



# The Regenesis Report



National Edition

Innovative Homeowner Association Management Strategies

Priceless

**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.



**RICHARD L. THOMPSON**

EDITOR & PUBLISHER  
rich@regenesiset.net

**Regenesis, Inc.**

PO Box 19605  
Portland OR 97280

**www.Regenesiset.net**

**PH 503.977.7974**

## Google It

Board decisions are sometimes challenged by other owners. Having substantiation from reliable sources improves board credibility. There is a wealth of information available to anyone willing to “look things up”. For one, there is Google, the great know-it-all.

Manufacturers are a great resource of information and it is available free. Manufacturers *want* consumers to use their products correctly for safety and reliability. Many manufacturers post online warranties, technical and support information, specifications, operating manuals, recommendations, references, material safety/data sheets, and access to professional advice. Some examples of available manufacturer resources include: parking lot repair and replacement, phone entry systems, paint, roofs, heating and air conditioning equipment, irrigation systems, chemicals, and siding.

Another important aspect of working with manufacturers is that it can insulate the HOA in the event of litigation by providing support for its products. For example, an HOA was sued for a slip and fall because of slippery asphalt. The asphalt manufacturer testified that the asphalt was improperly mixed with an insufficient quantity of sand. The asphalt manufacturer’s testimony resulted in the HOA being released from the litigation. The installation contractor was held responsible for the claim. Involving the manufacturer early was the key. Not only did the homeowner association have the correct answers, but the credentialed professionals were available to back up their position.

Additionally, manufacturers will often provide a representative to ensure their product is prepared and installed according to their specifications. For example, James Hardie Company can provide an inspector to ensure that its fiber-cement siding is installed according to stringent specifications. If the installer deviates from the specs, the inspector will require that corrective measures are implemented.

Government offices can also be a great resource. County Extension offices provide a wealth of information on topics including landscaping, gardening, pruning, soil testing, fertilization, pesticide use, management of insects and wildlife, and water quality. County Extension offices are typically manned by Master Gardeners and backed by County Extension Agents.

Wandering into the myriad of pest control treatments can be overwhelming. There are many great salesmen, but some may push a product that may not be in the greatest interest of the community. An HOA may receive conflicting recommendations on the best product to use when termites are found in a building. A quick call to the County Extension Service may clarify the issue. In one case, a product recommended was in violation of a safety code because the building was located too close to a body of water. This information was free.

Are there questions too stupid to ask? Maybe, but I’ve yet to hear one and have received great answers that helped with informed decisions. Here are some:

- Is it OK to wash the mold streaks on a shingle roof? And what product should be used?
- Can we use shredded paper with ink in the community vegetable garden?
- Do you have operating instructions for this phone entry system online?
- Can a family without a head of household over the age of 55 with 15 year old twins move into this age-restricted community?
- This bug was in our landscaping. Is it dangerous to the vegetation or residents?

The message to take from here is that it is often faster and more reliable to “look things up” and there are many ways to reach that end. But be sure that the “expert” truly has the correct answers. For example, Wikipedia has answers to almost everything, but anyone can enter data. Seek out several answers to the same question and compare results.

By Kimberly Holmstrom

## Ask the HOA Expert

**Q** Our homeowner association is single family detached homes. Our governing documents state that the HOA is responsible for replacing roofs, painting, gutters and other things that are commonly done with condominiums. Many owners object to building up a reserve fund to pay for repairs that may be as much as 20 years or more down the road.

The governing documents also state that the board cannot special assess for anything other than common area improvements. So that leaves us with pretty much the options of building up the reserve fund or changing the governing documents.

**A** While it's unusual for a single family HOAs to do exterior maintenance, repairs and replacements, it's not unheard of. It's doubtful that the developer made a mistake on this since it's a huge issue. And it's doubtful that you can muster the votes to change this which may take 100% of the owners to approve it including their mortgagees. You need to consult with a knowledgeable attorney to determine the requirements. If it is possible, the attorney can assist the board with the proper wording of the amendment.

So barring you pulling off a governing documents amendment, yes, you need a reserve plan that includes a funding plan to collect money systematically from each owner every year. The 20-year-down-the-road thinking is flawed. While a reserve event like a roof may take place 20 years down the road, the reserve plan will only charge each owner a share of the future cost directly proportional to the benefit received. For example, if a particular owner owns for five years and sells, he would only pay 5/20ths of the future roof cost. He only pays for the benefit received and not a penny more. This is the fairest way to fund future costs.

