

# Community Insights

FALL  
2021

A NEWSLETTER FROM THE COMMON-  
INTEREST COMMUNITIES AND  
CONDOMINIUM HOTELS PROGRAM

DEPARTMENT OF BUSINESS & INDUSTRY  
REAL ESTATE DIVISION





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# Handing Over the Reins

Jason O. Wyatt, Ombudsman for Common-Interest Communities and Condominium Hotels

**F**or those who have not yet heard, Charvez Foger, the Division's Ombudsman for the past 4 years, was named Deputy Administrator of the Nevada Real Estate Division (NRED) on July 1, 2021. In this new position, he will work to further the Division's mission of safeguarding and promoting interest in real estate transactions by developing an informed public and a professional real estate industry. Charvez will now be responsible for overseeing the development and enhancement of education, compliance, technology, staff, and outreach/resource deployment for all branches of the Real Estate Division, not just the Ombudsman's Office. We are so pleased that he will remain under the NRED umbrella, and we wish him well in his new endeavors.

As for who will step into those shoes, we are happy to welcome newly appointed Ombudsman, Jason O. Wyatt! Effective September 1, 2021, Jason took over the important job of leading the office created to assist homeowners and board members in common-interest communities to better

understand their rights and obligations under the law.

Jason joins the Division with a wide range of experience within federal, local and state agencies. He began his career with the U.S. Department of Energy under government contractor Donald Clark and Associates, and has since worked for various local entities, including Clark County Child and Family Services and the Economic Opportunity Board of Clark County. Within the world of real estate, Jason worked closely with Nevada's congressional delegation on issues pertaining to housing needs in Southern Nevada.

For the past two decades, Jason has worked in the insurance industry, serving in various roles, including management and leadership positions at companies such as Travelers Insurance, AAA Insurance and Sierra Health Services. We are excited for him to apply his experience and expertise to this new position, and are continuing to slowly ease him into the interesting and unique industry of common-interest community management and association living.



# Who Pays the Bill?

Whenever damage occurs involving a common element within a common-interest community, it is important to quickly determine the source of the damage and resulting impact. It is the responsible party that is liable for the prompt repair thereof, regardless of whether either party maintains insurance for the common expense.

After damage is properly evaluated by an expert, and source of the issue determined, three important questions should be asked to help determine who pays the bill:

1. How do the association's governing documents identify the element?
2. Based on the governing documents, whose responsibility is the element, or who does the element ultimately serve?
3. Can any individual be proven to be at fault?

To answer the first question, you must look to the association's declaration of CC&Rs. Within these governing documents:

- Common elements are often identified as those elements that serve *all the units* of a community (ex. pool, clubhouse, gym); and
- Limited common elements are identified as a portion of the common elements allocated for the exclusive use of one or more

but *fewer than all the units* (ex. balconies, patios, HVAC pads).

There are also some elements which blur the lines, such as those that lie partially within and partially outside the designated boundaries of a unit (ex. pipes, bearing walls, etc.). In that case, most declarations will recognize that:

- Any portion serving *only that unit* is a limited common element; and
- Any portion serving *more than one unit*, or any portion of the common elements, is a part of the common elements.

These definitions are important for answering the second question because responsibility for payment is ultimately determined by who the element serves. In the simplest circumstances and terms, and always pursuant to the association's governing documents, it can be stated that:

- **Damage occurring to, or stemming from a common element, which tends to serve the whole, is the responsibility of the association,** as "the association has the duty to provide for the maintenance, repair and replacement of the common elements" (NRS 116.3107); and
- **Damage occurring to, or stemming from a limited common element, which serves just one or a few, is the responsibility of the unit or**

**units involved**, as "any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides" (NRS 116.3115(4)).

There is one major exception to these statements when it comes to financial responsibility, however, and that depends on the answer to question three. If damage is caused by the **willful misconduct or gross negligence** of any unit's owner, tenant or invitee, the association may assess that expense exclusively against the unit, even if the association maintains insurance for the common expense. An association cannot assess the unit, however, if the damage or other common expense is caused by a vehicle driven by an invitee who is delivering goods to, or performing services for, the unit (NRS 116.3115(6)).

