



The Regenesis Report



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Regenesis means making 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, communication and compassion.

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

Managing an HOA can be a lonely and frustrating task. Take heart. Help is on the way.



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Bit of a Bother

“Nuisance” has been defined as “something that causes harm” and “a bit of a bother”. Nuisances are a pretty common occurrence in homeowner associations since living in close proximity is bound to create friction from time to time. Most HOA governing documents include language like: “No resident shall engage in offensive activities which are a nuisance, or interfere with the quiet enjoyment of other residents.”

These “nuisance” provisions trigger the need for the HOA to control resident behavior that qualifies. The problem is, there is a growing belief in the legal community that these provisions themselves may be a nuisance for the boards responsible for enforcing them.

One problem is simply defining the term “nuisance”. The obvious goal of nuisance provisions is to prevent residents from making other residents miserable. But the broad wording of typical nuisance provisions leads to arguments of whether such provisions apply to almost any activity, or none of them. This ambiguity causes board members charged with enforcing them to echo former Supreme Court Justice Stewart’s statement about the difficulty of defining obscenity: “[I can’t define it], but I know it when I see it.”

In the same vein, many HOA boards would agree that they recognize a nuisance when they see it. However, this approach has mixed results. Behavior that infuriates one person might go unnoticed or overlooked by another. Hyper-sensitive residents may deem all sounds as offensive, while others may refuse to recognize how their neighbors could find the most offensive behavior unacceptable.

The typical nuisance language in HOA documents doesn’t offer much guidance to the boards who must mediate these disputes. One option is to list the activities or behaviors that will constitute a nuisance. Generally, the board has the authority to adopt resolutions “to clarify” the governing documents. A nuisance resolution could

include:

1. Barking dogs at any time.
 2. Unsupervised pets in the common areas
 3. Loud music, TV, singing, etc. between 10 pm and 8 am.
 4. Obnoxious odors
 5. Use of chemicals or equipment that cause life or fire safety concerns
 6. Tobacco, barbeque or marijuana smoke that migrate between units.
 7. Housekeeping that causes fire safety or health conditions (overly cluttered, attracts vermin, mold, etc.)
 8. Other activities that the board deems to be a nuisance (catch all provision)
- Is a nuisance a bit of a bother or something that causes harm? Good question. But this is an area that the board needs to establish a policy that works most of the time and then focus on those special cases that require more thought or mediation. ⚠️

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Ask the HOA Expert

Q Our bylaws indicate that expenses are shared equally. We have one and two bedroom units that vary significantly in size. Dividing expenses equally seems unfair. Can we simply vote to change it? If so, how many need to vote in favor of it?

A Developers sometime propose an expense allocation like the one you describe. It's easier to calculate but clearly overlooks disparity in size and value. When there is substantial difference in square footage, the norm is to allocate expenses according to a unit's square footage as a percentage of the total units square footage. In that case, the expense share may range, for example, from 2% to 5% depending on unit size.

When developers ignore the unit size issue, the inequity usually becomes apparent after turnover. Then, those that feel they are carrying a bigger share than they should lobby to "fix it". The problem is that fixing it requires consent from *every* unit owner, those that will pay more and those that will pay less.

The principle of 100% consent applies specifically to HOA expense allocation. In this regard, individual owners have the protection against a majority foisting its will on the minority whenever it sees fit. It's different when it comes to a rule that applies to everyone, like No Pets. A majority could vote to eliminate pets but the same rule would apply to everyone.

If a majority of the owners were allowed to change the expense allocation formula without this 100% requirement, theoretically 51% of the owners could pass an amendment that would force 49% of the owners pay 100% of the expenses. This can't possibly be right or equitable. So expense allocation is one area that absolutely requires 100% consent of those affected. While it's theoretically possible to achieve if 100% are willing, people are people and there is usually someone that refuses to budge.

Bottom line, the expense allocation

formula needs to be fair from the get-go. After turnover, it's too late to change.

Q One of our homeowners wants to start an HOA newsletter. A few board members object to starting a newsletter because people don't read the minutes as it is, the board would need to review it and finding someone to do it consistently may be difficult. What say you?

