

The 'HOA Ombudsman'

A summary of the role of the Nevada Ombudsman for Owners in Common-Interest Communities and Condominium Hotels

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 for Owners in Common-Interest Communities and Condominium Hotels was created by the 1997 Legislature to assist homeowners living within common-interest communities in resolving their HOA-related disputes and understanding their rights and responsibilities.

Successive Legislatures have modified the scope of the Office of the Ombudsman to include:

registration of HOAs,
credentialing and formal education of community managers,
education of HOA directors and other common-interest community residents,
investigations into potential violations of NRS 116 and related statutes and regulations, and
beginning in 2008, regulatory responsibility for condominium hotels under NRS 116B.

Beyond these primary services, the Ombudsman 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 intervention affidavits, answers 800-1,000 phone queries, holds approximately 7-10 informal conferences between aggrieved parties and the HOA investigators provide information to 25-31 walk-in clients.

Homeowners associations are complex, self-governing entities affecting the homes of approximately half the residents of Nevada. They are governed by volunteer directors, who must obtain the advice of experts in making decisions on behalf of their communities. Associations may engage in contracts and legal actions that have consequences for their entire membership. Some retain employees and all are subject to various local, state and federal laws, not to mention their own governing documents.

Given the prevalence of homeowners associations in the state of Nevada and the growing complexity of the laws and regulations that govern them, demands on the Office of the Ombudsman as an information source and forum for disputes have increased steadily over the years.

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

Registration. Each association in Nevada must report certain key data regarding their officers, budgets, reserves, management, unit count, number of foreclosures due to unpaid assessments and other data to the Ombudsman's Office. There are nearly 3,000 homeowners associations comprising roughly half a million units in Nevada as defined by NRS 116, almost all of them existing as corporations. Information is reported annually and kept on file. Select data is also manually entered into a database.

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 is mandated to ensure payment and registration records for all associations are accurate and up to date.

In addition to processing all of this data, which is delivered on paper forms, the Ombudsman assists association representatives in understanding their reporting requirements, and finding necessary information. On average, office personnel meet with approximately 15 to 20 clients per month. Calls to the office, not counting those fielded by the Compliance section, average nearly 160 per month.

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. It is also a potential starting point for any audits that need to be conducted.

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, or to allege violations of NRS 116. It represents the simplest, most neighborly approach to problem solving. For HOA residents without the resources to use other processes, the Ombudsman may be the only means to have their complaints addressed.

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 in a neutral setting, usually at Real Estate Division offices. Such meetings are voluntary. The Ombudsman makes no decision and remains an impartial facilitator throughout the process.

In approximately 100 cases each year, the parties will meet with more than half ending in an agreed-upon resolution. Still more will resolve the dispute amongst 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 expense upon the participants. Often it also reduces tension in an association, bringing harmony back to a community. This is especially true in cases where personal differences have superseded the original problems themselves.

In cases where a potential violation of NRS 116 may have occurred, and are not resolved, the Intervention Affidavits are forwarded to the Compliance section of the Real Estate Division.

Alternative Dispute Resolution (ADR) – was the first service available to resolve conflicts pertaining to the governing documents of one or more HOAs. The system, governed by NRS 38, is legally required for most governing documents-related disputes (as opposed to violations of law) before such matters may be presented to a court. It is also a faster process than court.

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.

More than 100 ADR claims are filed each year with the assistance of the Ombudsman's Office over governing documents disputes. Many are resolved or dismissed before an arbitrator's decision. Very rarely do cases proceed to court.

The Ombudsman 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 in the newsletter. Beginning in 2010, all ADR decisions that come through the Ombudsman's Office are posted online at the Division's Web site. This allows homeowners and HOA management to see how cases are decided.

Education. Long-term, education is the most influential function of the Ombudsman's Office. Educating HOA directors, unit owners and other residents is a highly cost-effective way of ensuring viable associations with fair policies and fewer conflicts.

The office has two main customers for education - HOA residents and community managers.

Community manager education

The Ombudsman 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**. All accredited classes for community managers are taught by qualified professionals such as lawyers, CPAs, insurance experts, contractors and other who have specialized knowledge in certain affairs of HOA business. 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 about 60 continuing education classes and one 60-hour precertification course. Turnover of classes is frequent with newer ones replacing outdated ones. About 35 percent of courses were retired in 2008; another 15 percent in 2009, and 15 percent in 2010. Roughly 20 percent of current are expected to expire without renewal in 2011, and be replaced with ones containing more updated content, such as foreclosures, contracting, dispute resolution, ethics and government relations.

