



# The Regenesis Report



Priceless Innovative Homeowner Association Management Strategies September 2003

**“Regenesis” means new beginnings using eternal principles in innovative ways.**

**Regenesis believes that the goal of every homeowner association Board should be to promote harmony by effective planning.**

**The Regenesis Report provides resources and management tools for just that purpose. Every month, articles of common interest to HOAs nationwide are offered along with innovative strategies for addressing common problems.**

**Managing an HOA can be a lonely and frustrating task. You are not alone. Help is on the way. Read on.**

**I welcome your comments and questions.**

## CONTACT INFORMATION

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## Staking a Claim

In garden or townhouse style condominiums, a curious phenomena takes place: Certain owners feel compelled to stake claim to the common area adjacent to their units. This takes on many forms. Some commandeer adjacent grounds for personal plantings, even running irrigation systems through it. Some expand their patio or deck into it. Some build storage sheds in it or place hot tubs there. Some brazenly fence off “their” yard.

Another form of claim staking involves expanding personal living quarters into attic or crawlspaces when the architecture permits. Unit owners have been known to mole into crawlspaces to build wine cellars, extra bedrooms and storage bunkers. It’s not uncommon to find certain residents growing “exotic plants” in the attic, out of sight of drug enforcement. Have you ever seen a strange violet glow coming from attic vents after dark? Aha!

Condominium ownership is usually defined in the governing documents as “from the decorated surface of the unit in”. Admittedly, condo living is not for everyone. Folks that are used to digging in the dirt and redesigning their home are not going to be comfortable with these boundaries. They crave what Hitler called “lebensraum”, more living room. While these folks don’t use guns and tanks when they expand, they often feel they have the right to take over whatever common area space adjoins their unit. And sometimes, the Board agrees and approves them doing it.

The problem is, neither an owner or the Board has the authority to reallocate common area unless 100% of the members agree to it by amending the governing documents. Another more practical consideration is that these modifications often impact the ability of the HOA to properly maintain the grounds and buildings. For example, improperly installed decks are a common source of dryrot to the buildings. Add on rooms in the attic or crawlspace cause additional intra-unit noise and fire hazard potential.

It is very important for the Board to understand it’s role as Defender of the Common Area.

The common area belongs to **all** members and no one owner has the right to stake claim to it. Preventing claim staking requires constant vigilance by the Board. Once one unit owner is allowed to stake claim, others will quickly follow suit thinking if it’s okay for one, it’s okay for all. Soon, there will be multiple violations and the Board will have a heck of a time trying to undo it all. Be watchful and preempt these moves early.

If the horse is already out of the barn and there are already multiple violations, it’s time to determine the scope of the problem and prioritize the violations according to flagrancy. Curb appeal issues directly impact market values so violations of this kind you would want to deal with more aggressively. Violations like fencing, decks or storage sheds, or added rooms are the next priority. More minor offenses like owner planting beds, lawn ornaments, furniture and whirlygigs are lower priority.

If there are multiple violations of a common sort, it’s best to address them simultaneously to avoid the “What about so and so? They have one too” defense. The Board should have a cohesive strategy for responding to every violation. It’s important that individual board members **do not** negotiate with violators or give them the impression it’s no big deal because this will undermine Board authority. Besides, these violations **are** a big deal and appeals should be addressed only to the Board as a whole by holding an appeal meeting with all the players present. That way, when the defense is presented and the Board decision is made, everyone is informed.

Some owners may have a valid defense for their violation or have obtained written approval from a prior Board (curses!!!). In those cases, the current Board should try to negotiate a dismantling date, even if that date is when the owner sells the property. Whatever the outcome is, it should be formalized in a recordable document that is signed by filed against the unit title so future

the owner and the Board President and buyers are informed of the deal.

