

REPORT ON EXAMINATION

OF

GLEN ARDEN, INC.

AS OF

DECEMBER 31, 2008

DATE OF REPORT

NOVEMBER 1, 2010

EXAMINER

VICTOR ESTRADA

TABLE OF CONTENTS

<u>ITEM NO.</u>		<u>PAGE NO.</u>
1.	Scope of the examination	3
2.	Executive summary	4
3.	Description of the Community	5
	A. Management and controls	6
	B. Holding company system	8
	C. Plan of operation	11
	D. Escrow agreement	16
	E. Accounts and records	16
4.	Community demographics	19
	A. Occupancy levels	19
	B. Fees	21
5.	Financial statements	22
	A. Balance sheet	22
	B. Statement of revenue and expenses and change in actuarial surplus	24
6.	Land sale	25
7.	Advances to Parent	28
8.	Conclusion	30
9.	Subsequent events	31
10.	Compliance with prior report on examination	33
11.	Summary of comments and recommendations	37



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

November 1, 2010

Honorable James J. Wrynn
Superintendent of Insurance
Albany, NY 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Number 30386, dated October 8, 2009, annexed hereto, I have made an examination into the condition and affairs of Glen Arden, Inc., a not-for-profit Continuing Care Retirement Community licensed pursuant to the provisions of Article 46 of the New York Public Health Law, as of December 31, 2008, and respectfully submit the following report thereon.

The examination was conducted at the home office of Glen Arden, Inc. located at 214 Harriman Drive, Goshen, New York.

Wherever the designations the "Community" or "Glen Arden" appear herein, without qualification, they should be understood to indicate Glen Arden, Inc.

Wherever the designations “Elant” or the “Affiliate” appear herein, without qualification, they should be understood to mean Elant, Inc., the sole corporate member of Glen Arden, Inc.

Wherever the designation, the “Department” appears herein, without qualification, it should be understood to refer to the New York State Insurance Department.

As of December 31, 2007, the Community was not in satisfactory actuarial balance, as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community’s minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(9,328,000) as of December 31, 2007.

The Community is operating under a Plan of Restoration (the “Plan”) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 4, 2010.

1. SCOPE OF THE EXAMINATION

The previous examination of the Community was conducted as of December 31, 2005. This examination covered the three-year period from January 1, 2006 through December 31, 2008. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2008, in accordance with generally accepted accounting principles (GAAP), as modified by Department Regulation No. 140 (11 NYCRR 350), a verification of assets and liabilities as of December 31, 2007, on an actuarial basis, the most recent actuarial balance sheet available, as filed with the Community's December 31, 2008 annual statement, as modified by Department Regulation No. 140, a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountants. A review was also made of the following items:

- Community documents
- Compliance with the by-laws
- Board of directors' meeting minutes
- Financial documents
- Occupancy levels
- Plan to restore surplus

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

A review was also made to ascertain what actions were taken by the Community with regard to comments and recommendations contained in the prior report on examination.

2. EXECUTIVE SUMMARY

The results of this examination revealed certain operational deficiencies during the examination period. The most significant findings of this examination include the following:

- As of December 31, 2007, the Community was not in satisfactory actuarial balance, as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(9,328,000) as of December 31, 2007.
- The Community is operating under a Plan of Restoration (the "Plan") to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 4, 2010.
- In June 2006, the Community sold a 10.447 acre parcel of land to Lifestyle Concepts, LLC, a for-profit affiliate and wholly-owned subsidiary of the Community's Parent, Elant, Inc. for \$900,000. Such sale price was based on a six-year old valuation. Such sale was made without the prior approval of the Superintendent of Insurance, in violation of the requirements of Section 1505(c) of the New York Insurance Law. It should be noted that the Community has submitted an application for expansion which is currently under review by the New York State Departments of Health and Insurance. As part of the proposed expansion plan, such parcel of land would be leased to the Community. See Section 6 of this report for a more detailed discussion of this item.
- As of December 31, 2007, the Community had made advances and loans to its Parent, Elant, Inc., in the aggregate amount of \$3,281,876, without notification to/or approval by the Department and the New York Department of Health. Glen Arden, Inc. has agreed not to make any additional loans and/or cash advances to Elant, Inc. or any of its affiliates, without the prior written approval of the Department. See Section 7 of this report for a more detailed discussion of this item.

- As of December 31, 2009, Glen Arden reported in its filed annual statement submission that it did not meet the minimum liquid reserve requirement of Part 350.6(a)(2) of Department Regulation No. 140 (11 NYCRR 350.6(a)(2)). See Section 9 of this report for a more detailed discussion of this item.

3. DESCRIPTION OF THE COMMUNITY

Glen Arden, Inc. is a continuing care retirement community (“CCRC”), as defined in Article 46 of the New York Public Health Law. The Community received a Certificate of Authority from the New York State Continuing Care Retirement Community Council effective September 23, 1994, and a final Certificate of Authority from the New York State Department of Health on December 19, 1994. The Community commenced operations on June 1, 1996. Interlocking directorates exist within Glen Arden and some members of its holding company system.

Glen Arden, Inc. is a non-profit, tax-exempt corporation, organized under Section 501(c)(3) of the Internal Revenue Code. The Community offers a 40 bed skilled nursing center for residents who need full-time nursing care, a 148 unit independent living facility and a 28 bed enriched housing unit. In December 2007, the Community submitted an application to the New York State Departments of Health and Insurance to amend its Certificate of Authority to allow it to add 66 carriage houses, and the development of “Phase 1”, consisting of 13 carriage houses. In accordance with such amendment, Glen Arden proposed to lease the land for the development of the carriage houses from Lifestyles Concepts, its for-profit affiliate. This application is currently under review by the New York State Departments of Health and Insurance.