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

Education for residents of HOAs

Those who participate in HOAs as directors, owners or tenants have less formal, but no less critical educational needs. 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.

The education of the public, specifically residents who live in HOAs, is one of the core functions of the Ombudsman and one that nearly all staff members have a role in fulfilling. In addition to phone calls and walk-ins, the office maintains several structured programs designed to help the public understand its rights and responsibilities regarding associations. These include:

1. Classroom presentations by hired experts for select technical subjects;

2. Classroom presentations by staff;
3. The Nevada Common-Interest Communities Manual, a 17-chapter, 240-page primer intended for many skill levels and audiences;
4. A newsletter distributed to directors, officers and community managers, among others;
5. Brochures and other literature designed to explain common subjects succinctly; and
6. A regularly maintained Web site that includes information on all of the above, plus links to other educational materials, such as a Reserve Study Guidelines report, and calendars listing other classroom opportunities.

The **Nevada Common-Interest Communities Manual** is the most recent product from the Ombudsman. Written over the summer of 2010, the 240-page manual will be made available to the public via the Internet and in print form. It is intended to serve as a “how to” guide for directors, officers and residents of HOAs. As volunteers for their communities, HOA participants are expected to know how to run meetings and elections, maintain records, hire and consult experts, plan budgets, and run the affairs of a corporation. The manual informs readers of the requirements of NRS 116 as well as practicalities to conducting all of these types of business and more. For newcomers, there are summaries and glossaries explaining unfamiliar terms. For more expert readers, there are citations of law and step-by-step guides for certain functions. Appendices will include advisory opinions from agencies and commissions. The entire product will be updated routinely, making the onerous task of compliance by HOAs easier to follow. Interest in the manual is considerable, even before its approval with about 250 requests to date for copies.

Nevada’s 24-hour nature and far-flung communities require reaching HOAs at their convenience through publications, instructional videos and online content. Interim updates are provided via a printed newsletter, which will be published three times in FY 2011. The newsletter summarizes discipline and ADR decisions, explains changes to office procedures, and provides other updates as needed. In addition to the newsletter, the Ombudsman posts time-sensitive information online, including key dates, advisory opinions, etc. Also online are two tutorials created in 2008 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 updates nearly a dozen brochures, the content of which is a shortened, simplified version of the manual described above. All brochures are available on line.

Finally, the Ombudsman answers media inquiries from inside and outside the state. The office has open 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.

Compliance. The Real Estate Division’s Compliance section investigates potential violations of Nevada’s Real Estate law.

With respect to the Office of the Ombudsman, this includes NRS 116, NRS 116A and NRS 116B. These sections of law affect meetings, elections, recordkeeping, fiscal affairs, liens, fines and management practices, among other matters. Investigations of potential violations may lead to hearings before the Commission for Common-Interest Communities, or letters of instruction to remediate minor violations.

There are two main types of complaints: those against a board or 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.

Complaints against a community manager are handled directly by Compliance, 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. If those conditions are met, an investigation is opened.

The Intervention Affidavit is used for complaints against association boards or other non-credentialed personnel. This process starts in the Ombudsman's Office with the informal conference program described as the Intervention Affidavit. However, the Ombudsman typically does not review cases for Division jurisdiction or potential violation of law.

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 would constitute a substantiated violation. Not all issues heard by the Ombudsman constitute an alleged violation of law. An example would be a dispute over governing documents. If a complaint 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 allegations are addressed. This is necessary as most complaints contain numerous allegations, not all of which meet the requirements of an investigation. Respondents are always notified about complaints against them.

Investigations include gathering statements, documents and other evidence. A case analysis is conducted, recommendations are made, then the case is reviewed by the Chief Investigator, the Division Administrator and Attorney General's Office. If they concur that a hearing is appropriate, an administrative hearing is noticed for hearing before the Commission.

Results of investigations are communicated to the parties involved, however NRS 116.757 renders investigative files confidential.

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.