A Having a regular newsletter is not just a good idea, it's a basic good management practice. To encourage readership, the newsletter should be worth reading and provide information that all members need to know. If certain members don't choose to read it, that's up to them. The HOA should not withhold information because of it.

The board secretary generally previews the newsletter for content and accuracy. This doesn't take much time for a two to four page newsletter which is more than ample for most HOAs. Newsletters do not need to be long and involved, just timely and relevant. There is boilerplate information that can be repeated each issue like key contacts and pre-written articles that can be used to make a point. In fact there are over 1800 HOA articles available to subscribers of **Regenesi.net** in the **Article Archive** that are designed exactly for that purpose.

Q Our professional manager is pandering to certain board members and ignoring policies passed by the board majority. How do you keep a manager from getting involved with board politics?

A The board president has primary authority over the manager and should speak to the manager directly and plainly about this problem. Most managers are only trying to please or do their job. It may be a simple misunderstanding. If, however, there is conscious subterfuge and unwillingness to change, the matter should be addressed directly with the management company owner. If change isn't forthcoming, the president

should recommend to the board that there be a change in manager or management company.

On the other hand, if the manager is kowtowing politically to the board president who is abusing her authority, the remaining directors need to have a heart to heart with the president. All officers serve at the pleasure of the board. If one is exceeding authority, the board can remove and replace that person with another director who won't.

Q We are having an issue regarding allowing signs on the common property. Our governing documents requires board approval for all signs. In the past, the board has given approval for "For Sale" signs but not "For Rent" signs or any other sign. Recently, there were three "For Sale" signs up at once, all with board approval. Several homeowners complained that the signs were detracting from the appearance of the property and the board adopted a policy to not allow any signs on the property. Thoughts?

A If the board has the authority to approve signs, the board has the authority to enact a Sign Policy which signs are approved, how large they can be and where they can be placed. However, the board cannot enact a policy that prohibits signs since the governing documents imply that signs are allowable under some criteria adopted by the board. Only an appropriate majority of members can vote to amend the governing documents to eliminate signs altogether.

But such an amendment is not recommended. For Rent and For Sale signs are standard fare in homeowner associations. These signs are temporary and designed to assist members in a legitimate business enterprise which all undertake at some point in time. It is, however, appropriate to control the size, look, number, longevity and topic of signs. Political signs, for example, can only be displayed for, say, 30 days before an election and then be removed within 48 hours of the event.

There is a sample Sign Policy in the Policy Samples section of www.Regensis.net that can be adapted to your use. The sample policy is a reasonable approach to this issue. 🗑️

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Legal Issues
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Meeting Mechanics

Meetings are the mechanism for formalizing homeowner association business. They should be properly choreographed to ensure that real business gets done. While HOA meetings are typically less formal than those of Congress (and thankfully shorter), using parliamentary procedure goes a long way to turning endless discussion into done deals. Here are a few mechanisms on how to run an effective board meeting:

Schedule & Publicize the Meetings. Board meetings should be scheduled and noticed well in advance to avoid conflicts. Rather than schedule them on the fly, set dates, times and locations *a year in advance*. Schedule them consistently (like the second Tuesday of January, April, July and October, 6:30-8:30 pm at the Clubhouse). Post the schedule on the HOA's website, newsletters and common area postings. Distribute the schedule to all member by e-mail and/or regular mail.

Distribute Agendas & Supporting Material in Advance. Directors should receive the agenda and related information at least one week in advance. Include the most recent financial report, manager's report (if applies), details of delinquencies (amounts owed, how long, action taken to date), minutes of last meeting, requests by members (architectural modification, petitions) and committee reports. Directors should review the information *before* the meeting and come prepared to discuss it.

No Alcohol. Social events are great but HOA meetings are not social events and getting real business done requires

clear headed focus. Save the wine tasting for after the meeting or for another time and place altogether.

Use a Location Conducive to Business. While meeting in someone's home may be cheap, it is generally not conducive to meetings or large enough for guests. Homes often have disruptions like phones, kids and pets. If your HOA doesn't have a meeting room or clubhouse, use a local church, library or community center which are often cheap or free. The facility should have a table large enough for the board and additional room and seating for a reasonable number of guests. The room should be well lit and temperature controlled for comfort.