A. Management and Controls

Pursuant to the Community's charter and by-laws, management of the Community is to be vested in a board of directors consisting of not more than eighteen members, of which fifteen members are elected directors and three members are ex-officio directors. During every calendar year, the board is required to hold quarterly meetings, one of which is to be an annual meeting. It may hold special meetings as necessary upon prior notification. As of December 31, 2008, the Community's board of directors was comprised of the following sixteen (16) members:

<u>Name</u>	<u>Principal Business Affiliation</u>
Thomas C. Ammons Monroe, NY	Employee, Affinity Advantage Financial.
Ciro Attardo, MD* Chester, NY	Physician/Managing Partner, Horizon Family Medical Group
Stephen M. Brown Goshen, NY	Certified Public Accountant, Stephen Brown, CPA
Donna G. Case-McAleer* Goshen, NY	President & CEO, Elant, Inc.
Donna Cornell Newburgh, NY	Owner, Cornell Associates
Ursula Degenhardt Goshen, NY	Retired.
Michael H. Donnelly, Esq. Goshen, NY	Chairman of the Board, Glen Arden, Inc.
Richard B. Golden, Esq. Goshen, NY	Partner, Burke, Miele and Golden

<u>Name</u>	<u>Principal Business Affiliation</u>
John S. Goodreds, Jr. Goshen, NY	Retired
Donna Johnson Fishkill, NY	Consultant, DJ Consulting
John MacEnroe Beacon, NY	President and CEO, Dutchess County Economic Development Corporation
John Meder Port Jervis, NY	Self Employed Real Estate Executive, Associate Broker with Davis Chant
Kunwar Nagpal, DDS Port Jervis, NY	Owner, Mid Hudson Dental
William Richards, PhD Westtown, NY	President, Orange County Community College
Robert Scherreik Bloomingdale, NJ	Principal, SVP McBride Corporate Real Estate
William Thorpe* Newburgh, NY	Director of Marketing, Mid-Hudson Orthotic Systems

* Ex-officio members

A review of the attendance records for the board of directors' meetings held during the period under examination revealed that the meetings were generally well attended, with all directors attending at least one-half of the meetings they were eligible to attend.

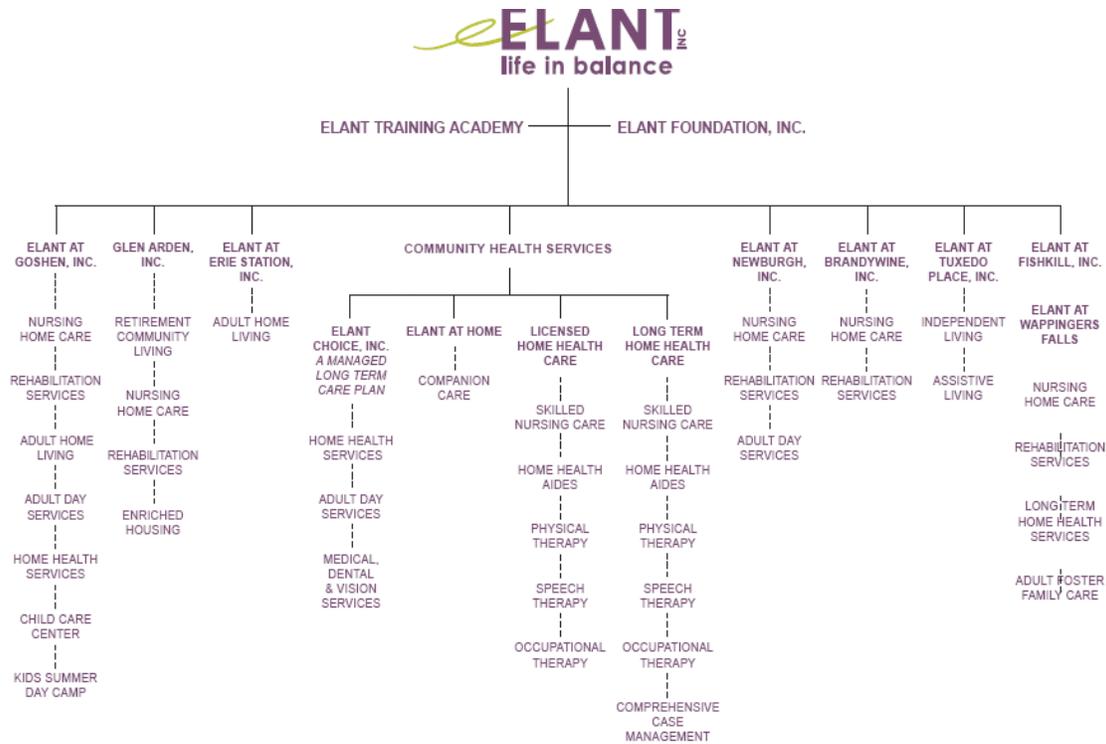
The principal officers of the Community as of December 31, 2008 were as follows:

<u>Officers</u>	<u>Title</u>
Stephen M. Brown	Treasurer
Donna G. Case-McAleer	President & CEO
Michael H. Donnelly, Esq.	Chairman
John S. Goodreds, Jr.	Vice Chairman
Robert Scherreik	Secretary

Note: Donna Cornell, was elected as the Community's Chairperson in April 2009.