Claim staking is as natural as the sun rising. It is bound to happen sooner or later in some form or another. It's up to the Board to be aware and prepared to defend the common area from claim jumpers. ♣



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### Ask the HOA Expert

**Q** I serve on a Board that is currently subject to a recall movement. One of the recall proponents has requested a member list for the purpose of furthering the objective. The Board and Property Manager are in a quandary as to how to respond to this request.

**A** If the member list is typically not made public due to privacy concerns, you should not release it now. The same would be true of collection records and other highly sensitive documents. Simply explain the policy and advise that the county tax assessor and title companies keep public records of all county property owners should they choose to investigate further. If, however, the member list has been made public previously, you should do so now, unless some of the members have

requested that their information not be disclosed.

When campaigns like this get started, it's not unusual for members to demand copies of documents and explanations of various board activities. You are under no obligation to spend time researching records or justifying actions taken one on one. Except for highly sensitive information, members are entitled to review HOA records. State that they are welcome to review non-sensitive records during normal business hours. If copies are desired, they will be expected to pay the normal copy charge.

As far as being grilled by an irate member, you can inform them they have the right to call a special meeting if \_\_\_ members (check the governing documents for the number required) ask that a meeting be held. That request should be in writing clearly describing the subject matter of the meeting and signed by those members who would like it to happen.

Stay as neutral as possible and don't get caught in the trap of withholding information that should be made available or roadblocking a member's right to criticize. You're much better off facilitating an organized platform for airing grievances, than permitting trash talk behind your back.

**Q** Our Architectural Review Committee (ARC) approved a special product for sealing our concrete driveways. The product cracks and chips off so I have applied a colored concrete sealer which the ARC tells me is not approved. What are my rights?

**A** HOA authority comes from the governing documents and subsequent policy that the Board adopts in compliance with them. The ARC is accountable to the Board and has limited authority. You have the right to request that the Board review and modify the policy and standards, especially if there is a compelling reason to do so.

**Q** What can be done about residents curbing their dogs on the lawn?

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**All Portland and Vancouver Metro Area Homeowner Associations that contact us each month are entered into a drawing for a free pass to an upcoming**

### Regenesis Seminar

**This Month's Winner:**

**Tracy Camp**

WL Morgan Historic Condominium

#### Thanks to others that responded:

Arbor Vista Condominium  
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North Park Loft Condominium  
Old Forestry Commons Condominium  
Oswego Pointe Condominium  
Oswego Talisman Condominium  
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**A** This is a problem as ancient as the Human-Dog partnership. Besides sending personal written warnings about "policing" to the offending pet owners, it helps to circulate general notices several times a year about the subject so that everyone is aware of the problem. These notices help deter some that feel they are being watched by neighbors. If it doesn't, the next step is to hire someone to clean up the mess and rebill the offending pet owner (or the landlord if the pet owner is a renter). For this, eye witness verification is required.

Keep in mind that pets wander from other neighborhoods and could be at least part of the problem. It may just be something that you put up with. As Peter Sellers said, "It's not my dog".

**Q** Our HOA has public streets and the driveways, walkways and paths are private. A notice was posted on the mailbox yesterday saying the Board voted unanimously to ban skateboards from the complex. Can the board enforce this and still allow other forms of wheeled recreation? And can they ban them from the public streets going through the complex? What kind of process must they go through to enforce this law, or is it as simple as one meeting and a vote?

**A** The Board's authority to make rules is found in the HOA's governing documents. When a rule is enacted, it should be absolutely necessary to address an ongoing problem, recite the problem it proposes to solve, include a penalty for violation and an appeal procedure. The Board can ban certain kinds of wheeled recreation if there is a compelling reason to do so. Acrobatic skateboarders often damage property and create noise disturbances. They often travel in packs so the rule may be related to deterring gang activity. But, whatever the Board's motivation, it's always best to circulate the proposed rule among the members for comment. Failure to do so invariably fuels criticism and resentment. 🐾



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WHERE YOUR EXPECTATIONS BECOME OUR COMMITMENTS

### Where's The Beef?

A common scenario: A new owner moves into the HOA and receives a demand letter informing of an architectural violation on the newly purchased property. Further, if it is not removed within 30 days, there will be a per day fine until the matter is resolved. How should the new owner handle this kind of problem?