**Q** Our board is being badgered by a delinquent owner because his account was turned over to collection. In hard economic times, should the board back off of collections?

**A** As long as the board is enforcing collections uniformly and consistently, it is the board's responsibility to enforce the Collection Policy regardless of individual circumstance or economic climate. There is no government bail-out for HOAs.

**Q** Is there an average that HOA management companies charge for managing a homeowner association? How do they base their fees...by size, number of units, expectations, etc.? Do they usually charge a flat fee or percentage? How do they charge for maintenance, as a flat fee, by the job, etc.?

**REGENESIS RESERVES**  
PACIFIC NORTHWEST  
RESERVE STUDY CONSULTANTS

- Complies with Statute
- Custom Funding Plan
- Maintenance Plan
- Many Satisfied Clients

NO OBLIGATION PROPOSAL  
**503.268.1789**  
info@regensisreserves.com  
www.regensisreserves.com

MEMBER  
Association of Professional Reserve Analysts

**A** Percentages are not used to determine HOA management fees like with rental property management. Commonly, the management fee is expressed as the cost "per door". But behind the per door concept is an analysis of how much time it takes the management company to execute the routine duties described in its HOA Management Agreement. This can vary a lot from HOA to HOA. And within the fee structure, there is usually several levels and costs of service included in the routine duties like management, accounting and administrative services like mailing, copies, etc.

Maintenance and repairs are charged over and above the basic duties on an hourly or bid basis. So, for a management company to make a profit, an annual estimate of all the levels of service multiplied by their hourly charges multiplied by the number of hours for each plus a profit margin equals the annual cost of management. Keep in mind, however, that most Management Agreements provide for extra charges for non-routine tasks like assisting in insurance claims, arranging contractor bids and performing special tasks or investigations requested by the board.

**Q** We recently read that names should not be included in the minutes. Can we legally go back over the past few years and strike the any names from the minutes which have already been approved?

**A** The minutes *should* contain names of board members and guests that take part in the meeting. As a matter of fact, it is extremely important that names be included when votes are taken. The minutes should record who makes a motion and who seconds it. If a board member voted against something that he felt was not in the HOA's best interest, it is entirely appropriate to record his name as a dissenting vote if he requests it.

If you are talking about recording names of delinquent owners in the minutes then the matter is entirely different. It is best to refer to delinquencies in the minutes only by amount and collection status (30 days past due, etc.). Should you go back and sanitize such names from the minutes? No. The minutes have been approved and distributed in their current form. Changing them would raise suspicions that other parts have been changed or deleted. Let sleeping dogs lie. But make sure in the future not to include names of dogs like these that might come back and bite you.

**Q** Could a parking enforcement rule be approved by an HOA board without the approval of the owners? The governing documents clearly state that "any additional rules can enacted by the

board if deemed prudent and appropriate". We have never had much of a parking problem in our community and it seems that the board is just making rules because of a few violators. Is this considered "prudent and appropriate"?

**A** The board generally has the power to enact rules that are in keeping with the governing documents. However, it is highly advisable for the board to run all proposed rules passed the members for review prior to enacting them. If the rule is not supported, the board should not enact it. And it is not appropriate to enact a rule because of a few violators. Rules should only be enacted when there is frequent and ongoing violation of issues that affect resident livability, safety and property values.

**Q** Our HOA recently had an annual meeting where 12 owners were represented in person and the remaining 12 by proxies which were given to the board president to vote. This has happened at past annual meetings as well and because of this, his voting block carries every issue. Our HOA has become a dictatorship and we have no voice.

**A** A proxy grants someone else the authority to act on another's behalf, in this case, at the annual owner meeting. Proxies should have a number of options:

**Option 1.** I assign my voting rights to [blank] (This could be anyone of legal age, even a non-owner.)

**Option 2.** I assign my voting rights to one of the directors of the board who is not running for election. (Proxies thus marked are distributed equally among the qualifying directors).

