



The Regenesis Report



National Edition

Innovative Homeowner Association Management Strategies

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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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Outside the Box

HOA boards are presented from time to time with a conundrum...a puzzling question that must be solved. These are situations that require the wisdom of Solomon because ramifications are far reaching and complex. In other words, a simple answer just won't do. Take this real life scenario:

A condo owner had a roof leak several years ago and notified the board president who, in turn, called the manager who, in turn, contacted a roofer who, in turn, contacted the condo owner to arrange a repair. While all seemed to have been handled correctly, the roofer never actually *did* the work, so the condo owner stopped paying the monthly assessment several months later when the rains returned and the roof started leaking again.

Late notices were sent by the management and eventually the HOA attorney stepped in. The owner made a few payments then stopped, claiming the leak still wasn't fixed and moreover, the lawyer had treated her rudely. Since it was now summer and the rains had passed, trying to repair a leaky roof was problematic. The owner was told it would be handled when the rains started again.

A new board was elected later that year and soon became aware of the issue, now over a year old. The board made a personal visit to inspect the leak which was in a bedroom closet. A fish tank was catching the rain water, the ceiling was covered in mold and falling apart. A roofer immediately remedied the problem and the owner was charged for drywall repair.

By now, the condo owner owed \$1200 in monthly assessments, \$405 in late fees and \$870 in legal fees. The owner made partial payment but refused to pay any legal or late fees. The board agreed to waive late fees but wants legal costs reimbursed which were already paid by the HOA. The board is in a conundrum: go to court or compromise?

Withholding assessments is a common tactic some use to make a point with their HOA. It's

easy to see how quickly things would get out of hand if every member stopped paying because things weren't going their way. But in this situation, there seems to be a huge disconnect between the owner, board and management. The manager clearly failed to see that the repair was completed. Now, the owner could make a good case that all interior damage should be paid by the HOA due to failure to repair the roof in a timely manner. Further, the mold issue could escalate into a legitimate health issue.

While this owner's methods weren't exactly kosher, under the circumstances, the board should compromise by waiving late charges and attorney fees if the owner brings the delinquency current immediately. This is a case when the board needs to settle the matter amicably before it goes any further (read "lawyers"). While the board should never back off too quickly, there are cases, and this is one of them, where the HOA has clear liability in the events. When that's the case, cut your losses and review the maintenance procedures to make sure it doesn't happen again.

It would be nice if all problems put before the board were cut and dried. But, now and again, a conundrum will present itself. Conundrum solving requires thinking "outside the box" so the HOA doesn't get itself boxed in. 🏠

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Ask the HOA Expert

Q What are your thoughts on "open or closed" session board meetings regarding potential litigation?

A Board meetings should be open to all members. Executive sessions should be reserved for selected topics like litigation, personnel and contract matters. The board should use executive session rarely and announce when such is taking place and the general nature of the discussion so that it is clear it's not a violation of open meeting requirements.

Q Does a board have a fiduciary responsibility to file criminal or civil charges when a former board treasurer and long time resident admitted to "using" (but paid back) \$5000?

A From a principle standpoint, filing criminal charges seems like the right thing to do. However, it would unlikely further benefit the HOA, particularly if the money has already been recovered. Considering that the person is no longer a board member, nothing more need be done.

It does, however, raise the issue of fraud for which all boards should be ever vigilant. There are a number of fraud prevention practices that should be followed to reduce the possibility of embezzlement including having duplicate copies of the bank statement made available to another board member like the president and requiring two signatures on checks (although the bank will cash them without two signatures). Also, the HOA should have Employee Dishonesty (Fidelity) Insurance coverage in an amount equal to the reserves plus three months of assessment to protect against embezzlement.

Q Since the inception of the HOA, there have been about 44 homes out of the 113 that have a courtyard extending from the front yard to the front door. Usually a low wall and gate separate the two

areas. Front yard maintenance is provided as part of the monthly homeowners assessment. Our governing documents specifically state that this care does not extend into the courtyard. However, the HOA has always taken care of the courtyards also.

The board now wants to follow the governing documents and informed the courtyard owners that the maintenance service would be discontinued. Several of the homeowners are threatening to take legal action. The board's alternative is to amend the governing documents so that maintenance does include the courtyard.

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A First of all, the board has no authority to amend the governing documents. That can only be done with an appropriate vote of all members. If given that opportunity, the non-courtyard owners are unlikely to approve such an amendment.

