



# **THE STATE OF FLORIDA**

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

**MARKET CONDUCT FINAL EXAMINATION REPORT**

**OF**

**PRESBYTERIAN RETIREMENT COMMUNITIES, INC.**

**D/B/A**

**WESTMINSTER OAKS**

**ISSUED**

**August 20, 2013**

**FLORIDA COMPANY CODE 88056**

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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 Westminster Oaks (hereinafter "Westminster Oaks") 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 Westminster Oaks. 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**

Westminster Oaks, a Florida not-for-profit corporation, was granted a certificate of authority by the Office to offer continuing care contracts on April 5, 1982. Westminster Oaks is located in Tallahassee, 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, Westminster Oaks reported 433 Continuing Care Units, of which 333 were Independent Living Units and 100 Assisted Living Units. In addition, there were 8 Rental Units reported. Westminster Oaks also reported 120 Skilled Nursing Units of which 48 were classified as Community Beds and 72 as Sheltered Beds. As of the same date, there were 613 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)

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

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

## REQUIRED DISCLOSURES

Westminster Oaks provided a list containing the 296 continuing care contracts executed during the scope period of the examination. A random sample consisting of 70 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.

1. **In 12 instances, Westminster Oaks 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.**

- 1a. **Recommendation:** The Office recommends Westminster Oaks 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.

### 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.

## REQUIRED DISCLOSURES (continued)

2. **In four instances, Westminster Oaks failed to timely deliver to the prospective residents or their legal representatives the disclosure documents required by Section 651.091(3), Florida Statutes.** The examination revealed that in each of the four instances, the required disclosure documents were delivered after the date the prospective residents executed the continuing care contracts.
- 2a. **Recommendation:** The Office recommends Westminster Oaks 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 70 contracts in the sample, 26 contracts were executed on or after July 1, 2010. All of these 26 transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

3. **In three instances, Westminster Oaks failed to provide as a required disclosure, a copy of Section 651.071, Florida Statutes, entitled "Contracts as preferred claims on liquidation or receivership", to the prospective residents or their legal representative, as required by Section 651.091(3)(h), Florida Statutes.**
- 3a. **Recommendation:** The Office recommends Westminster Oaks establish adequate procedures to ensure all required disclosures are properly afforded to prospective residents or their legal representatives.

## 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 Westminster Oaks.