Set a Time Limit. Most meetings should be limited to no more than two hours. Using a "timed" agenda actually puts time limits on each agenda item (like Review & Approve Minutes: 5 minutes, Landscape Contractor Review & Approval: 15 minutes, etc.).

Follow Parliamentary Procedure. Parliamentary procedure is designed so that business is handled systematically and to avoid rambling discussions. If a director wants to discuss something new, it should be proposed as a motion, seconded and approved by a majority of the directors. If the motion fails, move on. Parliamentary procedure allows discussion as long as it presents new information for consideration. If a discussion of a motion is clearly headed for pass or fail, the Chair can terminate the discussion by asking for a vote. At times it's like herding cats but in the long run, getting business done within a set time frame will reward accomplishment, not talk. (*For a simplified version of Parliamentary Procedure, see www.Regensis.net Meetings section.*)

Start on Time. Waiting for chronically late directors shortens available meeting time and encourages tardiness. If the meeting is scheduled for 6:30, start at that time. Avoid the temptation to bring straggling directors up on what they missed. This too encourages tardiness.

Start with a Member Forum. Let

the members have their say, ask questions and criticize if they must. Limit the forum to 15 minutes or less. Ask how many want to speak, do the math and limit each to a set time limit. If only one wants to speak, five minutes is usually enough and move on to the agenda. This is not a time for members to ask for board action on any complex topics. If the topic requires research, board response should be delayed until adequate information is received upon which to make an informed decision.

Follow the Agenda. The agenda is the meeting road map. Stray too far from it and you may not find your way back. The chair should monitor discussions carefully and rein it in when it drifts too far afield. Adding impromptu agenda items is rarely productive because they rob time from the set agenda and usually produce a rambling and uninformed discussion.

Directors and members will appreciate the results of productive meetings. Meeting mechanisms like these are designed to get business accomplished so volunteers can get back to their lives. Gear up and gitter done! 🗑️

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Changing of the Guard

Part of the routine of running a homeowner association includes annual election of the board. Usually, some directors step down and others step up to work with the remaining directors whose terms have not yet expired. Staggered terms improve continuity. Seasoned directors bring with them perspective and history that is valuable to decision making. And it eliminates reinventing the wheel on issues that have already been discussed and decided.

But politics are politics. There are occasions when the board resigns en masse or is voted out by angry homeowners. This is usually prompted

by a serious disagreement, allegations of fraud or some other malfeasance. Rumors and rumors of rumors abound. The outgoing board members often carry a fair amount of resentment and antagonism with them. "Uncooperative" is a given and some engage in subterfuge trying to stir up discontent among their supporters. There is no joy in Mudville.

At times like these, the new board may be tempted to engage in witch hunting...pinning the blame on somebody for the problems. Witch hunting always finds a witch of some sort and the result is always the same: bad feelings among neighbors. It's at times like these that the wise board should weigh the benefits of continued conflict (none) versus making peace and getting back on track (good choice). Besides, burning witches violates the local fire ordinances.

Get the Records. There are some prudent things the new board should get done quickly. If your HOA is self managed, getting the files and records from the outgoing board is a top priority. They are likely scattered between the president, secretary and treasurer but they need to be rounded up. The antagonism factor from past directors may interfere with the transfer but press on. The records belong to the HOA and, if necessary, legal consequences should be brought to bear. Withholding records only reinforces suspicions of chicanery.

Perform an Audit. Once records are transferred, an audit of the books should be performed. There are a number of benefits to this:

1. Improprieties will be identified and provide a basis for prosecution, or,
2. The accused will be vindicated, which is good for healing wounds.
3. A line in time will be drawn from which the new board can plan. Know where you are to know where you are going.
4. Books are reviewed by an outside, knowledgeable and objective professional.
5. The CPA will recommend improvements to the financial record system.