Many HOAs have some form of architectural requirements which are often enforced by an architectural

review committee (ARC). The idea is to keep some semblance of uniformity and balance within the association, owners must receive advance approval before any exterior work is done. Design review within an association has at least two purposes: to establish and preserve a harmonious design for a community and to protect the value of the property.

One might disagree with the need for external uniformity, but if the governing documents require it, it is binding on the members. You should read all of your association documents carefully to learn the scope and purpose of the architectural review committee.

There has been much litigation in the area of architectural controls. The courts have made it clear that covenants are valid and enforceable provided there are clear policy guidelines establishing the overall standards. For example, it probably will not be acceptable merely to say that owners may not make changes to the exterior without first obtaining the written approval of the board or the architectural control committee.

If no specific guidelines have been developed, neither the owner nor the ARC will have any objective standards by which to judge the validity of the proposed external change. And without such standards, even the most well-intentioned ARC can be accused of being arbitrary. The ARC cannot be a dictator by rendering unreasonable decisions. The Board must establish specific guidelines. If those rules are not already in the governing documents, they should be drafted, approved in accordance with your legal documents and the laws of your state.

There are several valid defenses by an owner when the HOA seeks enforcement of the architectural standards including:

- **Arbitrary and capricious actions.** The architectural standards must be applied fairly and consistently. It is improper to pick and choose the enforcement of the covenants or to go against some -- but not all -- of the owners.
- **Delays have occurred.** Referred to legally as "laches" or "estoppel", it

means that the Board has waited too long before taking action. One court ruled that a Board's six month delay in filing suit against an unauthorized fence barred it from enforcing the covenants. If there is a violation, the Board must start prompt action to assure compliance of the standards.

- **Waiver has been granted.** Basically, if the board fails to enforce a covenant in the case of one owner in similar situations, it may be prohibited from enforcing the same standards against another owner.
- **Failure to Act.** The governing documents often require that a decision must be made within a specified period of time (for example 60 days from receiving the request) or the request "will be deemed to have been approved."

The Board should try to work out an amicable resolution for alleged violations. In the final analysis, Boards and their ARCs must be firm but reasonable and flexible. If the owner has a valid defense, the Board should consider dropping the claim. The Board may also want to amend or abolish certain architectural controls which may not have a place in today's world. *By Benny L. Kass* 🐼



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### Slow D-O-W-N!

Here he comes again! That #!\*%! kid's gonna kill someone if he doesn't slow down! Traffic speed is something many HOAs grapple with. Since HOA streets tend to be narrower and traffic more compact, normal street speed is often way too fast.

Some HOAs have resorted to traffic committees or rent-a-cops who lay speeding tickets on offenders. But this clearly only works on residents. Guests and those just passing through merrily shred the tickets.

Other HOAs install axle jolting speed bumps that infuriate everyone, guilty and innocence alike, and create a real safety hazard for bicycles and motorcycle riders.

Posting SLOW DOWN signs has some positive effect. Still others post Burma Shave style signs (On Our Streets...Please Drive Slow...And Let Our...Little Shavers Grow). But, the speeders continue to speed.

Some municipalities have hit upon an effective way of slowing traffic down without the bone jarring effects of traditional speed bumps and the labor intensity of traffic patrols. Cities like

Portland Oregon have enacted "traffic calming zones" which use several passive, yet effective techniques. One is the Traffic Circle (aka "roundabout" in England). Essentially, a circular concrete island is constructed in the intersection which forces traffic to slow to get around it. The island can include an attractive planting area although strategically placed boulders help ensure that the SUVs don't roll over it.

