



The Regenesi Report



National

Innovative Homeowner Association Management Strategies

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Regenesi means making new beginnings using eternal principles in innovative ways.

Regenesi believes that the goal of every homeowner association board should be to promote harmony by effective planning, communication and compassion.

The Regenesi 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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High-Deductible Insights

Homeowner associations (HOA) need to consider various consequences when choosing their deductible amount. In particular, the deductible of your HOA's property policy affects both the individual unit owner and the HOA. Higher deductibles like \$25,000, \$50,000 and higher have become commonplace, but what are the pros and cons of a high deductible?

Pros.

High deductibles keep small claims from piling up on the association's loss history, keeping premiums lower for everyone.

1. Claims-free HOAs have access to more competitive insurance carrier whose coverage is more comprehensive and premiums are more affordable. The cost to mitigate and repair damage from one small water damage incident can cost tens of thousands of dollars. Lower deductibles like \$5,000 or even \$10,000 often mean that small claims must be filed on the association's policy. This also makes it easier for a higher number of claims to stack up on an association's loss history. One large claim can put an association into the high-risk market, and a higher frequency of small claims can do the same.

The HOA and individual unit owners are incentivized to mitigate risk by keeping up on maintenance.

2. To avoid paying a high deductible, unit owners and boards may feel motivated to take preventative measures to avoid property damage. Examples include keeping up on property and appliance maintenance or investing in a water leak detection system.

Cons

The HOA must be prepared to pay the deductible in the event of damage to common elements¹. If common elements are damaged

in a covered loss, the association will be expected to meet the association's deductible before the policy provides coverage. If units are damaged in the same incident, the association may only pay a portion of the deductible and unit owners would be responsible for their portion. However, if only common areas sustain damage, the association must cover the deductible out of association funds. This means it is crucial to fund the full amount of the deductible in reserve, so the association is prepared in the event of a loss.

Unit owners may be underinsured for damage inside their unit if they do not carefully review coverage needs with their personal insurance agent.

I. A higher deductible means unit owners must carry a higher corresponding building limit on their HO6 policy. Unit owners need to know the HOA's deductible and build their personal policy to complement it.

Your board should carefully consider the pros and cons of a high deductible. A high deductible can be an excellent strategy for avoiding disruptive property damage claims, as well as keeping premiums lower. Although there are drawbacks to consider, the cons may be easily addressed with communication and planning.

By Vern Newcomb, ABI

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Ask the HOA Expert

Q Many of our members spend the winter months in Florida or Arizona. Since board meetings take place during their absence, it limits their ability to serve on the board. We are thinking about having understudies who could stand in for directors who are out of town. What do you think of this plan?

A Directors need to regularly attend meetings to stay informed of the issues. An understudy would need to attend all the same meetings to be adequately informed to cover for an absent director. Also, board members are not allowed to give their authority to another. It would make more sense to allow board meeting teleconferences. It's fairly common in HOAs which are second homes to many members.

Q How can we shut down or discontinue amenities that few members use like hot tubs and tennis courts?

A You need to read your governing documents and state HOA statutes for provisions relating to discontinuing amenities. If there is nothing prohibiting it, an appropriate vote of the members (whatever the governing documents indicate) is enough to get this done. The board may have the authority to do this but it is always recommended that such action be put before the members.

Q We recently had an incident where a member's dog bit another resident. There was a discussion at the next board meeting about whether the HOA's pet rules needed to be amended. A committee was appointed to research and make recommendations.

Following the discussion, one of the board members made a comment that if any dog threatened him, he would kill it. Should this comment be recorded in the minutes?

A The comment was clearly inappropriate, especially for a board member. And, no, it has

no place in the minutes since the minutes are a record of board business, not discussions or comments. Since this comment has nothing to do with board business or HOA policy it would only confuse those reading the minutes and likely outrage dog owner members. Nothing good would come of it.

The outspoken director should be strongly advised to keep such comments private and out of the board meeting. The directors are elected to handle HOA business in a reasonable way. If this director is prone to such behavior, it will not serve the HOA or board well.

Q We have several individuals who complain about board decision and rudely intrude into director homes at all hours of the night to "discuss" their views. Do you have any suggestions on how to protect the board members from being punching bags?