6. Relieves the new board of imagined improprieties. Start with a clean slate.

Identify the Mistakes. The previous board fell from grace for good reason but it's important that the new board understand why to avoid the same fate. Some common mistakes include:

- **Bad communication** with the members. Examples include holding closed meetings, failing to distribute meeting minutes or newsletters.
- **Failure to get member feedback** on proposed budgets, special assessments and policies.
- **Selective enforcement** of rules and collection procedures. A big no-no and sure fire way to create animosity.
- **Domineering attitude.** One of the most infuriating attributes a board can have.

Make a list of where your prior board failed and agree to do differently in the future.

We're One of You. It's a funny thing how some members believe the board members come from another planet. Directors are subject to the same budget, fees, special assessments, rules and policies as everyone else. It's important to reiterate that reality when assuming control. It's also healthy for the board to chant that mantra when proposing and enforcing policy and all that that entails. If a rule is good, it applies to all. Message to the members: We are you.

The King is dead! Long live the King! Now *you're* in charge. You now have a golden opportunity to right the unrightable wrongs. Don't let your guard (or members) down. ☹️

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Fixing Your Documents

It's been said, "If you ever truly want to understand something, just try to change it." Making amendments to your homeowner association's governing documents fits this description to a "T". Making changes in one area often has significant ramifications in another area. There are several reasons to *not* amend your documents:

To conform to current state statutes. Your governing documents usually trump state statutes unless they are silent on a topic. The HOA can default to a state statute if necessary. It's not necessary to amend the documents.

To eliminate developer language. After the developer has sold all of the condos, homes or lots, developer language no longer applies. It might make you feel better to make it go away but doing so is unnecessary.

To enact new rules and regulations. The board has authority to make rules that are in keeping with the governing documents. But this can be done without amending the documents. An easier and cheaper way to make rules is the "Resolution Process". Resolutions are designed to address issues like collections, pets, parking and architectural control that need a broader definition and enforcement policy.

There are several good reasons to amend your documents:

To eliminate illegal provisions. Older documents sometimes have illegal language that needs to go away before a disgruntled member and their lawyer find it.

To eliminate contradictions. You can't have it both ways. Decide which way is best and eliminate the other.

To change owner property rights. Issues like rental restrictions are gaining popularity. The board does not have the authority to restrict rentals on its own. An appropriate vote of the members is required.

The criteria for amending is found in

the governing documents themselves. Look for the following:

1. What percentage of the voting interest is required to amend the documents?
2. Is a meeting required to vote or can is a mail ballot sufficient?
3. If an owner does not vote, is it considered in favor of or against the amendment?

When amending the documents, work with a knowledgeable attorney. (They invented governing documents, right?) Things that will affect the cost are: Will the attorney only review the board's proposed amendments and make suggestions? Or will the attorney draft and record the amendment?

Owner input should be included in the amendment through a meeting or survey. Involved owners are more likely to support it when they understand the goal.

Whether to consider single or multiple amendments simultaneously depends on the complexity of the issues. Too many complex amendments may be confusing. If the amendments are straight forward, include them all and vote on them individually.

Amending the documents can be good IF there is real need. Don't fix them if they aren't broke but if they are, go for broke.☼

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Fishbowl Management

Homeowner association boards are elected to handle HOA business. Some do it better than others because of training and natural ability. While good business practices are fundamental to getting the job done right, "people" practices are equally important.

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Even though HOA elections are not typically barraged with candidates, the membership *does* care what the board does. When the board doesn't do it right, some members simmer at a slow boil, some bellow a great hue and cry and others beat the tar and feather drums. The picture isn't pretty for normally well intentioned directors.

A truly effective and perceptive board understands the need to keep business transparent. This "fishbowl" style of management is difficult for some directors to deal with since it seems cumbersome and intrusive. In reality, running business transparently is largely *symbolic*. Doing business this way usually *reduces* unwanted intrusions. Once an open door policy is extended, the suspicion of what's going on behind closed doors subsides. Here are a few of the most important fishbowl management practices:

1. Board meetings are open to members and held in guest friendly venues, locations and times.
2. Members are allowed to express dissenting opinions and question board actions.
3. The board responds respectfully to dissenters.
4. The HOA has a website which stores need-to-know HOA information (See www.Regenesis.net HOA Websites section for recommended components).
5. Meeting minutes are distributed in draft form within one week of the meeting.
6. New owners receive welcome packets with "need to know" information.
7. Newsletters are distributed at least quarterly.