While no two cases are alike, hopefully by determining the type of common element damaged, as well as the source of the damage, the mystery of who is ultimately responsible for footing a repair bill can be easily answered.

## TEST YOUR KNOWLEDGE

# True or False - Changes to NRS 116

CIRCLE ONE

1	An association may direct the removal of a vehicle parked on property owned or leased by the association solely because the registration of the vehicle is expired.	T / F
2	The reasonable fee that may be charged pursuant to NRS 116.3102(1)(o) for “opening or closing a file for each unit” can be charged for any reason.	T / F
3	Effective January 1, 2022, each CIC containing 150 or more units must establish and maintain a secure internet website or electronic portal for unit owners to access pertinent information.	T / F
4	Also effective January 1, 2022, this internet website or electronic portal must provide units’ owners with the ability to pay assessments electronically.	T / F
5	A person noticed by the association of an alleged violation does not need to request an open hearing to be afforded due process rights.	T / F
6	Post-hearing, a person noticed by the association of an alleged violation must make a written request for a copy of the hearing decision in order to receive it.	T / F
7	A violation does not become “continuing” until the date on which the notice of the hearing decision of the executive board is provided.	T / F
8	Over time, a fine resulting from any type of violation can exceed \$1,000.	T / F
9	Under no circumstance may a unit owner be fined for the actions of their tenants’ guest.	T / F
10	If a unit owner has designated an email address to be used for correspondence from the association, they must receive all communications and documents electronically, despite the requirements within specific provisions of law.	T / F

1. False  
2. False

3. True  
4. False

5. True  
6. False

7. True  
8. True

9. False  
10. False



# **What it Means to be a Supervisory Community Manager**

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Every now and then, it is important for all those currently employed to take a step back and think about their professional roles and overall purpose. Now that we are reaching the end of another year, we are asking that supervising community managers reflect on the supervisory aspects of their career and performance thus far.

To obtain a “supervisory” designation, a community manager must first apply with the Division using [Form 617](#). Managers are not eligible for this designation unless they are in good standing and have been actively engaged in the full-time management of a common-interest community (CIC) for at least the immediately preceding 4 years; 2 of which must have been obtained in Nevada. Based on their performance as a community manager, the applicant must be deemed competent to engage in both the management of a CIC and supervision in a manner which safeguards the interests of the public. As a supervisor, the community manager has the very important job of ensuring that the next group of active community managers are proficient and prepared to manage any of the over 3,500 communities located throughout Nevada.

## WHAT IT MEANS TO BE A SUPERVISORY COMMUNITY MANAGER CONTINUED



Pursuant to NAC 116A.165(2), in their role as a supervisor, community managers are responsible for:

- Determining a manager's competency to perform the delegated tasks of managing a CIC;
- Teaching managers the fundamentals of managing a CIC and the ethics of the profession;
- Supervising the activities and operation of managing a CIC;
- Establishing policies, rules, procedures and systems that will allow for the review, oversight and management of any business conducted by those supervised;
- Establishing reasonable procedures and safeguards for the filing, storage, handling and maintenance of association documents and handling of any money received on behalf of a client; and
- Appointing for each branch office a supervising community manager to supervise and oversee activities and operations, while taking into account the number of community managers and other employees supervised.

A provisional community manager

must be supervised by a supervising community manager for a minimum of 2 years (NAC 116A.155(1)(a)). Under the supervising manager, a provisional manager must obtain 3,120 hours of **ACTIVE** experience in:

