



# **THE STATE OF FLORIDA**

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

**MARKET CONDUCT FINAL EXAMINATION REPORT**

**OF**

**PALM SHORES RETIREMENT COMMUNITY, INC.**

**D/B/A**

**WESTMINSTER PALMS**

**ISSUED**

**August 20, 2013**

**FLORIDA COMPANY CODE 88038**

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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 Palm Shores Retirement Community, Inc., d/b/a Westminster Palms 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 Palms. 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 Palms, a Florida not-for-profit corporation, was granted a certificate of authority by the Office to offer continuing care contracts on January 15, 1980. Westminster Palms is located in St. Petersburg, 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 Palms reported 211 Continuing Care Units, of which 151 were Independent Living Units and 60 Assisted Living Units. In addition, there were 8 Rental Units reported. Westminster Palms also reported 42 Skilled Nursing Units, all of which were classified as Community Beds. As of the same date, there were 152 individuals residing at the 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 Palms 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 Palms 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, Westminster Palms 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 Westminster Palms establish adequate procedures to ensure the Office is timely notified of changes to its organizational documents.

## 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.

### **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.

**Westminster Palms 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, Westminster Palms provided the monthly dates on which resident council meetings were held, rather than the dates on which the quarterly meetings with residents were held.

**Recommendation:** The Office recommends Westminster Palms 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

Westminster Palms provided a list containing the 122 continuing care contracts executed during the scope period of the examination. A random sample consisting of 48 contracts was selected from the list and tested for compliance with Section 651.055(4), Florida Statutes.

## REQUIRED DISCLOSURES (Continued)

### 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, dated statement from each party to the contract certifying that a copy of the contract with the specified attachments was received.

1. **In seven instances, Westminster Palms 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, 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 Palms 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:

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 48 contracts in the sample, 21 contracts were executed on or after July 1, 2010. The 21 transactions were reviewed to determine compliance with disclosure requirements of Section 651.091(3)(h), Florida Statutes.

2. **In two instances, Westminster Palms 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.**
- 2a. **Recommendation:** The Office recommends Westminster Palms establish adequate procedures to ensure all required disclosures are properly afforded to prospective residents or their legal representatives.

## 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 Westminster Palms in accordance with Section 651.105(1), Florida Statutes.

## ACCESS TO RECORDS (Continued)

### Findings:

**There were six instances in which Westminster Palms failed to make available for the examination, documents to substantiate that required disclosures were properly delivered to prospective residents and/or their representatives.**

**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 Westminster Palms establish adequate procedures and controls to ensure adequate 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 Palm Shores Retirement Community, Inc., d/b/a Westminster Palms.