a copy of Section 651.071, Florida Statutes, as required by Section 651.091(3)(h), Florida Statutes.**
- 2a. **Recommendation:** The Office recommends Orlando Lutheran Towers establish adequate procedures to ensure all required disclosures are properly afforded to prospective residents or their legal representatives.

**Subsequent Event:** On August 29, 2013, Orlando Lutheran Towers filed amended disclosure documents with the Office that included a copy of section 651.071, 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 Orlando Lutheran Towers.