Change of a routine that has been in place for so long should be handled very carefully. It's not surprising that the board has been challenged. When making radical policy changes, it is always in the board's best interest to have a knowledgeable attorney review the matter before moving forward.

However, it sounds like the board made a correct judgment to correct the past. It might consider allowing the service to continue with the affected owners reimbursing the cost to do so.

Q The board is meeting tomorrow evening about the delivery truck and resident speeding problem. Some want speed bumps, some want stop signs. Do you have or know of any sources of studies or information on the most effective ways to reduce speed and the draw backs?

A Installing traffic control is a highly sensitive issue and should be discussed in an open meeting with owners. Is this a general problem or are there relatively few offenders that can be identified? Have the police been called to do periodic speed control? Speed bumps should be your last option and may be illegal because they hinder emergency vehicles. In some cities, a low profile speed bump has been developed which spans the width of the street and is 6 feet deep. The impact is noticeable but not as radical as traditional speed bumps. And they are generally put in series, say, every several hundred feet so that driving more than 25 MPH gets to be a real pain.

There are also traffic circles that cause traffic to slow at intersections and, of course, stop signs. Your local government has a traffic flow expert that could provide the options.

Q Please explain the differences between the three types of CPA financial investigations and how they relate to HOAs: Compilation, Review and Audit.

A Auditing is a sophisticated process for the examination of financial statements by CPAs. An audit includes examining, on a test basis, evidence supporting amounts and disclosures in financial statements. It also includes assessing the accounting principles used and evaluating the overall financial statement presentation. In conducting an audit, CPAs are required to obtain reasonable assurance about whether the financial statements are free of material

errors or irregularities. An audit offers the HOA board reasonable assurance that the statements present the HOA's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles.

CPAs also offer two types of services that are widely used: reviews and compilations. In performing reviews, CPAs apply analytical procedures to financial statements and make certain inquiries of management. Review procedures, which are substantially less comprehensive than those performed in an audit, enable CPAs to express limited assurance on conformity of the financial statements with generally accepted accounting principles. In compilation engagements, CPAs put financial information supplied by the clients into the form of financial statements, but do not express any assurance on the statements.

Five years ago, I asked the board to approve the installation of a skylight on the front roof portion of my unit. This request was rejected but I was allowed to put the skylight in the back roof. The board has now changed the policy and allows skylights in the front of the units. I'm furious!

Adding skylights is not recommended at all since it all too often creates leaking problems. And when the board is presented with architectural change request, curb appeal is a very important consideration. In common wall communities, uniformity is usually an asset to value while variations detract from value. The board five years ago tried to accommodate you without compromising curb appeal. You, in response, had several alternatives at the time:

1. You could have made the case that your goal was to get maximum light by placing the skylight in the front.
2. You could have asked that the board approve streetside skylights as a standard.
3. You could have decided that it wasn't worth it installing a rear skylight.

I suspect that once you got yours installed, other owners liked the idea of a skylight but realized they were better suited for the front. They apparently presented their case better than you and the board agreed. The good news is that you now have the option of adding another skylight where you wanted it in the first place.

Our board officers are buying items for the HOA without the approval of the board. How do we control such spending?

The approved annual budget should allow for certain kinds of spending without the need for a board vote. For example, if the clubhouse needs a new table and chairs and the budget is there to buy it, the president or treasurer should have the authority to do so. If the amount or type of expenditure falls outside the approved budget, board approval should be required. The entire board does not need to micro-manage every expenditure. That is what an approved budget is designed to control. But if certain board officers are abusing their authority, they should be removed from their office by a majority vote of the board.

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Rockin' Rules

Homeowner associations (HOAs) are the fastest growing form of home ownership in America. In metropolitan markets, they can account for over two thirds of all new home construction. As more buyers choose this form or housing, condos and planned communities are becoming a dominant force to be reckoned with. Why? HOAs are quasi-governments that collect mandatory fees to pay for services and enforce architectural standards and rules in the same way that any government can. Like other forms of government, if you choose to live there, opting out of fees and controls is not an option. When buying

into an HOA, you automatically agree to be subject to its requirements.