Another calming device is a special speed bump that looks like it's on steroids. Instead of a one foot blip, the speed hump spans the width of the street and extends from 14 to 22 feet deep. The 14 foot variety moderates traffic to 25 MPH while the 22 footer moderates speed to 30 MPH. These monstrous bumps are usually placed in a series several hundred feet apart to ensure that traffic remains moderated through the neighborhood. The cost of each modified bump is \$1000-1500.

One important consideration to calming traffic is emergency vehicle access. Fire response and ambulances need to get where they're going quickly and seconds of delay can literally make the difference between life and death. Whatever traffic calming solution your HOA may be considering should be cleared by emergency response authorities.

Another *extremely* important consideration is the impact of traffic calming devices on your residents. Many devices have the effect of locking residents in. In effect, by trying to slow down a few speeders, a gauntlet must be run by every resident that wants to come and go. Before any of these speed control techniques are implemented, be sure to discuss them with the residents and make sure you have majority approval. Otherwise, you are likely to create a firestorm.

Vroom...vroom....screeeeech! Speed and vehicles seem to go together. If your HOA is experiencing ongoing speeding and traffic safety problems, maybe it's time to consider some of these alternatives. *For more on the technology and philosophy behind modified speed bumps see: [www.trans.ci.portland.or.us/trafficcalming](http://www.trans.ci.portland.or.us/trafficcalming)* 🐼





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OREGON CHAPTER**

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- § Are the HOA's reserves on target with projections?
- § Are reserve expenditures being paid out of reserves?
- § Has the HOA borrowed from reserves to meet monthly expenses? If so, is there a plan to repay the amount?
- § Are the amounts members owe the HOA increasing or decreasing? If increasing, does the Board need to increase its collection actions? Does it need to "write off" bad debts or set up allowances for them?
- § Are there miscellaneous income items? If so, do you know what they represent?
- § Are collections keeping up with the budget?
- § Are you over or under budget? If the HOA is severely over budget, you may need to curtail spending.

There, that wasn't so bad was it? Didn't hurt a bit. Now review the article one more time. There'll be a test in the morning. The Doctor. 🐶

depreciation may appear on either a cash method or accrual method financial statement. Capital assets can also be items that the HOA holds title to and generate considerable cash flow like a golf course or parking garage. However, most common area property is not included on an HOA's balance sheet.

**Liabilities.** These are amounts owed by the HOA, whether for products, services, or taxes. Cash method financial statements generally do not contain liabilities. Liabilities may appear on a modified cash method statement, but they are only updated at the end of the year, since the expenses are not accrued monthly or quarterly.

**Equity.** This is also known as Retained Earnings and generally states the current balance in the reserve and operating funds. However, some accountants prefer to list reserves as a liability item. The sum of the Assets must equal the sum of the Liabilities and Equity. Thus, the term "balance" sheet.

Reserves is money budgeted for future repairs and replacements of the common areas. It is often the amount of cash the HOA has set aside but may also be the amount the HOA projects it will have in its replacement fund by a particular date. The presentation of amounts allocated to reserves varies greatly. The HOA should discuss this with a CPA knowledgeable in HOA operations and the financial statements should be adjusted at year end to show the amounts budgeted for reserves, spent from reserves, and any transfers between operating and reserve funds.

**Interpreting Financial Statements,** The Board is responsible for the HOA's financial stability. It is a fiduciary duty to understand them. Some questions the Board should ask:

- § Is there enough cash to cover operating expenses?
- § Is operating cash increasing or decreasing since the previous report?
- § If it is increasing, should the excess be transferred to reserves?
- § Are reserves being properly invested at the highest rate with the lowest risk?

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Two women met at their 50<sup>th</sup> high school reunion. One asked the other, "You were always so organized in school. Did you manage to live a well planned life?" "Yes," said her friend. "My first marriage was to a millionaire; my second marriage was to an actor; my third marriage was to a preacher; and now I'm married to an undertaker." Her friend asked, "What do your marriages have to do with a well planned life?" "One for the money, two for the show, three to get ready, and four to go." 🐶

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