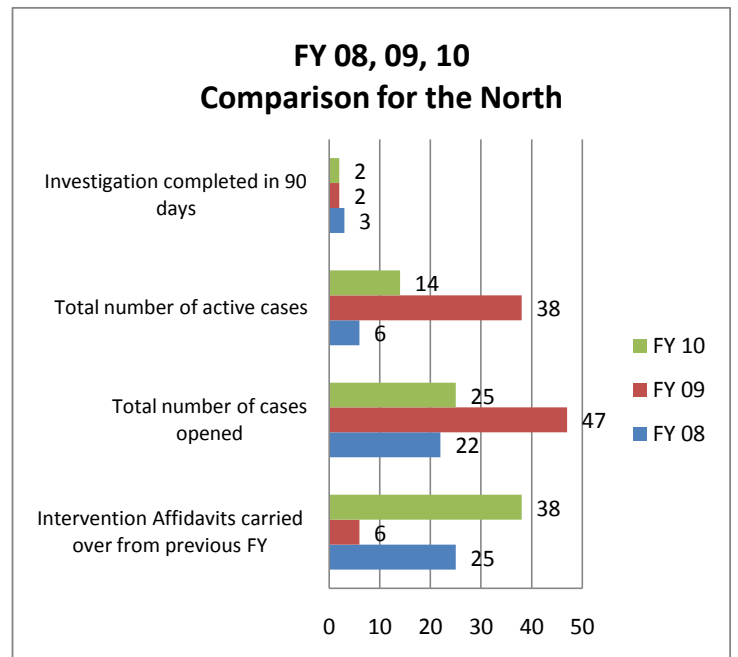
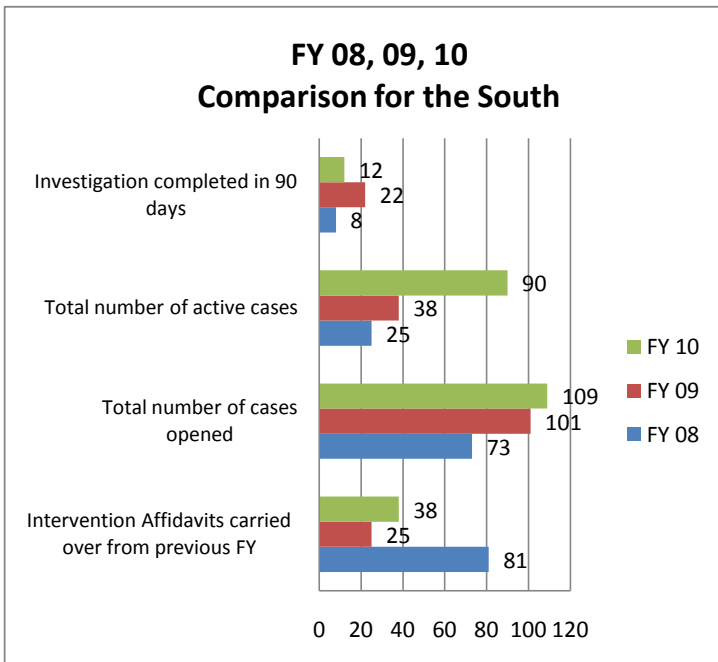
OMBUDSMAN CONFERENCE

	FY 08	FY 09	FY 10
Conferences offered	215	298	231
Conferences Held	84	92	74
% of Conferences resolved	40%	69%	58%

INTERVENTION AFFIDAVITS

	FY 08	FY 09	FY 10
Intervention Affidavits received	288	280	300
Incomplete Intervention Affidavits received	21	32	13
Correspondence without Intervention Affidavits	60	81	43

	FY 08		FY 09		FY 10	
	South	North	South	North	South	North
Intervention Affidavits carried over from previous FY	81	25	25	6	38	38
Total number of cases opened	73	22	101	47	109	25
Total number of active cases	25	6	38	38	90	14
Investigation completed in 90 days	8	3	22	2	12	2



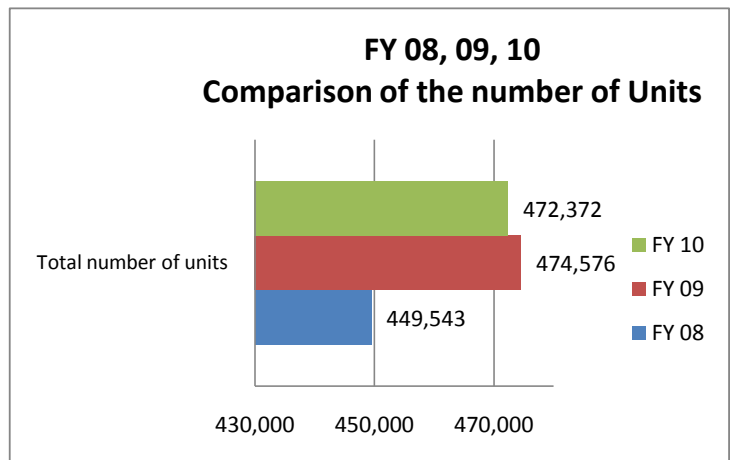
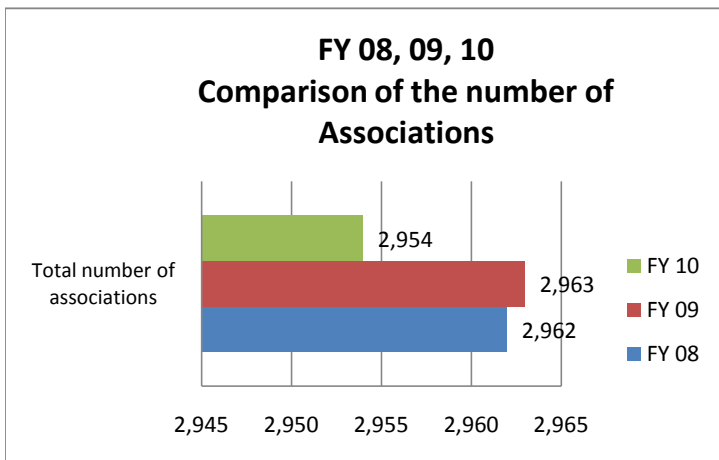
Outcome of completed cases