Since homeowner associations in their current form have only been around since the 1960s, they continue to evolve as lifestyles change and their strengths and weaknesses are better understood. The concept of "carefree living" promoted by early developers was largely hype intended to help close sales. As time and experience bore out, HOAs require a lot of care and attention for them to work right. Due to the dynamics of neighbors ruling over neighbors and members being owners, not renters, the challenges are more complex than other forms of property management. In commercial and rental property, for example, a lease or rental agreement can be terminated for non-compliance. Not so in an HOA. Private property rights have a profound impact on how homeowner associations must be run.

Homeowner associations have the unique ability to customize how their business is done. This allows one HOA to do business very differently than virtually every other HOA if the board and members choose to. While most don't, there are often policies, procedures, rules and regulations that vary somewhat from one HOA to another. These differences can range from minor nuances in parking and pet regulations to major policies on architectural design restrictions. And like other forms of government, what was the policy two years ago may not be the policy today if the board or members vote to change it. Buyer beware.

Regardless of the tone and texture of rules and policies, there are some fundamental principles which all HOAs should follow when enacting and enforcing them. Some of these principles are common sense and others deal with the unique "neighbor" aspect of HOAs:

1. **All rules need to be written.** In days before the written word, laws were passed on by oral tradition. Since clans were closely knit, this system worked pretty well. But with modern fractured families living global lives,

writing has a distinct advantage for keeping newcomers informed. Funny thing is, many HOAs have unwritten rules that offenders don't discover until they break them. Judges, however, don't like the idea of unwritten rules and often smite HOAs that have them. So all rules should be written.

2. All rules should be available for inspection. When paper was king, written material was controlled by the board and the management company. Getting it was often cumbersome if the "holder of the paper" was unavailable. With the advent of email and the internet, humankind has been set free of the paper prison. HOAs can now make rules, policies and information available 24/7 by way of an HOA website and email. Newsletters can be emailed in PDF (Portable Document Format) with links to the website. Prospective buyers can also access this information to ensure there is nothing that would create a problem after closing the sale (like, the buyer has an RV and RV parking is not allowed.).

3. All rules should be consistently enforced. If a rule is important, it should apply to everyone, including the board and friends of the board.

4. All rules should be necessary. In a world gone mad with regulation, having a whole new set to adhere to at home is an unnecessary aggravation. If there is a city ordinance to control wandering or defecating pets, the HOA doesn't need the same rule. Only add the rules the HOA really needs.

5. Never try to out rule scofflaws. Scofflaws love it when the board enacts rules to control them. They thrive on confrontation and rules are the line in the sand over which they *must* step. Fortunately, scofflaws are rare. If confronted by one, the board should address their special needs by other means.

6. Rules can be broken. Since all humans are unique, one size does not fit all. The board may have its rules challenged in a way that is headed to a judge's ruling that the board may not like. Since the board is elected to govern, the board has the power to

compromise. If faced with the prospect of an expensive court battle or compromise, it is often in the best interest of the HOA to opt for the latter. Courtrooms are nasty places that often only inflame disputes.

7. Run new rules up the flagpole. HOA boards can get myopic about the need for rules. Problems that loom large to a board may be of little importance to the majority of members.

The board can make much ado about nothing. Or worse, the board can fan the flames of rebellion by enacting an unpopular rule. (Is that tar I smell?). There is no rule that is so urgent that couldn't wait for a 30 day member review and comment. Proposed rules circulated to the members generally gain buy-in and compliance, rather than defiance.

8. Provide for a right of appeal. It's very American to have an excuse. And extenuating circumstances may actually be legitimate. Appeals are not only fair, but expected. The board should never engage in a game of "Gotcha". Look for ways to catch someone doing good.

At the end of the day, HOA rule breakers and enforcers are still neighbors. If the rules don't recognize this unique dynamic, a battleground will be groomed for future skirmishes between warring neighbors. Rather than plan for battle, rock your rules. 🏠

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Dealing with Difficult People

Dealing with difficult people in any setting can be a real challenge. But in volunteer-based homeowner associations, where there is none of the leverage managers have with employees, there is an entirely new level of difficulty. And, believe it or not, a new level of opportunity. The key is common interest.

Where we live means a lot more to us than any other physical environment. Our territoriality buttons are more easily pushed. Our investment is greater. We can easily get defensive of our personal space and quickly lose sight of community issues. It's worth recognizing that, to one degree or another, we all have this in common. What unites us seems to divide us and vice versa. In a homeowner association we are challenged to balance our individual and collective needs.

Most of us believe it's a good thing to work toward achieving that balance, but some people seem oblivious to it. And some people seem downright determined to undermine it. It's easy to imagine that the folks who obstruct or dismantle our meetings have malicious intent, or at least thoughtless disregard.