B. Holding Company System

Glen Arden is a member of the Elant, Inc. ("Elant") holding company system. Elant, Inc., Glen Arden's ultimate parent, is a not-for-profit holding company incorporated in New York State and is the sole corporate member of several health care providers, including Glen Arden, Inc. The following is a chart of the Elant, Inc. holding company system as of December 31, 2008:



Elant, Inc. became the sole corporate member of Glen Arden, Inc. in 1999 and provides management services to the Community under an administrative services agreement.

During the examination period, Glen Arden, Inc. maintained an administrative services agreement (ASA) with Elant for management services to be provided to the Community by Elant. All management services are subject to oversight by the Glen Arden board of directors. Elant's responsibility for management services include, but are not limited to: recruitment and hiring, training, supervision and termination of staff, administration and management of benefits, operating systems, accounting systems and recordkeeping, facility maintenance and repair, the recommending of adjustments to entrance and monthly fees and regulatory compliance.

The term of the ASA is for three (3) years, commencing March 3, 2006, with an annual aggregate fee of \$320,925 payable by the Community to Elant. Fees are paid on a monthly basis. The ASA agreement was amended in 2007 and 2008. The amendments included significant increases in the aggregate annual fee. Such revisions to the administrative services agreement were not submitted to the New York Department of Health and the New York Insurance Department for review prior to implementation, in violation of Section 1505(d) of the New York Insurance Law which states in part:

“(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(3) rendering services on a regular or systematic basis.”

It is recommended that the Community comply with Section 1505(d) of the New York Insurance Law and submit all administrative service agreements, and amendments to such agreements, to the New York Departments of Health and Insurance for review.

C. Plan of Operation

The Community provides residents with lifetime residency in an independent living unit (ILU) and access, as needed, to an adult home enriched housing unit (EHU) and a nursing center (the Health Care Center (HCC)). A resident may choose among several contract options that provide different levels of prepaid nursing care benefit days and different refund options. The consideration paid for entering into the contract and becoming a Glen Arden resident is the entrance fee and monthly maintenance fee; the amount of which is determined by the size, and layout of the residence, as well as the percentage of the entrance fee refundable, if any, and the number of nursing care benefit days. All contract options available to prospective residents include unlimited care in the Elant at Goshen Adult Home, for the same monthly fee the resident would have paid in the ILU. The contract options, including operative mechanisms, are as follows:

Entrance Fee Deposit

Each prospective resident is required to pay a 10% Entrance Fee Deposit. The balance, as disclosed within the Initial Disclosure Statement, is due prior to the applicant moving in, but no later than 90 days following the effective date of the Residency Agreement. For all contract types, the refund for death or withdrawal is 100% during the first 3 months of occupancy. In addition, all contract types provide that if the resident does not take possession of the unit, a refund will be made within thirty (30) days of resale of the unit. However, the refund must be made no later than one year after payment. Also, in instances where a refund is due under the contract type as a result of death or withdrawal, the refund will be made within thirty (30) days of resale of the unit, but no later than one year after death or withdrawal.

Monthly Fee

After the contract is endorsed and the entrance fee is paid, the resident is subject to a monthly maintenance fee that is prorated for any partial month that the resident begins or ends occupancy. The Community is required to give sixty days (60) written notice before increasing the amount of the monthly fee. The increase is either to be approved by the Department, or arrived at by using a methodology that was previously approved by the Superintendent of Insurance. All fees are intended to meet the financial requirements of Glen Arden, including but not limited to: debt service, property taxes and any other costs or expenses.

HMO Benefits

In the event that there is no agreement between a resident's health maintenance organization ("HMO"), which provides Medicare benefits, and Glen Arden's Health Care Center, the resident may be admitted to an alternate facility to obtain the HMO benefit for Medicare covered nursing home services. Regardless, an HMO enrolled resident may choose to remain at the Community's Health Care Center ("HCC") and pay the Medicare per diem and related expenses to the Community.

Additional Services

The resident is responsible for the cost of services beyond those allowed under the terms of the contract, including the costs associated with the resident's personal private physician, private duty nurse, other privately prescribed therapies and prescription drugs. The resident is also responsible for costs associated with stays at a hospital.

Financial Hardship Subsidy for Nursing Care

If the resident is unable to pay for nursing care and has not impaired his or her financial ability by transferring assets at less than fair market value, Glen Arden will subsidize the resident's care up to one year, to include previously used Medicare benefit days and lifetime maximum benefit days. Any subsidized amount, plus interest at the prime rate listed in the Wall Street Journal, will be charged against the refundable portion of the entrance fee. If, after the one year subsidy the resident is still unable to cover the HCC's daily rate, Medicaid or other public or private insurance must be applied for by the resident. In the interim, a portion of the refundable fee will be applied toward the payment of nursing home care.

Contract Options

Declining Entrance Fee Refund Option (Available With the Full Life Care Option, Limited Health Care Option and Modified Health Care Option)

In this refund option, if a resident terminates residency within ninety (90) days, the entrance fee will be refunded, less the cost of services provided, plus accrued interest if applicable, and the cost of refurbishing the ILU for resale. After ninety (90) days, the entrance fee refunded will be reduced by the costs mentioned previously and beginning with the fourth (4th) month of occupancy by a one time four percent (4%) administrative fee and a monthly two percent (2%) occupancy fee for forty-eight (48) months, thereafter. After the fifty-first (51st) month, the resident is not entitled to a refund of the entrance fee. If, two persons are joint residents, refunds of the unamortized second person entrance fee, if any, will be made within thirty (30) days of termination of either resident.