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A To protect director privacy, The policy should be that all comments and complaints need to be in writing and written by the communicator. Neither the board members or the manager should accept phone calls or verbal instructions to "tell so and so, etc." Advise the member to write it down and drop it in the suggestion box, mail it to the HOA's address or email it to HOA's email address.

When put in writing, the board and manager can effectively deal with it either sooner, if it is urgent, or later at the next board meeting, if it requires discussion. If the HOA has a committee system (Landscaping, Maintenance, Rules, Social, etc.), those communications can be directed to the appropriate committee for further action.

Once the written requirement is invoked, make sure to respond to all communications in a timely way. This system will create problems if written requests, complaints or communications disappear down a "dark hole" never to be seen again.

Having a written requirement will drastically reduce the number of communications since writing is more difficult than speaking. Once members are informed of the process, the board members need to respectfully but firmly refuse to receive phone calls or personal visits. In time, the members will understand the need for the written process and potential board candidates will be encouraged to run when they know their privacy is protected.

Q We have a resident owner that is paranoid schizophrenic. He vandalizes the common areas, steals property and verbally assaults the residents. All in all, he poses a significant danger. We have filed police reports and obtained a court order requiring a mental evaluation. The doctor keeps sending him home. We are in the process of amending our governing documents to deal with this kind of situation and we're back in court to obtain an order to move him off the property. We're at wits end.

A These kinds of situations are extremely frustrating but it sounds like your attorney is handling it properly. Dealing with mentally unstable people is never easy and courts are reluctant to pass judgment without professional input. Has the board sought out and contacted relatives that might intervene without the need for court action? If there are relatives that can simply take care of what needs to be taken care of (like making alternate assisted living arrangements), much time and expense can be saved.

It is useless to amend the bylaws for situations like this. Some issues simply need to be dealt with on their own merits as difficult as that process might be. Mentally unstable people don't or won't play by the HOA's rules. ☹️

Managing Board Personalities

Ideally, a homeowner association board of directors should be composed of individuals who work cohesively and efficiently to manage the community they serve. But in reality this is not always the case. Boards are comprised of different people with different abilities, talents, opinions, and life stories. Given this reality, the truth is that conflict among board members occurs far more often than we'd like to see.

The problem is not the conflict itself, but how the conflict is handled and resolved. Often, small disputes are not quickly resolved and escalate to extreme conflicts during which board members forget their ethical obligations and undermine board decisions with which they do not agree.

What many directors fail to recognize, however, is that this type of conflict is detrimental and reduces the trust level members have in their boards. Although rebellious directors may think they are acting in the best interests of the community by trying to push their position through, the escalated board conflict will hurt a community. So, it is imperative that directors learn to handle conflicts at the board level before such conflicts get out of hand.

Different people handle conflicts differently. For example, some people are "barkers" that throw temper tantrums and fling insults at others until they get what they want. Others are "wet blankets" that find reasons to reject every proposal or idea. And some people do nothing but complain. Each type of individual requires a different strategy for effective conflict resolution.

Barkers and Biters: I'm never going to agree with this proposal. You are all

stupid and wrong, and we are not leaving this meeting until you see it my way and change your mind.

Barkers and Biters throw temper tantrums to get their way, trample on other people's opinions, or make cutting and often personal remarks. The difference between them is that Barkers are insensitive, and Biters can be destructive.

Dealing with them:

- Stay calm. Be very aware of your body language and choice of words.
- Listen carefully.
- Hold your ground. Wait out their outbursts and then say something like, "I can see this upsets you."
- Confront with questions like, "That comment doesn't help the situation. Let's try something else."

Constant Complainers: I don't like the idea and it won't work. They never work. Nothing in this makes any sense. I don't know why we would even try it.

Dealing with them:

When you hear "You never . . ." or "You always . . ." get ready for the Constant Complainer. They gripe so much that it is hard to recognize when they have a legitimate concern. Ask questions that are solution-oriented, like, "What are some possible solutions to this?" "I've heard the concerns, now tell me the possibilities for success."

Silent Sufferers: Silence. More silence. Passive body language, but no verbal clues.

Silent sufferers never complain (although they may sigh a lot). Underneath that silence, they feel put upon, but you often have to play a guessing game about what is wrong. If you ask them about something, they are likely to answer with minimal responses like "yes" or "no."

Dealing with them:

Ask lots of open-ended questions that can't be answered "yes" or "no" and wait them out when they try to turn you off with silence. Pay very close attention to body language and word choice.