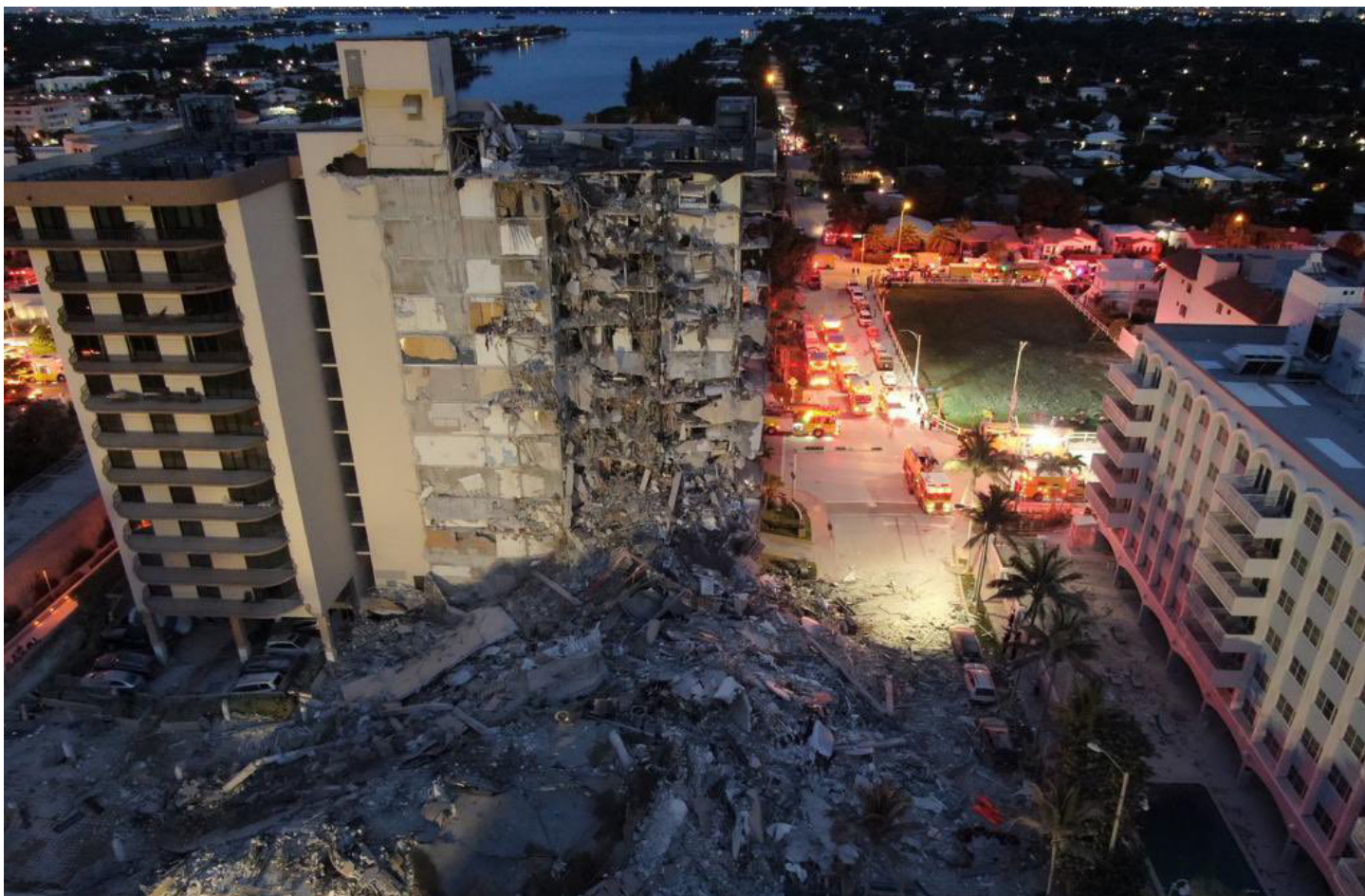
- Association governance;
- Financial management;
- Property and facilities management;
- Insurance coverage;
- Specific CIC management duties as provided by law; and
- Building a sense of community within an association (NAC 116A.155(1)(b)).

When employing a provisional community manager, the supervisor is acknowledging that their intent is to exercise careful, active supervision over the provisional's management activities during the course of their employment. Upon completion of the required hours, a supervisor must provide a signed statement, verifying the extent of active experience gained in each area and that the provisional met all necessary requirements. This signed document is then provided by the provisional manager to the Division as evidence that the supervisor approves the provisional to become an independent community

manager.