90% and 75% Refundable Fee Refund Option (Available Only With the Full Life Care Option)

For the 90% refundable option, if a resident terminates the contract or expires after ninety (90) days (but before six (6) months), the entrance fee will be refunded in the same manner as the “Declining Entrance Fee Refund Option”. If the termination of residency is after six (6) months of occupancy, the resident shall be entitled to a refund equal to ninety (90%) percent of the entrance fee.

For the seventy-five (75%) percent refundable option, if a resident terminates the contract or expires after ninety (90) days (but before thirteen and one-half (13.5) months), the entrance fee paid will be refunded in the same manner as the “Declining Entrance Fee Refund Option”. If the termination of residency is after thirteen and one-half (13.5) months of occupancy, the resident shall be entitled to a refund equal to seventy-five (75%) of the entrance fee. A pro-rated refund of the second person entrance fee is payable on the first death of a two person living arrangement.

Full Life Care Option

A continuing care retirement contract holder covered under the Full Life Care Option, must maintain Medicare Part A, Medicare Part B and one supplemental Medicare health insurance policy. Such contract holder receives the benefit of an ILU, and as needed, an unlimited number of adult home benefit days and an unlimited number of nursing care benefit days, at no additional charge. The refund provisions available are the Declining Entrance Fee Refund Option, the 75% Refundable Fee Refund Option, and the 90% Refundable Fee Refund Option.

Limited Health Care Option

Under the Limited Health Care Option, a resident must maintain Medicare Part A, Medicare Part B, and a Medicare supplemental health insurance policy to receive the benefit of an ILU and nursing home benefits that include a 60 day lifetime maximum nursing home benefit (“Benefit Days”) at no cost above the resident’s monthly fee. The Benefit Days are to be applied to Medicare non-covered days, and after insurance benefits are exhausted. After the Benefit Days are used, nursing care will be billed at the full HCC’s daily rate (per diem rate). In addition to nursing home care at the HCC, Glen Arden provides, as needed, unlimited adult home care at no additional charge. The refund provisions are the same as the “Declining Entrance Fee Refund Option”.

Modified Health Care Option

Under the Modified Health Care Option, a resident must maintain Medicare Part A, Medicare Part B, and Medicare Supplemental insurance to receive the ILU and HCC benefits. The health care provisions within this contract provide for a 365 day lifetime limit (“365 Benefit Days” less 100 Medicare/other insurance covered days) of nursing care at no additional cost to the contract holder. The 365 Benefit Days include Medicare covered days and private insurance for nursing home care. After the 365 Benefit Days are exhausted, the resident is responsible for paying the HCC full daily rate (per diem rate). Regardless of the existence of insurance coverage, the Community will provide the resident with a minimum of two hundred and sixty five (265) Benefit Days in the Health Care Center at no additional charge. In addition to nursing home care at the HCC, Glen Arden provides, as needed, unlimited adult home care at no additional charge. The refund provisions are the same as the “Declining Entrance Fee Refund Option”.

D. Escrow Agreement

Section 4622(3)(a) of the New York Public Health Law states in part:

“...(3) As a condition to receiving the commissioner’s authorization under this section, an operator shall establish a government insured interest-bearing account, which earns interest at a rate which is consistent with prevailing interest rates, and enter into an escrow agreement with a New York bank, New York savings and loan association or New York trust company for the deposit of any priority reservation fees collected by the operator pursuant to this section, which escrow funds shall be subject to release as provided for in this section.”

As of the examination date, the Community maintained an escrow account for the deposit of priority reservation fees. However, the Community failed to maintain within its records a copy of the agreement with its depository bank which sets forth the purpose and details of deposits and withdrawals relative to such escrow account.

It is recommended that the Community maintain a copy of the appropriate escrow agreement with its depository bank for its escrow account relative to priority reservation deposits.

E. Accounts and Records

During the course of the examination, it was noted that the Community’s treatment of the following item was not in accordance with Department Regulation No. 140 (11 NYCRR 350). A description of such item is as follows:

Part 350.6(a)(1) of Department Regulation No. 140 (11 NYCRR 350.6(a)(1)) states the following:

“(1) A continuing care retirement community shall maintain liquid assets in an amount greater than or equal to the aggregate of all interest and principal payments becoming due within the next 12 months under a mortgage loan, bond indenture or other long term financing of the community. Assets used to meet this requirement, which can include assets held in a debt service reserve fund established by or pursuant to a mortgage loan, bond indenture or other long term financing agreement, must be available to pay long term debt interest and principal payments should the operating revenues be insufficient for these purposes and must meet the eligibility requirements in paragraph (3) of this subdivision. Assets used to meet this requirement shall exclude assets used to meet the requirement in paragraph (2) of this subdivision.”

Part 350.6(a)(2) of Department Regulation No. 140 (11 NYCRR 350.6(a)(2)) of Department Regulation No. 140 (11 NYCRR 350.6(a)(2)) states the following:

“(2)(i) A continuing care retirement community shall maintain liquid assets in an amount greater than or equal to 35 percent of the sum of the following amounts:

(a) the projected operating expenses of the community during the next 12 months, which shall include such comparable expenses related to providing services to non residents of the community during the next 12 months;

(b) the projected aggregate of all taxes and insurance expenses that are related to the capital assets of the community and the responsibility of the community and due within the next 12 months;

(c) the projected debt interest payments of the community becoming due within the next 12 months, excluding debt interest payments included in paragraph (1) of this subdivision; and

(d) the projected and/or actual refund expenses of the community becoming due within the next 12 months, except where such refund is dependent on the resale of the unit.