Silent Steamers: Silence. More silence. Defensive or angry body language, but no verbal clues.

Silent Steamers look like silent sufferers, but their silence hides a lot of pent-up anger waiting to explode.

Dealing with them:

Ask open-ended questions and out wait their silence during confrontations. Pay close attention to body language.

Wet Blankets: I guess we can change things, but it won't work. But whatever you want.

Mention any change to Wet Blankets and they will have a hundred reasons why it can't or shouldn't be done.

Dealing with them:

- Introduce changes slowly.
- Tell them what you have in mind.
- Let them criticize it.
- Ask them how they would solve the problem.
- Tell them you are seeking their opinion and cooperation.

Know-It-Alls: Here's what we are going to do and it is the only way that it works. From my experience, my idea is the right idea and here's why. The know-it-alls may often have the most experience or knowledge on an issue. This knowledge can give them power, which allows them to run over those who have other ideas.

Dealing with them:

- Talk to them about respecting others' ideas and opinions—in private, of course.
- Remind them that with their knowledge comes responsibility.
- Don't let them become Barkers or Biters.

The Great Pretender: Yes, I know the solution but I'm not prepared to discuss it now.

Great Pretenders pose as know-it-alls. Recognize that they are insecure and overly sensitive. When it's necessary to call their bluff, leave them an out so they can save face.

Dealing with them:

- Give true specific objectives, goals and tasks.
- When they make recommendations that won't work, begin your redirect sentence with, "Or, we could try..."

Wafflers: I don't know what to think. I can see this side, but I can also see the other side. What do you guys think? Or, I need to sit and think on this.

Wafflers can't make decisions or don't want to make decisions because they are afraid they will make the wrong ones. They become distracted by a desire to please. If you ask them how they feel about something, they'll often ask counter questions to determine how you want them to feel about it.

Dealing with them:

- Try to break the issues down into individual parts.
- Give them deadlines.
- Reward making decisions and not the decision itself.

Although there will always be some board conflicts that cannot be resolved, using these methods will help significantly lower the number of unresolved conflicts.

By Elina Gilbert - HindmanSanchez 🌱

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Lights, Cameras, Action!

A quandry that homeowner associations face is how to implement security measures when a known violent resident exists. The board is in a Catch 22: Fail to inform residents about a violent resident who subsequently injures someone and the board is held responsible. Inform residents of a violent resident who subsequently files suit against the HOA for libel and the board is held responsible. But failing to act is not an option. Besides taking and responding to complaints in this regard seriously, one way to monitor resident activity is

by security cameras. If the board is thinking about it, consider:

1. Who is going to service the cameras to make sure they are functioning properly?
2. Who is going to monitor the cameras and sound the alert if something improper is occurring?
3. How many cameras and where are they needed?
4. Do security cameras actually stop criminal activity?
5. Is the homeowner association responsible for law enforcement?

Installing security cameras is an uncertain method for controlling crime. They are often a knee jerk reaction to a recent security incident. Once the hysteria passes, the desire to pay the cost is rarely there. Give the issue time to mellow. Security is more perception than reality. Many of the surveillance cameras you see with the blinking red lights are just that...fake cameras with blinking red lights. Under the same theory, inexpensive printed signs that read "24 Hour Surveillance" can be just as effective as fake cameras...assuming that the bad guys can read.

Most security problems should be handled by local law enforcement. The HOA is not prepared to deal with real crime in an effective way. Defer to the pros. They are trained and paid to do the job.

The HOA can and should form a security committee and all residents should be given information about Neighborhood Watch and other self help security programs.

The board can also have local law enforcement attend a board meeting to discuss the issues and solutions. This is particularly important since it will be recorded in the minutes that law enforcement was formally put on notice of problems. Obviously, if law enforcement suggests corrective measures, the HOA should take specific action to increase security (like improved lighting, fencing, reduced landscape cover, etc.). The board needs to act. But leave playing cop to the cops. 🌱

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Change for the Better

Boards of homeowner associations are often challenged to change the status quo for the better. A common scenario includes a newly elected board that promises to start enforcing rules or architectural policies. Problem is, there are HOA members that like it just fine the way it is and they loudly resist the board's proposed changes. If certain board members are single minded about forcing change, the resulting brouhaha will take center stage, the goals moved to the peanut gallery and little accomplished other than ruffling feathers. Flexibility is the key to success. Consider the following observation:

