



*Revised October 1, 2019*

## **Updated Continuing Care/Life Plan Community Disclosure/Posting Checklist**

As a result of the passage of CS/CS/CS/HB 1033 (Chapter No. 2019 -160, Laws of Florida), twelve new disclosure requirements were added to chapter 651, Florida Statutes, along with one contract change.

Disclosure of pertinent information about individual continuing care/life plan retirement communities is extremely important to most residents and prospective residents. This is what led to the additional disclosure requirements adopted by the Florida Legislature in 2010, 2015, and 2019. Written documentation with signatures and dates, when appropriate, is key to proving compliance.

For your convenience, we compiled a checklist of all disclosure requirements in chapter 651, Florida Statutes. The disclosure requirements added or revised in 2019 are identified with an asterisk (\*). They take effect on January 1, 2020, but you may want to incorporate them into your policies before then. Please note that the statutory references for many of the existing requirements have changed because of the placement of new requirements in s. 651.091, F.S.

### **To Resident Council President or Chair:**

- Within 30 days of the election of a president or chair of the residents' council, provide such person with a copy of chapter 651, F.S., and related rule (690-193, Florida Administrative Code). Both are available on the Office of Insurance Regulation website ([www.flor.com](http://www.flor.com)) by clicking "Government Affairs" and then "Florida Statutes" for chapter 651 and "Florida Administrative Code" for the rule. Both can be printed in their entirety by clicking on "View Entire Chapter or Rule." In lieu of providing a copy of these documents, the law states that you may direct the Resident Council President or Chair to the OIR website where the documents are available through links. The OIR website is intended to be user-friendly, but less technically adept residents may have trouble locating the documents. (Statutory reference: s.651.081(2)(b), F.S.)
  
- \*Notice of the issuance of a final examination report or the initiation of any legal or administrative proceedings by OIR or the Department of Financial Services (DFS) and a copy of such document within 10 business days of the issuance. (Statutory reference: s. 651.091(2)(d), F.S.)

- A copy of the full annual statement and a copy of the most recent third-party financial audit filed with the annual report within 30 days of such filing with OIR. A staff person must be designated to provide an explanation of the information. OIR is interpreting “full annual statement” to mean the annual report. (Statutory reference: s.651.091(2)(f), F.S.)
- \* Information described in s. 651.085(4), F.S., in writing and make supporting documentation available upon request. (Statutory reference: s. 651.091(2)(g), F.S.) Please see first bullet under “To Residents” for more on s. 651.085(4).
- A summary of entrance fees collected and refunds made during the time period covered in the annual report and the refund balances due at the end of the report period. (Statutory reference: s. 651.091(2)(h), F.S.)
- A copy of each quarterly statement within 30 days of filing the statement with OIR. (Statutory reference: s. 651.091(2)(i), F.S.)
- Upon request, a copy of any newly approved continuing care or continuing care at-home contract within 30 days of approval by OIR. (Statutory reference: s. 651.091(2)(j), F.S.)
- \* A copy of any notice filed with OIR relating to a change in ownership within 10 business days after such filing by the provider. (Statutory reference: s. 651.091(2)(k), F.S.)

### **To Residents and Prospective Residents:**

- A true and complete copy of the full disclosure document to be used must be filed with OIR before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. 651.022(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs. (Statutory reference: s.651.091(4), F.S.)

### **To Residents:**

- At a quarterly meeting prior to the implementation of any increase in the monthly maintenance fee, the designated representative of the provider must provide the reasons, by department cost centers, for any increase in the fee that exceeds the most recently published Consumer Price Index for all Urban Consumers, all items, Class A Areas of the Southern Region. Nothing in this subsection shall be construed as placing a cap or limitation on the amount of

any increase in the monthly maintenance fee, establishing a presumption of the appropriateness of the Consumer Price Index as a basis for the increase in the monthly maintenance fee, or limiting or restricting the right of a provider to establish or set monthly maintenance fee increases. (Statutory reference: s.651.085(1) & (4), F.S.)

- \* Make available for review master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations and development. Provide notice of changes to that information to the president or chair of the residents' council within 3 business days. *With the exception of disclosing any changes, the same information has been available to prospective residents for several years.* (Statutory reference: s. 651.091(2)(l), F.S.)
- \* Written notice of delinquency proceedings within 3 business days after the initiation of such proceedings under chapter 631. (Statutory reference: s. 651.114(8) F.S.)

### **To Prospective Residents:**

Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, obtain written acknowledgment of receipt, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

- The contract to furnish continuing care. (Statutory reference: s. 651.091(3)(a), F.S.)
- The summary of the last OIR Examination Report as specified in s. 651.091(2)(b). (Statutory reference: s. 651.091(3)(b), F.S.)
- All ownership interests and lease agreements, including information specified in s. 651.022(2)(b)8. about persons who are required to be named in the provisional certificate of authority and receive remuneration with a real or anticipated value of \$10,000 or more. (Statutory reference: s. 651.091(3)(c), F.S.)
- Make available for review, master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans will not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development. (Statutory reference: s. 651.091(3)(d), F.S.)

- Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident. (Statutory reference: s. 651.091(3)(e), F.S.)
- The policy of the facility with respect to admission to and discharge from the various levels of health care offered by the facility. (Statutory reference: s. 651.091(3)(f), F.S.)
- \*A copy of s. 651.071. (Statutory reference: 651.091(3)(g), F.S.) – Note that a sentence has been added to s. 651.071 which states “For purposes of s. 631.271, such contracts are deemed Class 2 claims.” Please be sure the amended section of law is provided.
- A copy of residents’ rights contained in s. 651.083. (Statutory reference: s. 651.091(3)(h), F.S.)
- \* Notice of the issuance of a final examination report or the initiation of any legal or administrative proceedings by OIR or DFS, including where the report or filing may be inspected in the facility, and that, upon request, an electronic copy or specific website address will be provided from which the document can be downloaded at no cost. (Statutory reference: s. 651.091(3)(i), F.S.)
- \*Notice that if a resident has not exercised the right to rescind a continuing care contact within seven days after executing the contract, the resident’s funds held in escrow pursuant to s. 651.055(2) will be released to the provider. (Statutory reference: s. 651.091(3)(j), F.S.)
- \*A statement that distribution of the provider's assets or income may occur or a statement that such distribution will not occur. (Statutory reference: s. 651.091(3)(k), F.S.)
- \*Notice of any holding company system or obligated group of which the provider is a member. (Statutory reference: s. 651.091(3)(l), F.S.)
- Include in the continuing care contract, a description of the policies that may lead to changes in monthly recurring and nonrecurring charges or fees for goods and services received. The contract shall provide for advance notice to the resident, of not less than 60 days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs. (Statutory reference: s.651.055(1)(i), F.S.)
- \*Written notice of delinquency proceedings initiated under chapter 631 in written materials provided to prospective residents. (Statutory reference: s. 651.114(8) F.S)

## To Governing Body:

- A copy of the final examination report and corrective action plan, if one is required by the OIR, to the executive officer of the governing body of the provider within 60 days after the issuance of the report. (Statutory reference: s. 651.105(6), F.S.)
- Requires the OIR to notify the executive officer of the governing body in writing of all deficiencies identified during examinations/inspections. (Statutory reference: s. 651.105(4), F.S.)

## To Resident Council:

- \* A written general outline of the amount and anticipated terms of any new financing or refinancing, and the intended use of proceeds at least 30 days before the closing date of the financing or refinancing transaction. If there is a material change in the noticed information, a provider shall provide an updated notice to the residents' council within 10 business days after the provider becomes aware of such change. (Statutory reference: s. 651.019(1)(a) F.S.)

## Posting Requirements:

- Display the certificate of authority in a conspicuous place inside the facility. (Statutory reference: s. 651.091(2)(a), F.S.)
- Post in a prominent position accessible to residents and the general public a concise summary of the last examination report issued by OIR, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility. (Statutory reference: s. 651.091(2)(b), F.S.)
- \*Post in a prominent position, accessible to residents and the general public a notice containing the contact information for OIR (website [www.floir.com](http://www.floir.com) and telephone number) and the Division of Consumer Services of the Department of Financial Services (website <https://www.myfloridacfo.com/division/Consumers/> and toll-free consumer hotline 1-877-693-5236 or 850-413-3089). The notice must state that OIR or the Division may be contacted for the submission of inquiries and complaints related to potential violations of chapter 651, Florida Statutes, by the provider. (Statutory reference: s. 651.091(2)(c), F.S.)
- Post in a prominent position in the facility a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services must also be posted. (Statutory reference: s. 651.091

(2)(e), F.S.)

- Residents shall be entitled to at least 7 days' advance notice of each quarterly meeting. An agenda and any materials that will be distributed by the governing body or representative of the provider shall be posted in a conspicuous place at the facility and shall be available upon request to residents of the facility. (Statutory reference: s. 651.085(1), F.S.)

**New Contract Requirement** (Please see s.651.055 for all contract requirements)  
The new language is underlined so you can see what was added as a result of HB 1033.

- \* The contract must include or be accompanied by a statement, printed in **boldface type**, which reads: “This facility and all other continuing care facilities (also known as life plan communities) in the state of Florida are regulated by the Office of Insurance Regulation pursuant to chapter 651, Florida Statutes. A copy of the law is on file in this facility. The law gives you or your legal representative the right to inspect our most recent financial statement and inspection report before signing the contract. The financial structure of a continuing care provider can be complex, and the decision to enter into a contract for continuing care is a long-term commitment between a resident and the continuing care provider. You may wish to consult an attorney or a financial advisor before entering into such a contract.” (Statutory reference: s.651.055(3), F.S.)

## Verification of Compliance with Disclosure Requirements

The Office of Insurance Regulation is required to verify that continuing care retirement communities comply with disclosure requirements in chapter 651, F.S., when it conducts an examination of the facility or responds to a consumer complaint. Therefore, it is important that providers request that recipients of required disclosure documents sign and date a witnessed statement indicating that they have received the document. Written documentation is expected by OIR examiners as proof of compliance. Failure to comply with a disclosure or posting requirement is one of the more commonly cited violations during examinations, frequently referred to as triennial audits. Disclosure violations are often a result of inadequate or inaccurate document by the community to prove that disclosure occurred. Bottom line – disclosing is not enough; it must be documented in writing.

If you have any questions, please contact Mary Ellen Early, Public Policy Liaison, at 386-734-7681 or [mearly@earthlink.net](mailto:mearly@earthlink.net).