8. All rules and policies are written and easily available.
9. Rules are few and truly necessary. Each one includes the reason for enactment, a reasonable penalty and right of appeal.
10. Board policies that affect lifestyle and ownership responsibilities are circulated to members for comment *prior* to enactment.

Using these fishbowl practices demonstrates that the board operates in the open and respects members and their opinions. Communicating that attitude will keep most members satisfied that the board is doing a good job. Failure to provide these kind of services results in suspicion and hassles that the board doesn't need.

Another benefit of fishbowl management is that it gets the board organized and prepared to do business. With good communication and management systems in place, crisis management becomes a thing of the past. As the board becomes more proactive, the directors feel more personally rewarded. Actually getting business done attracts achievers. Success begets success. Happy members mean a harmonious community. When it comes to HOA business, keep it transparent.☼

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Forgive & Forget

Basic human nature causes us all to offend others from time to time. Sometimes it's done unintentionally while other times with malice and forethought. But regardless of intent, if we are to coexist in peace, making amends is essential. Here are seven

“A” ways to go about it:

Address everyone involved. If your offense was perpetrated in a group setting, you should make amends to everyone that was there, both the target and the audience. The audience part is important because onlookers may not have been personally offended, but may carry the impression that you're a jerk until you disabuse them of the notion.

Avoid *if*, *but*, and *maybe*. Don't rationalize what you did. (“You made me mad”). Take responsibility for your actions.

Admit specifically. Say that you lost your temper, you misunderstood or whatever it was that triggered your inappropriate behavior.

Acknowledge the hurt. Admit that damage was done.

Accept the consequences. If there is something that needs to be restored (stolen, broken, etc.) restore it and pay the price.

Alter your behavior. Promise to do better in the future.

Ask for forgiveness. This may be the toughest part because you may not get the forgiveness you ask for. You can't control the response but you can control your desire for it. Expect the worst and hope for the best. Accept whatever response you get. Either way, it doesn't change your part of the process.

Forgiveness is a life changing event for those that forgive and for those that ask for it. We're all guilty of offending our neighbor. Forgive, forget and be set free.☀

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Two Wolves

A wise old Cherokee told his grandson about a battle that goes on inside people. He said, “My son, the battle is between two wolves inside us.

One is Evil. It is anger, envy, jealousy, sorrow, regret, greed, arrogance, self-pity, guilt, resentment, inferiority, lies, pride, superiority and ego.

The other is Good. It is joy, peace, love, hope, serenity, humility, kindness, empathy, generosity, truth, compassion and faith.”

The grandson thought about it for a minute and then asked his grandfather, “Which wolf wins?”

The old man replied, “The one you feed.”☀

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Healthy Insanity

Here are some creative ways to maintain a healthy level of insanity and to keep your neighbors off balance:

1. Sit in your parked car with sunglasses on and point a hair dryer at passing cars. See if they slow down.
2. Page yourself over the intercom. Don't disguise your voice.
3. Every time someone asks you to do something, ask if they want fries with that.
4. Put your garbage can on your work desk and label it "IN."
5. Put decaf in the coffee maker for three weeks. Once everyone has gotten over their caffeine addiction, switch to espresso.

6. In the memo field of all your checks, write "For Smuggling Diamonds."

7. Finish all your sentences with "In Accordance with Prophecy".

8. Don't use any punctuation

9. Skip rather than walk.

10. Whenever you go out to eat, order a diet water with a serious face.

11. Specify that your drive-through order is "To Go."

12. Sing along at the opera.

13. Go to a poetry recital and ask why the poems don't rhyme.

14. Put mosquito netting around your work area and play tropical sounds all day.

15. Five days in advance, tell your friends you can't attend their party because you're not in the mood.

16. Have your co-workers address you by your wrestling name, Rock Bottom.

17. When the money comes out of the ATM, scream "I won! I won!"

18. When leaving the zoo, start running towards the parking lot, yelling "Run for your lives, they're loose!"

19. Tell your children over dinner, "Due to the economy, we are going to have to let one of you go."

20. Send this list to someone who won't "get it". ☀

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