"What prevents human beings from successfully managing the natural environment and other complex systems? Dietrich Dörner, a cognitive psychologist, performed experiments and found out. Using computer simulations of complex environments, he invited intellectuals to improve the situation. They often made it worse. Those who did well gathered information before acting, thought systemically, reviewed progress, and corrected their course often. Those who did badly clung to their theories, acted too quickly, did not correct course, and blamed others when things went wrong. Dörner concludes that our failures in managing complex systems do not represent any inherent lack of human capability. Rather they reflect bad habits of thought and lazy procedures." *State of Fear by Michael Crichton*

These observations point to several courses of action an HOA board might consider when endeavoring to make changes:

1. **Do Your Research.** If the board wants to change long standing policy, lack thereof or tradition, it's important to

truly understand why it stood so long. Don't automatically assume that previous boards just failed to do their job. Homeowner associations have the ability to establish norms that vary if the members want it that way. So, failing to enforce rules may be the way most of the members may like it. Your HOA may have too many rules that need to be weeded out instead of enforced. So, rather than charge in to smite the offenders, consider polling the community to see just how important a new "get tough" policy is.

2. Organize Your Plan. Repointing the board takes careful planning since not every issue has the same priority. Even if the board and members are generally agreed on, say, correcting architectural violations, those violations come in large and small size, visible and not so visible. Prioritizing the plan of attack and laying out a time frame that doesn't require the board to deal with everything all at once makes sense.

3. Do Progress Reports. As the board attacks individual issues, some will resolve quickly while others fester. Resolution is great because that reduces the number of issues. Progress reports will allow the board to celebrate its successes and refocus on remaining issues.

4. Rethink Solutions. The board has the authority to make judgment calls. Not all issues are black and white. In the case of an architectural violation, the board can compromise if it's in the best interests of the HOA. For example, if an owner has illegally expanded a deck into the common area, the board's order would normally be to remove it. However, if the owner has spent considerable money and a previous board granted permission (even though it had no authority to do so), the owner might mount a legal defense and be willing to go to court over the matter.

The board could expend thousands of dollars of HOA funds in legal costs and possibly lose the case or compromise by getting the owner to agree to remove the deck upon sale of the property. The compromise allows the owner to save

face, the HOA to save money and ultimately get the deck removed...it just will take a bit longer than anticipated. The lesson is to not get too entrenched in one solution. Circumstances may warrant creative thinking and the board has the authority to be creative.

The board usually steers the HOA ship across calm seas with business as usual. But from time to time squalls and shallow rocks dictate a change of course. While governing documents and state laws point a direction that often works, be prepared to deviate when circumstances dictate. 🏠

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Running for the Board?

Serving on the board of a homeowner association requires understanding the scope of work. Here are eight questions all candidates should ask themselves:

1. Do I have the time to devote to my duties and responsibilities as a board member? Being a board member can consume significant amounts of time each month. Don't volunteer if you don't have the time to do the job right or can't attend meetings.

2. Do I work well with others? A board of directors is not a place for loners or rebels. To function well, board members must work as a team.

3. What is my underlying motivation to serve on the board? While there is no one right reason, you should know what is motivating you to volunteer. Does it conflict with the goals of the board? Is it your desire to be a change agent?

4. What if I am sued personally for something I do as a board member? Does your homeowner association have Directors and Officers (D&O) insurance from a company that specializes in providing this type of insurance to HOAs that shifts the risk to the insurance company? Has the

board done everything it can to limit liability? Is the board required to indemnify (legally protect and defend) you if you are sued?

5. Have I examined the financial records (Income & Expense Statement, Annual Budget, Reserve Study, Collection Report)? Before committing yourself you should know the financial condition of the HOA. If it is less than solvent, ask yourself if you want to spend most of your time dealing with financial issues such as reserves, assessment increases and deferred maintenance.

6. Do I know what the expectations for board members are? Are there high expectations regarding how much time is to be spent on HOA business? Are you going to be asked or expected to do or go along with something you have strong feelings against?

7. Do I have thick skin? Serving on a board is not for the faint of heart or overly sensitive people. You will likely receive criticism during your term. And some of that criticism may even be personal in nature.

8. Will I be committed to seeing my term through? HOAs don't need board members who serve only a few months. It takes that long to get a good understanding of the issues and how the board operates, not to mention the personalities. Don't volunteer if you're not committed to serving your full term.

By Community Essentials 🏠

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Neighbor Nuisances

When people live in close proximity, lifestyles are likely to clash. Noise is the most common complaint followed closely by odors, health and sanitation issues, cigarette smoke and curb appeal. The board is challenged from time to time to sort out various nuisances that interfere with a member's enjoyment of

their property. To intervene or not to intervene? That is the question.

Some nuisances are clear violations of law and should be handled by law enforcement. Among these are domestic disputes, out of control parties, abuse of alcohol and use of illegal drugs should all be directed to law enforcement. These are not situations that neighbors or boards are prepared to deal with and there is a chance attempts to do so could escalate to physical altercations. The complainer should be directed to call the police immediately.

Other nuisances, like a neighbor's choice or volume of music, midnight vacuuming, hard stepping ways, or Marlboros can cause ongoing nuisance that are more appropriate for board intervention.

But these issues may come in several flavors: *people driven* or *building design driven* or a combination of both. People driven issues are more easily dealt with but the board's approach to building design nuisances is more problematic.

New construction generally provides for adequate sound barriers, but older properties often don't. Sound transmission is a very common problem in condo conversions using apartment buildings. In older buildings where common walls, floors and ceilings are wood frame construction, there will often be ongoing noise issues to deal with.

Correcting these soundproofing deficiencies is possible but very expensive. Carpet and sound deadening drywall will help but not totally kill the noise. Installation of hardwood and tile floors in upstairs units will virtually guarantee an ongoing upstairs/downstairs war. The best the board can do is enact bans on hard surface flooring and encourage greater noise sensitivity between neighbors.

For people generated nuisances not better handled by John Law, the board's involvement is certainly called for. In this, the board is challenged to "balance competing interests" such as the upstairs neighbor's need to have a trampoline and the downstairs neighbor's need to sleep. In balancing

these interests, the board needs to have an actual chance of reconciling the problem. As one judge put it, "The test of nuisance is not what effects it has on persons of delicate or dainty habits or living, or of fanciful or fastidious tastes, or on persons who are invalids, afflicted with disease, bodily ills, or abnormal physical conditions, or on person who are of nervous temperament, or peculiarly sensitive to annoyance or of disturbance of the character complained".

In plain English, this means that just because someone is bothered doesn't automatically make something a nuisance. People living in close quarters are called on for a higher degree of tolerance. But some just can't adjust. Some folks simply need more space, a wider buffer zone. No degree of board intervention will ever satisfy them short of vacating all adjoining units.

Most long lasting solutions for nuisances are compromises. For example, instead of banning Mr. Trampoline from his passion, maybe he will agree to bounce from 9 am to 7 pm instead of at 3 #\$\$!! am. When settling the nuisance dust between neighbors, creativity and a lot of humor is called for (a LOT of humor). The board should deflect those which can be to the combatants or the law, and for those that can't, ply the waters of compromise. 🌱

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Bonding Principle

As social animals, we build friendships with other people. And a part of friendship is helping one another without having to negotiate an exchange at every turn, partly because we know that over time, the exchange and social capital will balance itself out.

Bonding also happens with parents and siblings. "Blood is thicker than water" is a common saying. It can also happen with family substitutes including

employers and other organizations and institutions that we join.

One of the effects of becoming friends is a very human process of *bonding*, whereby we feel an emotional connection with the other person, such that our identities are connected together.

In such a situation, with connected identities, if I do something for myself, I am also doing it for the other person, and vice versa.

Emotional bonds vary. We have family, close friends and general acquaintances. The degree to which we will help them varies accordingly.

Make friends with the other person. Build emotional bonds. Find things in common. Thus when you ask them to do something for you, they will feel as if they are doing it for themselves.

For more persuasion principles, see www.ChangingMinds.org 🌱

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Sage Advice

- Accept that some days you're the pigeon, and some days you're the statue.
- Always keep your words soft and sweet just in case you have to eat them.
- Always read things that will make you look smart if you die in the middle of it.
- Drive carefully. It's not only cars that can be recalled by their maker.
- If you can't be kind, at least have the decency to be vague.
- If you lend someone \$20 and never see that person again, it was probably worth it.
- It may be that your sole purpose in life is simply to serve as a warning to others. 🌱