- Unsubstantiated allegations
- Letter of Instruction (LOI)
- Referred to Commission
- Referred to Administrative Law Judge
- Parties resolved prior to completion of investigation
- Claimant request closure of case
- Statute of limitations expired
- Duplicate case filed on resolved issue
- Concurrent ADR claim - decision rendered
- Consolidated with other claim
- Division terminated investigation
- Non-jurisdictional after assignment
- XMPT - Not Under NRS 116

	FY 08		FY 09		FY 10	
	South	North	South	North	South	North
Unsubstantiated allegations	51	9	29	2	29	4
Letter of Instruction (LOI)	18	13	31	6	16	3
Referred to Commission	8	14	5	3	6	13
Referred to Administrative Law Judge	10	0	0	0	0	0
Parties resolved prior to completion of investigation	0	0	7	0	2	0
Claimant request closure of case	18	2	7	2	3	0
Statute of limitations expired	3	1	0	0	1	0
Duplicate case filed on resolved issue	9	0	2	0	0	0
Concurrent ADR claim - decision rendered	2	0	1	0	1	1
Consolidated with other claim	0	0	0	0	0	0
Division terminated investigation	0	0	2	1	2	1
Non-jurisdictional after assignment	10	3	4	1	1	0
XMPT - Not Under NRS 116	0	0	0	0	0	26

HOA REGISTRATION

	FY 08	FY 09	FY 10
Total number of associations	2,962	2,963	2,954
Total number of units	449,543	474,576	472,372



Types of Communities	FY 08	FY 09	FY 10
CONDO	575	567	691
COOPERATIVE	4	9	10
CONDO/HOTEL	5	7	9
DUPLEX	0	0	30
TWNHSE	0	0	265
PLANNED COMMUNITY - CONDO	130	138	0
PLANNED COMMUNITY - CONDO/TOWNHOUSE	12	12	0
PLANNED COMMUNITY - MANUFACTURED HOUSING	19	19	21
PLANNED COMMUNITY - NOT DEFINED	25	7	5
PLANNED COMMUNITY - SINGLE FAMILY DWELLING	1778	1820	1821
PLANNED COMMUNITY -SINGLE FAMILY DWELLING /CONDO	18	16	19
PLANNED COMMUNITY - SINGLE FAMILY DWELLING /CONDO/TOWNHOUSE	14	16	15
PLANNED COMMUNITY - SINGLE FAMILY DWELLING/CONDO/TOWNHOUSE/MANUFACTURED HOUSING	1	0	0
PLANNED COMMUNITY -SINGLE FAMILY DWELLING/MANUFACTURED HOUSING	8	4	3
PLANNED COMMUNITY - SINGLE FAMILY DWELLING/TOWNHOUSE	56	37	31
PLANNED COMMUNITY - SINGLE FAMILY DWELLING/TOWNHOUSE/MANUFACTURED HOUSING	1	1	0
PLANNED COMMUNITY - TOWNHOUSE	236	250	0
PLANNED COMMUNITY - DUPLEX	5	23	0
UNKNOWN	75	37	22

ADR CLAIMS	FY 08	FY 09	FY 10
ADR claims carried over from previous FY	81	91	82
Total number of claims filed	130	120	108
Total number of claims closed	120	129	121
Total number of claims currently open	91	82	69

ADR SUBSIDY PROGRAM	FY 08	FY 09	FY 10
Subsidized claims filed	0	10	1
Subsidy requested by claimant	20	10	21
Subsidy requested by respondent	0	0	0
Subsidy paid	\$2,559.52	\$0.00	\$500.00