It is in the best interest of the supervisor to perform their duties thoroughly. If one of the managers they supervise finds themselves before the Commission, they will be asked to attend the disciplinary hearing as well, and may be asked to defend their hands-on training and oversight (NAC 116A.580). If it is determined that the supervisor failed to perform their duties properly, the Commission and Administrator may find they committed professional incompetence (NAC 116A.355(4)(k)).

Ultimately, as a supervisor you are responsible for the success of those you supervise. In your role, you should be easily accessible, provide hands-on assistance when necessary and perform real-time observation and guidance regarding management tasks. You should be leading by example, clearly displaying your knowledge and understanding of the law, industry standards, as well as how to hold association meetings, elections, hearings, etc. It is crucial that you take your responsibilities seriously, as the future of the community management industry relies on you.



# Surfside Collapse

**N**ow that we are a few months removed from the tragedy that was the Champlain Towers South Condominium collapse in Surfside, Florida, it would benefit common-interest communities nation-wide to take a moment to learn from this terrible disaster. Unfortunately, many of the issues plaguing this residential complex prior to its collapse were not uncommon. It was quickly reported by multiple news sources that the condominium's executive board of directors had been discussing the repairs needed to get the building up to par with state-required recertifications for years. Various conflicting opinions, however, led to inaction.

In the Spring of 2021, just a few months before the collapse,

Champlain's board president sent a warning letter to all unit owners regarding the lack of appropriate upkeep of the building. Due to the length of time certain maintenance projects had been delayed, issues became increasingly serious and increasingly expensive to remedy. In the end, it was estimated that units would need to be specially assessed over \$80,000 to get the community back in order. Unit owners of course did not agree to such a special assessment, and would not approve the increase pursuant to their governing documents.

*Unfortunately* for this association, Florida law defers to the association's governing documents when determining the mechanism for imposing special assessments. *Fortunately* for Nevada associations,

NRS 116.3115(2)(b) states that "notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments." Since unit owners are not often eager to increase their assessments by any significant amount, it makes sense that the Nevada legislature guaranteed that unit owner approval was not ultimately required to increase reserve assessments when the amounts are justified by the reserve study.

It is important to highlight the fact that this increase in assessments must be *justified*. The subsection of law above ends with the statement that "any such assessments imposed



by the executive board *must* be based on the study of the reserves.” The reserve study is a tool used by the board to determine reserve assessment amounts. Estimates in the study regarding what it will cost to repair, replace, and restore major components of the common elements over time allow the board to create a funding plan designed to collect appropriate funds to be made available as certain

the reserve study fully, without shortcuts or deferments. If the association is causing routine maintenance to be performed on individual areas as needed, there should be no unexpected maintenance costs as the community ages, aside of course from unforeseen catastrophic events, reducing the likelihood that extremely high special assessments will suddenly be required to refund the reserves in the future.

In those situations where a special reserve assessment is unavoidable due to underfunding, the executive board should at least remain transparent and communicative with unit owners. The executive board should comply with NRS 116.31083(7) and review, at least quarterly at a board meeting, the current year-to-date schedule of revenues and expenses for both the operating and reserve account, compared to the budget for those accounts. Furthermore, pursuant to NAC 116.415(2), an executive board must include in any upcoming budget, statements explaining why the projected balance of the reserve account at the end of the fiscal year is less than the amount required to adequately fund the reserves and how this difference is proposed to be resolved.

For all common-interest communities, ensuring that routine maintenance and upkeep is taking place per the reserve study is essential to safeguarding the community over time. If an association reaches the point where they simply do not have the funds to carry out these obligations, response should be swift. Unit owners should be made aware of the fact that a special assessment is necessary, and a plan should be put in place to hopefully spread the payments out over time if possible.

maintenance projects become due. Reserves may only be used for the purpose of repairing, replacing, and restoring common elements such as roofs, roads, and sidewalks, and must not be used for daily maintenance. If the reserve account is adequately funded, there will be money available to maintain the common elements at the level described in the governing documents and in the reserve study, without using funds from the operating account or specially assessing unit owners (NAC 116.425(2)).