**Option 3.** I give this proxy for quorum purposes only. My voting rights are not assigned to anyone.

Having such wording clearly allows more discretion to the proxy giver than a proxy that states only "I assign my voting rights to the president of the board." If this is the wording on your proxy, it clearly is a setup to keep the current president in control and needs to be changed. If it is not written this

way and merely leaves a blank to be filled in, the president could go door to door and ask each owner to write his name on their proxy. But other members (including you) could do the same thing. If your proxy is written this way, gather as many proxies as possible before the next Annual Meeting and start making changes in this dictatorship. 🗳️

**Regenesis.net**  
**Cut Cost Ideas**  
**Subscribe Today!**

**Every Rule, Every Time**  
In general, Americans are not really "rules" people. In fact, one way of looking at the American Revolution is that it began in response to a dictatorial board of directors (British Parliament) that declared an unfair assessment (taxes) without listening to the will of the people (a membership vote). That negative reaction to authority has been an American tradition for hundreds of years.

There a long-held belief that we should be absolutely unencumbered by external rules in our own homes. But the reality is this: As soon as a family broadens into a community, whether it's a commune, a condo, a city or country, rules become inevitable. Even the earliest human communities decided at some point that certain things weren't such a great idea, like skewering your neighbor on your spear.

In fact, when you boil it down, all rules are a form of conflict resolution. They're an attempt to provide a framework for avoiding disputes or resolving them without escalating to violence. The problem is there are dozens of different theories about how to balance rules and whether to err on the side of fewer or greater restrictions. You'll find homeowner associations (HOAs) with very few restrictions as well as those that tell you how early you're allowed to turn on the television.

The vast majority of rules are designed to regulate interaction between

neighbors and to ensure that each can enjoy their property as undisturbed as possible. Rules designed to protect the common elements and prevent the deterioration of property values, however, make up a very important minority of rules. These rules govern how your shutters look or what you can do to your balcony. In general, every rule belongs to one of these two categories: avoiding conflict or protecting property. And some actually do both.

It's important to remember that rules are not optional. They're not optional for the board to enforce, and they're certainly not optional for owners or their guests to follow. Don't bring your potbellied pig or bobcat into a pet-restricted condominium, thinking, "They can't possibly care! Who would say anything?" They will care. Mediators and judges are inundated with hundreds of cases on just these issues, and absent disability or other exceptions, the rule violator is going to lose almost every time.

Rules and regulations are contractual covenants. They're not permissive and they're not suggestions. They are terms that you constructively agreed to, in writing, when you bought your home or unit. That makes them fully enforceable, down to specific compliance. That is, if you finished your floors with \$30,000 worth of Italian marble but your governing documents only allow carpet, a judge is not going to care one whit about your investment or the hardship you will incur by removing the tiles. You are going to have to remove them at your expense, under court order. No question.

Rules are separated into two classes, and these classes are treated very differently. For simplicity, they are referred to as Recorded and Unrecorded.

A **Recorded Rule** is a covenant, rule, or restriction that is written into the governing documents and recorded into the public record. This includes anything in the original documents as written by the developer and any rules promulgated and recorded later by the board. Recorded Rules are clothed with

a very strong presumption of validity, as owners have the opportunity to know about them before purchasing a property; if it's in the public record, you're assumed to know that it exists (aka constructive notice).

Recorded Rules will not be invalidated by a court unless wholly arbitrary in application, in violation of public policy or contradict a fundamental constitutional right. The simplest example of an invalid Recorded Rule would be a restriction against a particular race or religion buying into the community. This violates public policy as well as various state and federal statutes.

Another example might be a rule that gives the board the power, at its sole discretion and on a case-by-case basis, to regulate what unit owners wear on the common property (a case of arbitrary application). These types of rules will generally be invalidated if they are ever challenged in court, whether or not they have been recorded in the public register. But otherwise, Recorded Rules are mostly bulletproof, so it's very important that any prospective HOA owner reviews the covenants, rules, and restrictions in the public record extremely carefully. If there's a rule that says no loud music on Tuesdays, it doesn't matter how odd or random that might appear. If there's any explanation for the rule, then it will be presumed to be valid and it may be enforced by the board.

**Unrecorded Rules** are those rules that have been promulgated by the board over the years but never recorded publicly. The important thing to remember about these rules is that a court may invalidate them if they are unreasonable, or if they circumvent a right granted or inferred from the recorded covenants, conditions, and restrictions.