Why are some people so difficult? Because they learned how -- and because they didn't learn how not to. The seriously difficult person is significantly dis-inhibited. He or she didn't learn the typical social inhibitors that make for balanced exchanges. Most of us know how to "make nice," even when we don't much want to. Some people simply don't know how. We can name some of the more difficult behaviors and we can speculate about what motivates them. In general, fear is the prime motivator. Extremely difficult people are extremely dis-inhibited in their response to fear.

Terrorist Behavior literally holds a group hostage. In extreme cases, this includes streams of abusive language, threats or emotional outbursts (yelling, crying, banging). There is frequently a relentless nature to all of this, so it's clear to the group that nothing else stands a chance of going on.

Aggressive Behavior is domineering, offensive, in-your-face and is easily triggered. In fact, the threat of aggression hangs over the group and creates an underlying tension. This behavior is more controlled than the first category in that it is less all-over-the-map and probably more directed at individuals than at the entire group.

Passive-Aggressive Behavior avoids full-blown confrontation but strikes out covertly. Hidden agendas and character assassination attempt to sabotage normal, above-board group process and interaction.

Unyielding Behavior is unable or unwilling to set a past issue aside. The issue or emotion keeps coming up, even when the subject is different and the cast of characters has changed. Everything is referenced to an unresolved past. While this behavior is less invasive and threatening than those above, its continued presence is an energy drain and source of frustration.

Persecuted Behavior is the victim response -- blaming, whining and complaining. Although most of us enjoy complaining and grouching about things from time to time, persecuted behavior stems from a non-stop, perennial point of view. And since the victim perspective predominates, it's easy for your group to join the list of persecutors.

Polarity Response is a behavior unfamiliar in name but not in most everyone's experience. Whatever the issue or opinion, the polarity responder takes the opposite view. Disagreement is automatic. This can include and goes past the devil's advocate role some people take on in groups. Most polarity responders seem unaware of their behavior and its impact on others.

What can you do? While you were reading the descriptions above you were probably thinking of specific examples from your own experience, and that may have left you wondering what you can do to stay focused and flexible in the face of such behavior. That's not surprising. A change of focus is in order. Here are five things you can do

1. Notice your response. Is the behavior one that really "pushes your buttons"? Your first step is to consider what's going on with you in this unpleasant situation. Be responsible for your own reactions -- after all, that's one of the things you wish that difficult person would do.

2. Change what you're doing. Since you can't really change someone else, change what you can. The results can be surprising and rewarding. First of all, it shifts you from being at the mercy of the situation. As soon as you begin to consider exercising new options, you step out of the problem frame and onto a larger canvas. This re-framing is an important shift in perspective.

3. Ask the person "What do you want?" You may think you know but you may learn a few things you didn't know by asking. Of course, it's hard to ask the question after things have spiraled out of control. Hopefully you can find a good time to ask, because it's the ideal starting point for building rapport and trust.

4. Focus on outcomes. Your group needs to ask itself the "What do you want?" question. Spend whatever time it takes to generate a set of goals and objectives as well as how to meet them. Now comes the really important part of this formula (in bold italics): Once you have specified your outcomes, decide what behaviors will support getting them like: *Patience. Assuming Positive Intent. Willingness to Listen.* Generate your list of behaviors during meetings in a conspicuous place. This will be a great reminder for even the positive contributors in the group. And when the negative behaviors erupt, you can point to the list, not at the person. Stay focused on what you want. If the difficult person is unwilling to change behavior, you will also need to specify how the group will respond.

5. Consider alternatives. What will you do if the difficult behavior persists? One option could be to take a five minute break. (This is sort of like pushing the group re-set button). During the break, clarify for the difficult person what the goals for the meeting are and which behaviors support those goals. Then state what the next step will be if the difficulties arise again. Be prepared to quickly adjourn your meeting if the behaviors continue. For the extreme behaviors, it may be the only useful choice. Consistently applied, it will send the message that certain behaviors aren't

acceptable.

Common interests are the basis for improving cooperation. The more clearly you identify how your interests overlap and become shared, the stronger you'll be in your response to the whole range of difficult behaviors.