(ii) Assets used to meet the requirement in subparagraph (i) of this paragraph:

(a) shall exclude assets used to meet the requirement in paragraph (1) of this subdivision;

(b) can include assets, other than a debt service reserve fund, established by or pursuant to a mortgage loan, bond indenture or other long term financing agreement;

(c) must be available to pay operating expenses, refund expenses, and taxes and insurance expenses related to the capital assets of the community should the operating revenue be insufficient for these purposes; and

(d) shall meet the eligibility requirements in paragraph (3) of this subdivision.”

Part 350.6(a)(4) of Department Regulation No. 140 (11 NYCRR 350.6(a)(4)) states in part, the following:

“A continuing care retirement community shall, within 30 days of the end of each fiscal quarter, test whether it meets the requirements of paragraphs (1) and (2) of this subdivision. Documentation of the testing and results shall be maintained with the community’s business records. The continuing care retirement community shall immediately notify the superintendent if the requirements of paragraphs (1) and (2) of this subdivision are not met...”

During the examination period, the Community did not perform and/or document the quarterly testing required by Part 350.6(a)(4) of Department Regulation No. 140.

It is recommended that the Community comply with the testing and documentation requirements of Part 350.6(a)(4) of Department Regulation No. 140.

4. COMMUNITY DEMOGRAPHICS

A. Occupancy Levels

As of the year ending December 31, 2008, the Community maintained 137 occupied independent living units, 25 occupied enhanced housing units and 40 occupied skilled nursing care beds. The overall occupancy level for the year ending December 31, 2008, was ninety-three (93%) percent.

The following reflects the breakdown at December 31, 2008, relative to the Community's independent living units (by type and number of units):

Traditional	14
1 Bedroom Deluxe	46
1 Bedroom with Den	33
2 Bedroom	38
2 Bedroom with Den	<u>17</u>
Total Units	<u>148</u>

The following reflects the occupancy rates at year end for the period 2006 through 2009, relative to the Community's *Independent Living Units*:

Period	2006	2007	2008	2009
Occupancy	97%	94%	93%	91%

Note: As of April 30, 2010, the latest period available at the time of the writing of this report, the Community's occupancy rates relative to its independent living units had decreased from 91% at December 31, 2009 to 89%.

The following reflects the occupancy rates at each year-end for the period, 2006 through 2009, relative to the Community's Enriched Housing/Adult Care Units:

Period	2006	2007	2008	2009
Occupancy	75%	89%	86%	75%.

Note: As of April 30, 2010, the latest period available at the time of the writing of this report, the Community's occupancy rates relative to its enriched housing/adult care units increased from 75% at December 31, 2009 to 78.5%.

The following reflects the occupancy rates at each year-end for the period 2006 through 2009, relative to the Community's Skilled Nursing Facility:

Period	2006	2007	2008	2009
Occupancy	93%	100%	100%	97.5%

Note: As of April 30, 2010, the latest period available at the writing of this report, the Community's occupancy rates relative to skilled nursing facility beds increased from 97.5% at December 31, 2009 to 100%.

As noted above, the Community's most recent occupancy rates, as of April 30, 2010 for its independent living units and enriched housing/adult care units were 89% and 78.5%, respectively, compared to actuarial determined acceptable levels of approximately 95% for such units.

It is recommended that the Community take the necessary steps to increase its occupancy levels for its independent living units and enriched housing/adult care units to actuarial acceptable levels (approximately 95%).

B. Fees

Entrance fees increased 5%, 2% and 0% for the years 2008, 2009 and 2010, respectively. In addition, the monthly maintenance fee and second person fee for the independent living units increased 5%, 3% and 3% for the years 2008, 2009 and 2010, respectively. Sixty-day (60) notices for the above increases were provided to the residents and such rate increases were approved by the Department.

5. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as of December 31, 2007, as determined by this examination. It is the same as the actuarial balance sheet reported by the Community within its December 31, 2008 annual statement and is presented on a statutory actuarial basis pursuant to Department Regulation No. 140 (11 NYCRR 350).

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
<u>Current assets</u>		
Cash and investments	\$ 7,847,000	\$ 7,847,000
Accounts receivable	212,000	212,000
Inventory	29,000	29,000
Prepaid expenses	<u>178,000</u>	<u>178,000</u>
Total current assets	\$ <u>8,266,000</u>	\$ <u>8,266,000</u>
<u>Fixed assets (less long term debt)</u>		
Land and improvements	\$ 456,000	\$ 456,000
Buildings and improvements	38,842,000	38,842,000
Less: long term debt	(24,191,000)	(24,191,000)
Fixed asset and moveable equipment	2,476,000	2,476,000
Less: Accumulated depreciation	<u>(8,400,000)</u>	<u>(8,400,000)</u>
Total fixed assets	\$ <u>9,183,000</u>	\$ <u>9,183,000</u>
<u>Other assets</u>		
Deferred finance costs	\$ <u>637,000</u>	\$ <u>637,000</u>
Total assets	<u>\$18,086,000</u>	<u>\$18,086,000</u>

<u>Liabilities</u>	<u>Examination</u>	<u>Community</u>
Actuarial reserve liabilities	\$ <u>27,414,000</u>	\$ <u>27,414,000</u>
Total liabilities	\$ <u>27,414,000</u>	\$ <u>27,414,000</u>
 <u>Net surplus</u>		
Net actuarial surplus	\$ <u>(9,328,000)</u>	\$ <u>(9,328,000)</u>
Total liabilities and net actuarial surplus	\$ <u>18,086,000</u>	\$ <u>18,086,000</u>

NOTE:

1. It should be noted that the net asset values herein are reported on a statutory/actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's certified public accountants using generally accepted accounting principles (GAAP basis).