However, there's another hurdle for the board to face: Does the rule circumvent a right granted or inferred from the recorded documents? The documents are silent on pets, which at first glance might seem to mean that the board is free and clear. But what it actually means is that, since there are no

restrictions on pets, they are presumptively allowed.

There are a couple of defenses, however, that owners can raise to lawfully prevent an HOA from enforcing a rule: *estoppel and selective enforcement*. Here's how they work. As a general principle, the law requires any rule to be enforced within a reasonable amount of time; otherwise, the violator may assume that the rule is not going to be applied. In the case of contractual covenants, this rule is called estoppel or waiver. In essence, if the board does not act in a timely manner to enforce a regulation, it will be stopped from doing so altogether.

The second defense, *selective enforcement*, plays out exactly as it sounds. Just like our own government, an HOA cannot enforce a rule against one resident but intentionally ignore another similar violation. Rules are to be applied universally or not at all.

The wrinkles involved in HOA rules and regulations can actually be rather difficult for the majority of owners to grasp. Society encourages cooperation and reasonable application of laws. "I know dogs have to be on a leash," a pet owner will say, "but not *my* dog! He's the best boy ever!" But that owner is going to be the same person who hits the roof when her dog is attacked by a less friendly animal that is also breaking the rules.

Unit owners will plead for the board to "be reasonable," and often, the board relents. But waiving on rules opens the doors to valid claims of estoppel and selective enforcement, even when application of the rule might be extremely important to protect either the property or the residents. So, as difficult as it may be to accomplish, it's very important to enforce every rule, every time.

By Gary A. and Ryan Poliakoff

**Regenesis.net**  
**Sample Rules**  
**Subscribe Today!**

## The Planning Calendar

In conjunction with completing the annual budget review, a Management Planning Calendar should be compiled to reflect budget events, meetings and other action items. This calendar should be distributed to all members so they can plan accordingly for events that impact them personally. Result: No surprises, more gets done and more harmony in the HOA. Here is an example:

### Nottacare Condominium Management Planning Calendar

#### JANUARY

8 Annual Homeowner Meeting  
~ Elect 2 Directors  
~ Review Bylaw Amendment - ARC  
~ Review & Approve Parking Resolution  
~ Appoint Social Committee  
~ Appoint Maintenance Committee  
~ Appoint Landscape Committee  
~ Appoint Architectural Control Committee  
Get proposals for roof replacement  
Get proposals for pool work  
Get proposals for corrective pruning  
Inspect decks for repairs  
Forward Year End Financials to CPA  
Sweep parking lots

#### FEBRUARY

13 Board of Directors Meeting  
~ Review roof proposals  
~ Review pool work proposals  
Newsletter

#### MARCH

File association tax return by the 15th  
Install barkdust  
Order fire extinguisher inspection

#### APRIL

1 Maintenance Committee Inspection  
15 Pool work project begins  
Dewinterize exterior faucets  
Walkthrough with Landscape Contractor  
Clean Clubhouse and stairwell carpets

#### MAY

5 Work Party - Plant spring flowers  
12 Board of Directors Meeting  
25 Pool Opens  
Newsletter  
~ Send Pool Rules  
~ Announce Summer Social  
Clean gutters  
Wash windows  
Sweep parking lots

## JUNE

Roof replacement project begins  
Deck repair project begins

## JULY

15 Summer Social  
Corrective pruning project begins

## AUGUST

15 Board of Directors Meeting  
~ Appoint Budget Committee  
Newsletter

## SEPTEMBER

10 Close Pool  
12 Chimney Inspections & Cleaning  
15 Budget Committee Meeting  
~ Review manager's draft budget  
~ Review insurance coverage  
Wash windows

## OCTOBER

5 Work Party - Plant fall flowers  
Winterize exterior faucets  
Mail winterization notices to residents  
Walkthrough with Landscape Contractor

## NOVEMBER

1 Grounds Committee Inspection  
22 Board of Directors Meeting  
~ Review & approve budget  
Newsletter  
~ Request Board Candidates  
~ Announce Christmas Party  
Mail budget & fee notice by the 30th

## DECEMBER

5 Clubhouse Cleaning Party  
12 Christmas Party at Clubhouse  
Clean gutters 🗑️

**Regenesi.net**  
**Resource Links**  
**Subscribe Today!**

## 25 Life Lessons

1. