

STATE OF NEVADA
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN

BIENNIAL REPORT
FEBRUARY 2009



Revised 03-13-09

The Role of the Office of the Ombudsman

“To provide a neutral and fair venue to assist homeowners in handling issues that may arise while living in a common-interest community.” – Mission statement of the Office of the Ombudsman

The Office of the Ombudsman was created by the 1997 Legislature to assist boards of directors and owners who live within common-interest communities in understanding and properly applying the laws that regulate them, and also to investigate and assist in resolving disputes.

The scope of the Office has been expanded to include the registration of homeowner associations (HOAs), the credentialing of professional managers and others, the education of community managers and homeowners, and investigations into potential violations of NRS 116 and, beginning in 2008, NRS 116B regarding condominium hotels.

The five-member Commission for Common-Interest Communities was created in 2003 to conduct disciplinary hearings, adopt regulations, and act in an advisory capacity. The Commission's statutory authority was subsequently expanded by the 2007 Legislature with AB 431, and was renamed the Commission for Common-Interest Communities and Condominium Hotels (CCICCH).

Beyond these primary services, the Ombudsman's Office is a resource for general questions pertaining to HOAs. Staff members routinely answer questions ranging from technical matters in the governance of an association to assistance in using public services. In an average month, the office processes 25-35 new intervention affidavits, answers 1,000-1,300 phone queries, and provides general assistance to about 70 walk-in visitors. In addition, Compliance investigators conduct about 50 in-person interviews in which they answer questions regarding compliance and hear complaints regarding potential violations NRS 116.

Homeowner associations are complex, self-governing entities affecting the homes of approximately half the residents of Nevada. They are governed by volunteer directors, usually with the advice of a professional community manager and other experts, and may engage in contracts and legal actions that have consequences for their entire membership. Many retain employees and all are subject to various local, state and federal laws.

Given the prevalence of HOAs in Nevada and the complexity of the laws that govern them, the need for an Ombudsman's Office as an information source and forum for disputes has never been greater.

Functions of the office may be subdivided into five distinct programs:

1. **Registration.** There are nearly 3,000 homeowner associations (**see Table 1**) comprising roughly half a million units in Nevada, as defined by NRS 116. Of these, approximately 449 are self-managed and the rest are professionally managed. Each association must report certain key data regarding their officers, budgets, reserves, management, unit count and other essential facts to the Ombudsman's Office. This information is reported annually and kept on file.

Accompanying the registrations and supplemental filings is a \$3-per-unit annual fee from each association. Associations in arrears are subject to additional fees and potential defaulting of their corporate filing protections. The office ensures payment and registration records for all associations are accurate and up to date.

Table 1 – Registered Associations as of Dec. 31, 2008

	Registered Associations	Registered Units
Master Associations	124	82,118
Sub-Associations	551	66,473
Regular Associations	2,277	320,815
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Total	2,952	469,406

In addition to processing all of this data, the Ombudsman’s Office assists association representatives in understanding their reporting requirements, and finding necessary information. On average, office personnel meet with three or four constituents a day, or approximately 70 per month, not counting those conducted by Compliance investigators. Calls to the office, not counting those fielded by the Compliance Section, average nearly 800 per month thus far in fiscal year 2009, having increased more than 10 percent over the prior year.

Each registration provides an annual snapshot of the financial status of its associated HOA, and documents that the association has completed the steps necessary to govern itself properly. It also provides updated information on key contacts, which changes regularly within these organizations. The process is an important first step in ensuring that Nevada’s associations remain viable, and that the appropriate party may be contacted when necessary to conduct business with the association.

Table 2 – Intervention Affidavits: Aug. 2006 – Dec. 2008

Affidavits received.....	787
Conferences held.....	227
Resolutions reached.....	124
Pending resolution.....	8

- Intervention Affidavit – informal conferencing.** The signature service of the Ombudsman’s Office, the Intervention Affidavit, provides a no-fee method for homeowners, boards of directors and others to resolve their HOA-related disputes. It represents the simplest, most neighborly means of resolving a dispute within an association. For HOA residents without the resources to use other processes, the Ombudsman may be the only means to have their complaints heard at all.

About 300 to 350 Intervention Affidavits are filed each year. Most involve a dispute between a homeowner and HOA board, although tenants and others involved in HOAs may also file. (See **Table 2.**)

The process typically begins with a review of the complaint, followed by an invitation for representatives of both parties to meet for informal mediation with the Ombudsman. Meeting with the Ombudsman is voluntary. The Ombudsman makes no decisions and remains an impartial facilitator throughout the process.

In approximately 100 cases each year, the parties will meet with the Ombudsman, with more than half of these ending in an agreed-upon resolution. Some disputes will be resolved by the parties themselves in advance of the meeting.

The strength of the system is that it allows many issues to be resolved through compromise and negotiation, greatly reducing the burden on more structured systems, producing quicker resolutions, and mitigating the expenses upon the participants. Often it also reduces tension in an association, bringing harmony back to a community. This is especially true in cases where personality differences have superseded the original problems themselves.

3. **Compliance.** The Real Estate Division's Compliance Section investigates potential violations of Nevada law. With respect to the Office of the Ombudsman, this includes NRS 116, NRS 116A and NRS 116B. These are laws regarding meetings, elections, recordkeeping, fiscal affairs, liens, fines and management practices, among other matters. Investigations of potential violations may lead to hearings before the CCICCH or letters of instruction to remediate minor violations.

There are two main types of complaints: those against a board of directors, association member or other party to a common-interest community alleged to have violated NRS 116; and those against a professional credentialed under NRS 116A, notably a community manager and a reserve study specialist.

Complaints against a community manager are handled directly by the Division's Compliance Section, which verifies that all requirements are met, including an attempt at resolution by the aggrieved party. If the attempt fails, the complaint, called a Statement of Fact, is further reviewed to ensure the Division has jurisdiction and that the allegation, if proven, constitutes a violation of law. If those conditions are met, an investigation is opened.

The second type of complaint, the Intervention Affidavit (IA), is used for complaints against association boards or other non-credentialed HOA persons. This process starts in the Ombudsman's Office with the informal conference program described in the preceding section.

Should either party refuse the informal mediation process or should the issue remain unresolved, the file may be forwarded to Compliance, where it is reviewed for jurisdiction and whether or not the allegation constitutes a violation. Not all cases handled by the Ombudsman constitute an alleged violation of law. An example would be a dispute over governing documents. If a case does meet the requirements, an investigation is opened.

For both types of complaints, if the requirements are not met, the complainant is notified in writing with an explanation of why. Should the complainant question the decision and/or supply additional information, the complaint may be re-reviewed.

Should an investigation be opened, both sides of the dispute are notified and the "violation of law" allegations are reviewed. Most complaints contain numerous allegations, not all of which meet the requirements of an investigation. Respondents are always notified about complaints against them and provided with a copy of the IA.

From November 2007 through October 2008 the Compliance Section opened 193 investigations, out of 417 complaints and IAs filed. At the end of October 2008 there were 127 open cases. (See **Tables 3, 4 and 5** for other compilations of data on cases in the Compliance section.)

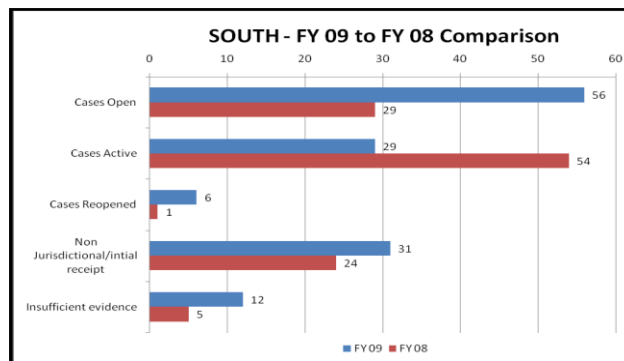
Table 3 - INVESTIGATIVE ACTIVITIES, FY 2007-2011

Number of Intervention Affidavits Received				
FY07	FY08	FY09*	FY10*	FY11*
227	256	289	327	369

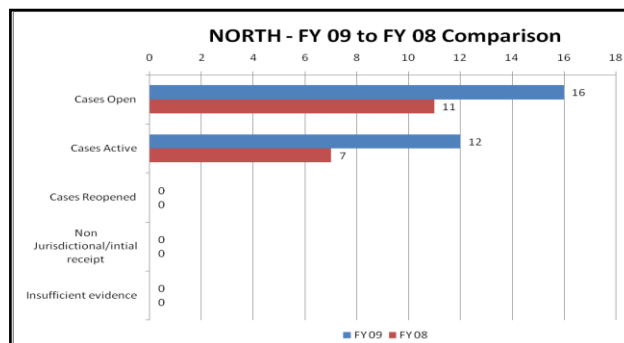
Number of Cases Heard by CICCH				
FY07	FY08	FY09*	FY10*	FY11*
1	3	4	6	8

*Projected

**Table 4 – Cases in Compliance – South: FY 09 vs. FY 08
(July 1, 2008 – Dec. 31, 2008 vs. July 1, 2007 – Dec. 31, 2007)**



**Table 5 – Cases in Compliance – North: FY 09 vs. FY 08
(July 1, 2008 – Dec. 31, 2008 vs. July 1, 2007 – Dec. 31, 2007)**



Investigations include gathering statements, documents and other evidence. A case analysis with conclusions and recommendations is completed. The case analysis is then reviewed by the Chief Investigator and, if the recommendation is that the case should be heard before the CCICCH, the Division Administrator. The matter is then forwarded to the Attorney General’s Office for further review. If that office agrees that the matter should be prosecuted before the CCICCH, a formal complaint is filed and the case proceeds to hearing.

The most prevalent issues that the Compliance Section investigates are: board elections (both eligibility to run and removals from boards), board duties regarding budgets, record requests by homeowners, the right of unit owners to speak at certain meetings, and the right of unit owners to have complaints on the agenda.

The results are always communicated to all parties to an investigation; however certain investigative information in the Division file is confidential in accordance with Nevada Revised Statute 116.757.

Beyond investigations, the Compliance Section has intervened on behalf of associations with concerns about election procedures, or transition following elections to ensure the process was followed properly.

In addition to casework, investigators accept phone calls and walk-ins with questions regarding NRS 116 and related sections of law. Compliance fielded more than 6,600 phone calls and met with 438 walk-ins in fiscal year 2008. Currently, the office answers about 500 phone calls, handles 50 personal interviews per month and responds to email questions as well.

4. **Alternative Dispute Resolution** (ADR) was one of the first services available to resolve conflicts pertaining to the governing documents of HOAs. The system, governed by NRS 38, is legally required for most governing documents-related disputes before such matters may be presented to a court. ADR is generally cheaper than using the courts as well, although in some cases it can become relatively expensive.

ADR provides three options: nonbinding arbitration, binding arbitration and mediation. Where the parties cannot agree upon a method, nonbinding arbitration is the default. A subsidy is available to parties that agree to use binding arbitration.

**Table 6 – Alternative Dispute Resolution in CICs
(July 1, 2008 – Dec. 31, 2008)**

Number of Open Claims from Previous Fiscal Year.....	91
Total Number of Claims Filed.....	69
Total Number of Claims Closed.....	64
Total Number of Claims Currently Open.....	96
Claims Awarded ADR Certificate ⁽¹⁾	35

(1) Issued when Division receives notice from Arbitrator/Mediator that proceedings were completed.

More than 100 ADR claims are filed each year with the assistance of the Ombudsman's Office. Many are resolved or dismissed before an arbitrator's decision. Very rarely do cases proceed to court. (See Table 6 above.) The majority of issues that proceed through ADR are issues involving the enforcement of governing documents, landscaping, fines and property damage.

The Ombudsman Office does not provide the actual ADR services. Rather, it facilitates their use for parties with certain HOA-related disputes. This includes maintaining a list of qualified mediators and arbitrators, accepting and processing claims, providing forms to comply with the requirements of ADR, and guiding the parties through the system. Once through the system, the parties also receive a certificate of completion from the Ombudsman, which may be taken to a court to enforce a decision, or in some circumstances to challenge one.

The office also promotes the option of ADR, describing the different processes, and the advantages and limitations versus other options. Statistics and the final disposition of each are published periodically.

5. **Education.** Educating and training HOA directors and community managers is a cost-effective way of ensuring viable associations with fair policies toward all members and residents. (See Table 7, following this report, on numbers and locations of HOAs.) The office has multiple educational missions, affecting three broadly defined groups of clientele: credentialed professionals, HOA directors, homeowners and other participants. Within these categories, education recognizes different levels of proficiency.

Regarding credentialed professionals, the office ensures certified community managers have sufficient opportunities to learn what they need to serve Nevada's HOAs properly and effectively. The Real Estate Division as a whole keeps managers apprised of the results of NRS 116 disciplinary hearings, Attorney General opinions, new regulations, new Division procedures and other matters of interest to the industry.

The formal requirements for the education of community managers are divided into two categories: original certification and continuing education. For all classes, the office reviews proposals, recommends any changes, and then forwards a summary to a commission for approval or denial. After approval, courses are reviewed occasionally for relevance, timeliness and adherence to regulations.

There are currently more than 70 Continuing Education classes and one 60-hour precertification course. Applications for more of both are under review. About 35 percent of courses were retired in 2008 and replaced with ones containing more updated content, including information regarding foreclosures, contracting, ethics and government relations.

The Ombudsman actively promotes all educational courses to both credentialed professionals and HOA participants in general through various outside media, as well as a newsletter and Web site.

More directly, the Ombudsman routinely offers seminars taught by staff to assist managers and others in doing business with the state, such as completing forms. In addition, the Ombudsman and staff are conducting educational outreach seminars throughout the State.

Those who participate in HOAs as directors, owners or tenants have less formal, but no less critical educational needs. More than 10,000 Nevadans serve on the boards of their HOAs. Associations spend relatively large sums of members' money, enter into contracts and legal actions, and generally function as corporations. While professional advice is often a must, it is the board of directors and voters who make the decisions.

Proficiency varies considerably amongst these groups. Some are brand new to HOA living while others work in the industry. HOAs themselves are also quite diverse, comprising high-end condominiums, suburban single-family-home neighborhoods, rural associations designed to provide basic services, age-qualified communities, and country clubs, amongst others. The Ombudsman's Office must create products to serve the entire spectrum.

Some HOA participants prefer live presentations. More than a dozen seminars targeting HOAs directly were held at locations throughout the state during 2008. These events focused on the basics of association living, the role of the Ombudsman, and other government services. A separate set of seminars, contracted to industry professionals, covers technical subjects beyond the scope of Division personnel, such as how to read financial statements, understand a reserve study, or manage risk.

The Office of the Ombudsman has prepared publications, instructional videos and online content to reach Nevada's HOAs at their convenience. Two new videos created in 2008 are geared toward HOA beginners, introducing basic concepts of living in an HOA or serving as a director of one. The videos were produced using Division staff and resources with technical services provided by a contracted company.

More advanced content may be found in a series of brochures explaining association business and Ombudsman services. The Division created and distributed nearly a dozen different brochures in recent months with new ones under development. Legal proceedings and other news affecting HOAs are conveyed in online postings as well as a direct-mail newsletter.

Finally, the Ombudsman recently opened communications with various media with the goal of improving the public's understanding of HOAs and the office itself, as well as the media's explanation of the same. About half a dozen media members have come to the office for a one-on-one presentation, including reporters for television and print.

SIGNIFICANT ISSUES:

1. Presently, there are conflicting legal opinions that have been issued by the Division's counsel, the Attorney General's Office and the Legislative Counsel Bureau (LCB) as to what constitutes a common-interest community. In light of this conflict, the Division and its counsel met with representatives of LCB. It was concluded that LCB would prepare legislation that would correct the current legal definition of the term. It was proposed that the legislature adopt the definition used in the Uniform Common-interest Ownership Act (UCIOA): A common-interest community means real estate described in a declaration with respect to which a person, by virtue of his (the person's) ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in that declaration. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest of less than [20] years in a unit, including renewal options. The Chairman of CCICCH, through a Common-Interest Community Subcommittee of the Nevada State Bar's Real Estate Section, has proposed a bill, sponsored by Senator Terry Care, to redefine a "common-interest community" utilizing the definition found in the most recent draft of UCIOA.

2. Recently, there have been numerous stories in the media involving election fraud in homeowners associations. According to media reports, the Federal Bureau of Investigation is looking into possible collusion between HOAs and businesses benefitting from construction defect lawsuits, in particular if individuals were placed on homeowners association boards who would direct business stemming from construction defect lawsuits to select companies in exchange for kickbacks. One of the named HOAs is Vistana Condominium Owners Association (Vistana). What appears to be emerging is a complex criminal conspiracy. To date, no criminal charges have been filed, and it hasn't been reported that anyone has been identified as a target. It appears that this case is still in the investigative stage.

The Division has acted appropriately within its scope of authority with respect to problematic election situations. The Division has intervened in cases with contentious elections, including at Vistana. It has also required that HOAs that have contentious elections where potential fraud is asserted use a neutral third party to conduct the elections.

Nevada Revised Statutes 116 does not preclude non-owners or individuals with a fractional share of unit ownership from serving on an HOA board. If the election procedures conform to NRS 116, there is no violation the Division can pursue under NRS 116.

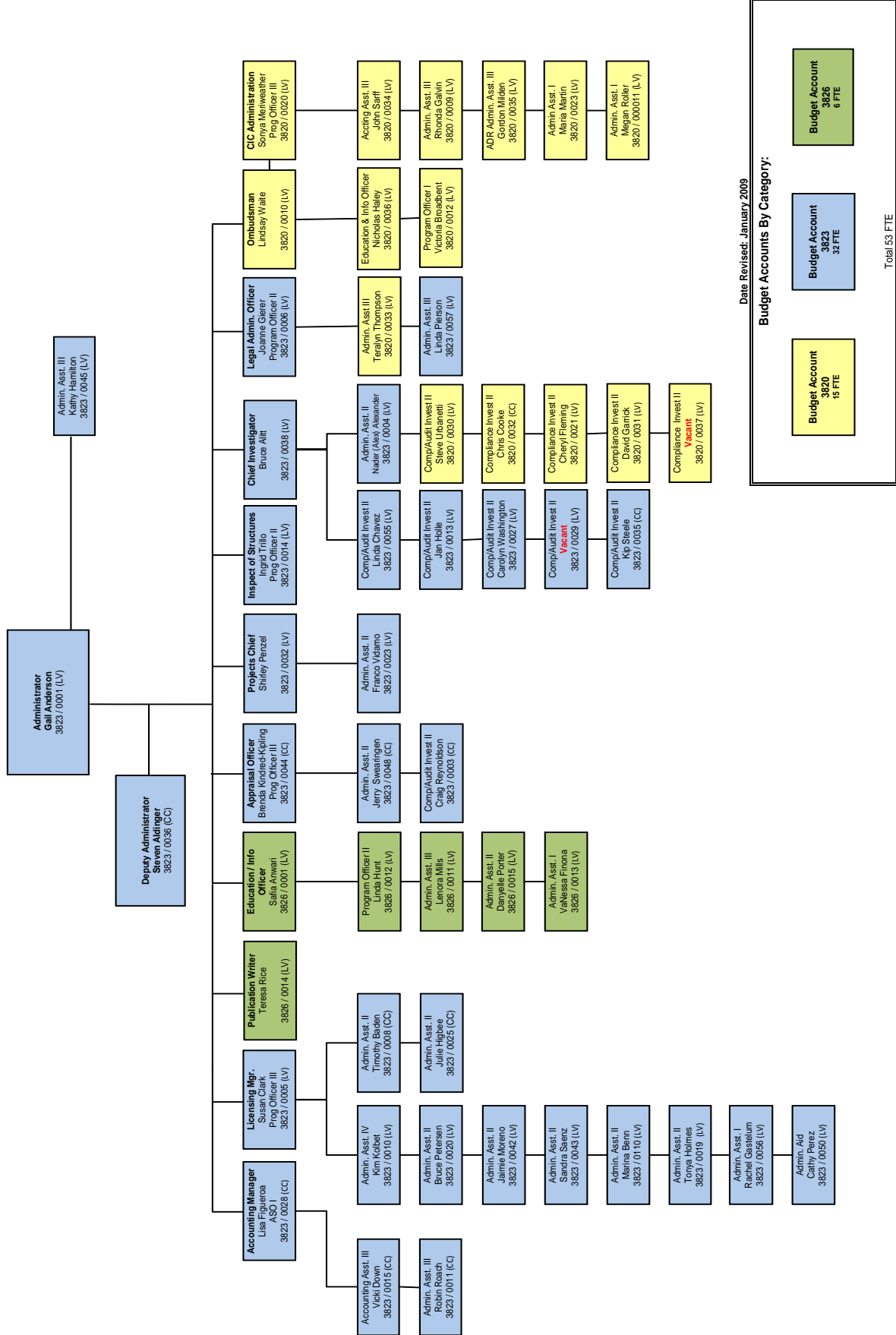
Criminal allegations and conduct are not areas in which the Ombudsman's Office has jurisdiction. NRS 116 provides administrative remedies, which do not address such activities. However, this is an example of why in 2007 the Division wanted NRS 116 amended to add that otherwise confidential information can be shared with law enforcement (AB 562 - NRS 116A.270). There was a recognized need for such a statute, and the process is working as it should be.

Table 7 – Miscellaneous Data *

<u>Unit count reported*</u>	<u>Number of associations</u>
0 – 200	2356
201 – 500	441
501 – 1000	92
1001 – 2000	38
2001 – 4000	8
4001 – 6000	2
6001 – 8000	3
<u>Budgeted revenue amounts</u>	<u>Number of associations</u>
75,000 and less	1266
75,001 – 250,000	883
250,001 – 1,000,000	441
1,000,001 – 10,000,000	85
10,000,001 – 60,000,000	4
Not reported	280
<u>City</u>	<u>Number of Associations</u>
Boulder City	18
Carson City	36
Cold Spring	1
Coyote Springs	2
Crystal Bay	2
Dayton	3
Elko	9
Fallon	4
Gardnerville	12
Genoa	1
Glenbrook	2
Henderson	317
Incline Village	111
Lake Tahoe	1
Las Vegas	1827
Laughlin	12
Logandale	2
Mesquite	69
Minden	31
Mt. Charleston	1
N. Las Vegas	89
Pahrump	16
Reno	333
Sandy Valley	1
Sparks	18
Spring Creek	3
Stateline	17
Sun Valley	1
Virginia City	2
Washoe Valley	2
Wells	1
West Wendover	2
Winnemucca	1
Zephyr Cove	12

*Units in each sub association through 2-1-09 (registered associations)

REAL ESTATE DIVISION ORGANIZATIONAL CHART



Date Revised: January 2009

Budget Accounts By Category:

Budget Account 3820 16 FTE	Budget Account 3823 32 FTE	Budget Account 3826 6 FTE
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Total 53 FTE