2. As of December 31, 2007, the Community was not in satisfactory actuarial balance, as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(9,328,000) as of December 31, 2007. The Community is operating under a Plan of Restoration (the "Plan") to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 4, 2010.

B. Statement of Revenue and Expenses and Change in Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis, as modified pursuant to Department Regulation No. 140, for the period January 1, 2006 through December 31, 2007 as follows:

Operating revenue

Resident fees	\$21,480,284
Other operating revenue	243,664
Income from investments	620,903
Income from donations	<u>2,305</u>

Total operating revenue \$ 22,347,156

Operating expenses

Salaries	\$ 5,891,230
Employee benefits	1,665,724
Supplies and other expenses	7,352,868
Depreciation and amortization	3,023,980
Interest	<u>2,801,790</u>

Total operating expenses 20,735,592

Non-operating revenue

Gain on sale of land	\$ 600,000
Litigation settlement	102,944
Unrealized gain (loss) on investments	<u>121,011</u>

Total non-operating revenue 823,955

Net income \$ 2,435,519

Change in Actuarial Surplus

Surplus decreased \$5,010,000 during the examination period, January 1, 2006 through December 31, 2007, detailed as follows:

Surplus per prior report on examination, as of December 31, 2005			\$ (4,318,000)
	<u>Gain in Surplus</u>	<u>Loss in Surplus</u>	
GAAP basis net income	\$ 2,435,519		
Statutory adjustment	_____	\$ (7,445,519)	
Net decrease in surplus			\$ (5,010,000)
Surplus per report on examination, as of December 31, 2007			\$ (9,328,000)

6. LAND SALE

On June 22, 2006, Glen Arden sold a 10.447 acre parcel of land to Lifestyle Concepts, LLC (Lifestyle), a for-profit wholly-owned subsidiary of Elant, Inc. According to the independent auditor's report for Elant, Inc. and subsidiary as of December 31, 2008, Lifestyle, established in November 2000, acquires and develops housing and healthcare facilities, which, if successful, are transferred to newly formed operating entities. Elant and Lifestyle share certain common board members with Glen Arden.

As consideration for this land sale, Glen Arden received a \$900,000 promissory note from Lifestyle with interest at a rate of 7%. Both interest and consideration are due as a balloon payment upon the note's maturity on June 21, 2011. However, in 2009, the

management of Glen Arden determined that the note receivable from Lifestyle was impaired and forgave the entire note and interest thereon in the aggregate amount of \$1,110,423.

It is recommended that the Community re-establish the note receivable amount and interest thereon due from Lifestyle in the amount of \$1,110,423.

The consideration paid by Lifestyle was equal to an appraised value determined by a June 2000 appraisal (approximately six years old at the time of the sale). At that time, the property's highest and best use was considered as office space. Senior housing development is a permitted use by law, subject to site plan approval by the local planning board. Prior to the sale of the property, Elant received approval by the planning board to construct a sixty-six (66) unit adult condominium development. Costs incurred with regard to securing planning board and New York State approval for such development were reported at \$527,026.

An appraisal of the 10.447 acre property made as of March 22, 2006, for the purpose of obtaining project financing from Provident Bank, indicated a value (with approvals secured and estimated on an "as is" basis) of \$3,700,000. A review of comparable sales prices within the area and a desk audit review of the March 22, 2006 appraisal by the Department indicated that the \$3,700,000 value appeared reasonable.

Thus, Elant and Lifestyle incurred costs of \$1,427,026 (sale price of \$900,000 and subsequent approval costs of \$527,026) in acquiring an asset from (affiliate), Glen Arden that had an estimated value of \$3,700,000. Taking into consideration the aforementioned \$527,026 costs related to state and local approvals relative to the development of this

property, and the March 22, 2006 valuation of the property, the residual site value (net of approval costs) was established at \$3,172,974.

Further, the appraiser of the March 22, 2006 valuation of the property indicated that the cost of approved land and infrastructure typically amount to 20 to 25 percent of the value of the units to be sold. Despite having infrastructure costs in excess of the norm, the cost of land, approvals and infrastructure represent 14.3% of the reported average unit sales price of the Elant and Lifestyle development. This indicated that the land was acquired at a substantial discount from the cost attributed to a typical condominium/townhouse development in such area.

In light of the above, a value of \$3,200,000 appeared reasonable for this site.

As of the date of this writing, there are four carriage house units which are constructed on the sold property site. Also, the New York Insurance Department and the New York Department of Health are in the process of reviewing Glen Arden's application to amend its Certificate of Authority to add sixty-six (66) carriage house units and the development of Glen Arden's Phase 1 expansion of thirteen (13) of such carriage house units. In connection with the expansion, it is Glen Arden's intention to lease such land from Lifestyle Concepts, LLC. However, the Community has been informed by both the New York Insurance and Health Departments that such land lease or take back of the land may not proceed without the approvals of both Departments. The Insurance Department, on February 23, 2010, communicated to the Community the Department's objections to the financial plan for the carriage house expansion as proposed.

7. ADVANCES TO PARENT

As of December 31, 2008, Glen Arden reported \$3,014,607 as due from its parent, Elant, Inc., as compared to \$3,281,876 reported as of December 31, 2007. Such amount, according to Elant, Inc.'s CFO, represented amounts advanced by Glen Arden to Elant, Inc., in order to cover Elant's overhead expenses relative to several of Elant's subsidiaries. The amount as of December 31, 2008, reflects a write-down in the amount of \$141,000, as the management of Glen Arden determined that a portion of the amount due from Elant was impaired and such amount was forgiven.

A review of the Community's draft audited financial statements submitted to the Department contains a balance sheet for the period ended December 31, 2009 that indicates that such advances decreased to \$2,140,001 as of such date. This amount reflects the aforementioned \$141,000 write-down at December 31, 2008, as well as an additional write-down in the amount of \$604,407 made in 2009. Such write-downs aggregated to \$745,407 as of December 31, 2009.

It is recommended that the Community take the necessary steps to recover the receivable due from Elant relative to the amounts written off in the aggregate amount of \$745,407 for 2008 and 2009 and, in the future, refrain from writing off any other amounts due from affiliates.

Section 1505(c) of the New York Insurance Law states the following:

“The superintendent's prior approval shall be required for the following transactions between a domestic controlled insurer and any person in its

holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the insurer's admitted assets at last year-end."

Section 1505(d) of the New York Insurance Law states in part:

"The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it with such period:

(1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer's admitted assets at last year-end..."

Section 350.6(c)(7) of Department Regulation No. 140 (11 NYCRR 350(c)(7))

states, in part:

"After satisfying the requirements of subdivisions (a) and (b) of this section, assets supporting reserve liabilities may be invested in any of the following...

(7) accounts receivable subject to the restrictions that they are expected to be paid and not more than:

(i) 90 days overdue when the payor is not a government agency..."

The Community has deviated from its previously approved plan to achieve satisfactory actuarial balance by making such advances/loans, since management has converted assets, previously permitted on its actuarial balance sheet, to assets which are not permitted on its actuarial balance sheet (overdue receivables).

Glen Arden has agreed not to make any additional loans and/or cash advances to Elant, Inc. or any of its affiliates without the prior written approval of the New York Insurance Department.

As noted in item 6 of this report on examination, the Community has submitted an application for expansion with the New York Departments of Insurance and Health. However, the Insurance Department has objected to the proposed financial plan for the carriage house expansion.

It is therefore recommended that the Community take the necessary steps to recover all outstanding advances/loans made to Elant, Inc. within a time frame established by the New York Departments of Insurance and Health.

8. CONCLUSION

As of December 31, 2007, the Community was not in satisfactory actuarial balance, as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(9,328,000) as of December 31, 2007.

The Community is currently operating under a Plan of Restoration (the “Plan”) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 4, 2010.

9. SUBSEQUENT EVENTS

A. Minimum Liquid Reserve Requirement

As of December 31, 2009 Glen Arden reported in its filed annual statement submission that it did not meet the minimum liquid reserve requirement of Part 350.6(a)(2) of Department Regulation 140 (11 NYCRR 350.6(a)(2)) and that such shortfall totaled \$627,945. As of May 31, 2010, the Community reported that the shortfall had increased to \$1,679,742.

Part 350.6(a)(2) of Department Regulation No. 140 (11 NYCRR 350.6(a)(2)) states in part:

“(a) Once a continuing care retirement community has commenced operations and funds held in escrow are released pursuant to section 4610 of the Public Health Law, the continuing care retirement community shall maintain...an operating reserve fund as described in paragraph (2) of this subdivision...

(2)(i) A continuing care retirement community shall maintain liquid assets in an amount greater than or equal to 35 percent of the sum of the following amounts:

(a) the projected operating expenses of the community during the next 12 months, which shall include such comparable expenses related to providing services to non residents of the community during the next 12 months;

(b) the projected aggregate of all taxes and insurance expenses that are related to the capital assets of the community and the responsibility of the community and due within the next 12 months;

(c) the projected debt interest payments of the community becoming due within the next 12 months, excluding debt interest payments included in paragraph (1) of this subdivision; and

(d) the projected and/or actual refund expenses of the community becoming due within the next 12 months, except where such refund is dependent on the resale of the unit.

(ii) Assets used to meet the requirement in subparagraph (i) of this paragraph:

(a) shall exclude assets used to meet the requirement in paragraph (1) of this subdivision;

(b) can include assets, other than a debt service reserve fund, established by or pursuant to a mortgage loan, bond indenture or other long term financing agreement;

(c) must be available to pay operating expenses, refund expenses, and taxes and insurance expenses related to the capital assets of the community should the operating revenue be insufficient for these purposes; and

(d) shall meet the eligibility requirements in paragraph (3) of this subdivision...”

It is recommended that the Community maintain adequate liquid assets to meet the minimum liquid reserve requirement of Part 350.6(a)(2) of Department Regulation No. 140.

B. Occupancy Levels

As noted within Item 4A of this report on examination, occupancy levels as of April 30, 2010 relative to the Community’s independent living units and enriched housing/adult care units had fallen below acceptable actuarial standards. At a meeting with the Department on June 15, 2010, Glen Arden’s management indicated that there had been a significant improvement in May, 2010 with regard to the occupancy rate for enriched housing/adult care (to 82%), however, the independent living unit rate (89.2%) continued to remain below the actuarial determined acceptable level (approximately 95%).

10. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2005 contained the following seven (7) comments and recommendations as follows (page numbers refer to the prior report):

<u>ITEM NO.</u>		<u>PAGE NO.</u>
	<u>Surplus</u>	
1.	<p>As of December 31, 2005, the Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,318,000.</p> <p>It is recommended that the Community continue to operate under the Plan of Restoration, accepted by the New York Insurance Department on August 7, 2006, in order to bring its required surplus to an adequate level.</p> <p><i>The Community deviated from the above plan by making the advances/loans to Elant, Inc.</i></p> <p><i>At the time of this writing, the Community was operating under a revised Plan of Restoration (the "Plan") to achieve satisfactory actuarial balance. The Plan was approved by the New York Insurance Department on March 4, 2010.</i></p>	2,4,15,26
	<u>Initial Disclosure Statement</u>	
2.	<p>It is recommended that a standard information sheet, approved by the New York Department of Health be included with any distributed marketing materials and attached to the initial disclosure statement pursuant to section 4606(14) of the New York Public Health Law.</p> <p><i>The Community has complied with this recommendation.</i></p>	18

ITEM NO.**PAGE NO.**Land Sale

3. It is recommended that Glen Arden comply with the provisions of Sections 1119(a) and 1505(a)(1) & (c) of the New York Insurance Law and seek approval of the New York Insurance Department and the New York Department of Health prior to entering into a sale of land or building property and/or promissory notes(s) with any entity, including a member of the Elant, Inc. holding company. 20

The Community has complied with this recommendation

4. It is recommended that the Community provide this Department with the pertinent board of directors' minutes pertaining to discussions and/or approval of the above land sale as requested by this Department in a letter to the Community dated October 5, 2007. 21

The Community has complied with this recommendation.

5. It is recommended that Glen Arden comply with the provisions of Section 715 of the New York Not-For-Profit Corporation Law with regard to effecting contracts or transactions with other entities including affiliated corporations in which certain directors and/or officers are also directors and/or officers of such other entities, including affiliated corporations. 22

The Community has complied with this recommendation.

ITEM NO.**PAGE NO.**

At the time of this writing, the New York Insurance Department and the New York Department of Health are in the process of reviewing Glen Arden's application relative to the sale of the 10.447 acre of land and development of such land back to Glen Arden.

22

The current expansion proposal under review no longer includes selling the 10.447 acre parcel back to Glen Arden.

Advances/Loans to Parent

6. Glen Arden has agreed not to make any additional loans and/or cash advances to Elant, Inc. or any of its affiliates without the prior written approval of the New York Insurance Department. Should the projected financial entries discussed at item 7B of this report not fully offset the outstanding advances/loans, or should the expansion project not proceed, it is recommended that the Community take the necessary steps to recover all outstanding advances/loans made to Elant, Inc. It is also recommended that, in the future, the Community comply with the prior approval or notification requirements of Section 1505(c) & (d) of the New York Insurance Law prior to any advances or loans being made to any members of its holding company.

24,25

A similar recommendation is contained in this report with regard to the Community taking the necessary steps to recover all outstanding advances/loans made to Elant, Inc. The Community has complied with the prior approval or notification requirements of Section 1505(c)&(d) of the New York Insurance Law prior to any advances or loans being made to any members of its holding company.

ITEM NO.**PAGE NO.**Application For Expansion

7. It is recommended that, prior to initiating such expansion and incurring the lien and anticipated project costs, the Community should recover all of the outstanding advances/loans made to Elant, Inc. 26

The Community has not complied with this recommendation. A similar recommendation is included within this report on examination.

11. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Satisfactory Actuarial Balance and Surplus</u>	
As of December 31, 2007, the Community was not in satisfactory actuarial balance, as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(9,328,000) as of December 31, 2007.	2, 4, 23, 30
The Community is operating under a Plan of Restoration (the "Plan") to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 4, 2010.	
B. <u>Holding Company System</u>	
i. It is recommended that the Community comply with Section 1505(d) of the New York Insurance Law and submit all administrative service agreements and amendments to such agreements, to the New York Departments of Health and Insurance for review.	10
C. <u>Escrow Agreement</u>	
It is recommended that the Community maintain a copy of the appropriate escrow agreement with its depository bank for its escrow account relative to priority reservation deposits.	16
D. <u>Accounts and Records</u>	
It is recommended that the Community comply with the testing and documentation requirements of Part 350.6(a)(4) of Department Regulation No. 140.	18

<u>ITEM</u>	<u>PAGE NO.</u>
E. <u>Occupancy Levels</u>	
It is recommended that the Community take the necessary steps to increase its occupancy levels for its independent living units and enriched housing/adult care units to actuarial acceptable levels (approximately 95%).	20
F. <u>Land Sale</u>	
It is recommended that the Community re-establish the note receivable amount and interest thereon due from Lifestyle in the amount of \$1,110,423.	26
G. <u>Advances to Parent</u>	
i. It is recommended that the Community take the necessary steps to recover the receivable due from Elant relative to the amounts written off in the aggregate amount of \$745,407 for 2008 and 2009, and in the future, refrain from writing off any other amounts due from affiliates.	28
ii. It is therefore recommended that the Community take the necessary steps to recover all outstanding advances/loans made to Elant, Inc. within a time frame established by the New York Departments of Insurance and Health.	30
H. <u>Subsequent Events</u>	
It is recommended that the Community maintain adequate liquid assets to meet the minimum liquid reserve requirement of Part 350.6(a)(2) of Department Regulation No. 140.	32

Appointment No. 30386

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Victor Estrada

as a proper person to examine into the affairs of the

Glen Arden, Inc.

and to make a report to me in writing of the condition of the said

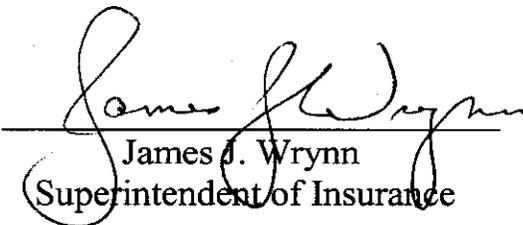
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with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name and affixed the official Seal of this Department, at the City of New York.

this 8th day of October, 2009




James J. Wrynn
Superintendent of Insurance