What happened in Surfside is a good example of why it is so important for boards to follow recommendations in



# AB 237 Leads to a New Resale Form

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
3300 West Sahara Avenue, Suite 350, Las Vegas, NV 89102  
(702) 486-4480 \*Toll free: (877) 829-9907 \*Fax: (702) 486-4520  
E-mail: [CICombudsman@red.nv.gov](mailto:CICombudsman@red.nv.gov) <https://www.red.nv.gov>

## RESALE PACKAGE OVERCHARGE FORM

Effective July 1, 2021, this form can be submitted if you, as a unit owner, have been overcharged for an association Resale Package. **YOU MUST ATTACH A COPY OF THE ITEMIZED RECEIPT, SHOWING ACTUAL AMOUNTS PAID, IN ORDER FOR THIS FORM TO BE PROCESSED.** It is advised that you submit this form as soon as overcharges are realized. In preparing and providing resale documents, an association may not charge ANY fees that exceed these amounts:

TYPE OF DOCUMENT/ACTION	MAXIMUM AMOUNT THAT CAN BE CHARGED (NRS 116.4109 & 116.3102)	AMOUNT ACTUALLY CHARGED
<b>Resale Certificate</b>	<b>\$185</b> (+ \$100 to expedite)	\$ <input type="text"/> Expedite fee charged (if applicable): \$ <input type="text"/>
<i>Includes a statement of any unsatisfied judgments or pending legal actions against the association, including status, any other fees associated with the resale of a unit, and all current and expected fees or charges for each unit. This fee must be based on the actual costs the association incurs in preparing the certificate.</i>		
<b>Demand Statement</b>	<b>\$165</b> (+ \$100 to expedite)	\$ <input type="text"/> Expedite fee charged (if applicable): \$ <input type="text"/>
<i>Sets forth the amount of monthly assessment needed for common expenses and any unpaid obligation of any kind currently due from the selling unit's owner.</i>		
<b>Opening/Closing a File</b>	<b>\$350</b>	\$ <input type="text"/>
<i>This fee must be based on the actual cost the association incurs to open or close any file. It may only include fees authorized by the governing documents, including transfer fees, inspection fees, processing fees, and any OTHER fees used to cover association resale costs. Prepaid assessments do not fall under this cap.</i>		
<b>Governing Documents/ Information Statement</b>	<b>\$0</b> To be provided electronically at no fee. (In the event an association is unable to provide these documents electronically, it may charge up to 25 cents per page for the first 10 pages, and 10 cents thereafter).	\$ <input type="text"/>
<i>Includes the CC&amp;Rs, bylaws, rules and regulations; a copy of the current operating budget and current year-to-date financial statement, including a summary of the reserves; and the "Before You Purchase...Did You Know?" statement.</i>		
<b>TOTAL:</b>	<b>\$700</b> (or \$900 to expedite)	\$ <input type="text"/>

NOTES: Fees may increase on an annual basis by a percentage equal to the percentage of increase in the Consumer Price Index (All Items). Both a sub-association and Master association (if applicable) have the authority to charge these fees.

Unit Owner Name: \_\_\_\_\_  
Current Mailing Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_  
Address of unit being sold: \_\_\_\_\_  
Name of the Association for the home being sold: \_\_\_\_\_  
Date Resale Package was provided: \_\_\_\_\_

Executed on: \_\_\_\_\_  
(Date) (Unit Owner Signature)

# What happened at Commission?

**NRED V. MICHAEL SOSEBEE**

**CASE NUMBER** 2019-9

**TYPE OF RESPONDENT**

Community Manager

## **ALLEGATIONS/VIOLATIONS**

Respondent is the community manager of El Sol Del Pueblo Home Owners Association located in Las Vegas, Nevada, consisting of 48 buildings, each containing a fourplex. It is alleged that the respondent violated: NRS 116.31153 by sole signing association checks and permitting his sister to also sole sign association checks; NRS 116A.630(1)(b) through NRS 116.31144 by failing to inform the board that the association was required to have an audit performed by a CPA every fiscal year, resulting in no audits being performed from 2016 through 2018; NRS 116A.620 by entering into a management agreement with the association that had an automatic renewal clause; NRS 116A.630(2)(a) by failing to comply with state laws; and NAC 116A.355(1) by committing professional incompetence, demonstrating a significant lack of ability, knowledge, and fitness to perform a duty or obligation owed to a client and failing to exercise reasonable skill and care with respect to that duty and obligation owed.