By Ken Roffmann 

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Art of HOA Leadership

As a homeowner association board president, it can get lonely at the top. Here you are, just trying to do a good job and not even getting paid for it. Then, suddenly, you begin to feel like the bottom line for every horse's rear end that's having a bad day. You get cocktail inspired phone calls at dinnertime and maintenance emergencies *always* happen after midnight. And that loud music...*do something about it!* It's hard enough pulling the HOA barge. Why should you have to put up with all this on top of it?

You don't. You were not elected to do it yourself. You were elected to administrate the HOA's business, not to replace lightbulbs and pick up dog doo doo. As the HOA's CEO, you are empowered to execute decisions made by the board and to hold members accountable to provisions of the governing documents. You have the authority to make decisions between board meetings. You can sign contracts and checks. You wear the Ring of Power!

There is an art to HOA leadership. Recognizing your scope of authority is essential. The president is granted much authority and responsibility. Appreciating what you are responsible for is critical. You have been entrusted with the care of millions of dollars in real estate...the members' homes. Take this trust very seriously. (They do). Besides all the warm fuzzies folks get when they think of home, it's usually

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the largest investment most people have. It requires nurturing to maintain and grow its value. That's where you come in.

Managing other people's assets requires care and forethought. You need thoughtful planning and good advice. For this, turn to the experts. For legal issues, use only attorneys that specialize in HOA law. For management, use only companies that specialize in HOA management. For long range financial planning, hire a **Professional Reserve Analyst** (see www.apra-usa.com for a list of credentialed PRAs.) This all costs money but it's an investment in success. Spend money wisely but spend it.

A good leader doesn't need to know how everything works. A good leader just needs to know the people that know how everything works. Big difference. While experts don't work for free, they will help you navigate through the many traps and pitfalls that befall HOAs that do without them. Good leaders choose good people to execute the work.

Manage board business wisely. Do it systematically, not on the fly. The vast majority of HOA business can and should be handled at board meetings. If presented with an issue, unless it's an emergency, save it for the next meeting. Don't encourage people to come to you (board president) for decisions on the fly. Let them know, the *whole board* must discuss it.

Board meetings are designed to examine issues and get various perspectives in the decision making process. Use your board to arrive at better decisions. The president is there to guide the meeting, not to dictate outcomes. So, promoting discussion and ideas will get directors involved and invested in the outcome. A good leader gives credit when credit's due to encourage volunteers.

The art of HOA leadership is that a leader leads and doesn't follow. But the wise leader leads by allowing others to perform key parts of the whole. At year end, all those minor

parts have added up to an impressive amount of work accomplished. So to become a true homeowner association artist, paint your HOA canvas using the techniques mentioned in this "art"icle. 🎨

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Greener Grass

A philosopher in ancient Athens was sitting outside the city gates when a traveler came up.

"I wish to live in the great city of Athens," he said. "Can you tell me what it is like?"

The philosopher asked, "Tell me what your home city is like."

"It's an awful place. The people lie to your face, stab you in the back and rob you blind. I have no friends and many enemies."

The philosopher responded, "I'm afraid you will find the same thing here."

So the traveler moved on. Soon after, another visitor approached the city gates.

"I've heard much about Athens and have been thinking of living here. Can you tell what the city is like?"

The philosopher replied, "Tell me what your home city is like."

"It is a most wonderful place! The people are friendly and helpful. No matter where you go, you feel welcome."

The philosopher smiled, "You will find Athens much the same."

Lesson: Running from your problems won't make them go away. 🎨

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The Donkey & the Well

One day, a farmer's donkey fell into an abandoned well. The animal cried piteously for hours as the farmer tried to figure out what to do. Finally, he decided the animal was old and the well needed to be covered up anyway.

He grabbed a shovel and began to shovel dirt into the well. Realizing what was happening, the donkey at first wailed horribly. Then, a few shovel fulls later, he quieted down. The farmer peered into the well, and was astounded by what he saw. With every shovel full of dirt that hit his back, the donkey would shake it off and take a step up on the rising layer of dirt. He continued to shovel in dirt, the dirt rose, and eventually, the donkey stepped out of the well, walked over to the farmer and bit him!

Moral: Life is going to throw you in a deep hole and shovel dirt on you at one time or another. The trick is not to let it bury you, but to shake it off and take a step up. Each trouble is a stepping stone. You can get out of the deepest problem by never losing hope and never giving up.

Free your heart from hatred.
Free your mind from worries.
Live simply.
Give more.
Expect less.

And never forget. When you cover your ass, it could come back to bite you. 🎨