## **DISCIPLINARY ACTIONS**

### **SETTLEMENT—**

Respondent agrees to surrender the community management certificate he holds from the Division for at least 10 years, beginning on the date of the order approving this settlement. He agrees to pay the Division a total of \$5,193.82, consisting of a Division imposed fine of \$2,500.00 and the Division's incurred costs and attorneys' fees in the amount of \$2,693.82. He agrees to pay the Division \$216.41 on a monthly basis until the amount due is paid in full. Respondent agrees that if the terms and conditions of this Stipulation and Order are not met, the Division may, at its option, rescind this Stipulation and Order and proceed with prosecuting the complaint before the Commission. Respondent agrees and understands that, by currently entering into this Stipulation and Order, he is waiving his right to a hearing at which he could have presented evidence in his defense, had a right to a written decision on the merits of the complaint, and a right to reconsideration and/or rehearing, appeal and/or judicial review. Respondent understands that this Stipulation and Order and other documentation may be subject to public records laws. The Commission members who review this matter for approval may be the same members who ultimately hear, consider and decide the complaint if this Stipulation and Order is either not approved or is not timely performed by the respondent.

# Reminder for Community Managers

**NRS 116A.620(6)** states that, *“except as otherwise provided in the management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after the termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company.”*

It is important for this transition of records to be quick and efficient, and for the individual receiving the records to immediately examine what has been turned over to determine if anything is missing. In the event that some records are missing, the receiver will want to reach out to the exiting community manager as soon as possible to notify them of the discrepancy and have them remedy the matter. Anytime a record cannot be located by the exiting manager, it will be important for the receiving individual to document that fact in writing. This could serve as a protection for both themselves and the association moving forward.

# Ombudsman Information

July through September 2021

Total Associations Registered in the State of Nevada	<b>3,516</b>
Complaints Received	<b>78</b>
Alternative Dispute Resolution (ADR) Filings	<b>83</b>
Associations Reviewed for Possible Audit	<b>60</b>
Training Sessions Conducted	<b>38</b>
Classroom Attendees	<b>659</b>

## STATE OF NEVADA DEPARTMENT OF BUSINESS & INDUSTRY

Terry Reynolds  
Director

### REAL ESTATE DIVISION

Sharath Chandra  
ADMINISTRATOR

Charvez Foger  
DEPUTY ADMINISTRATOR

### COMMON-INTEREST COMMUNITIES & CONDOMINIUM HOTELS Office of the Ombudsman

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OMBUDSMAN

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EDUCATION & INFORMATION OFFICER  
EDITOR

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James Bruner, Vice-Chairman  
DEVELOPER MEMBER

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CERTIFIED PUBLIC ACCOUNTANT MEMBER

Charles Niggemeyer, Commissioner  
HOMEOWNER MEMBER

Phyllis Tomasso, Commissioner  
HOMEOWNER MEMBER

Patricia Morse Jarman, Commissioner  
HOMEOWNER MEMBER

Tonya Gale, Commissioner  
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## UPCOMING COMMISSION MEETINGS

### ● DECEMBER 7-9

Further details located on the [CICCH Commission Calendar](#).

## UPCOMING HOLIDAYS

**OCT 29** / NEVADA DAY

**NOV 11** / VETERANS DAY

**NOV 25** / THANKSGIVING DAY

**NOV 26** / FAMILY DAY

**DEC 24** / CHRISTMAS DAY (OBSERVED)

**DEC 31** / NEW YEAR'S DAY (OBSERVED)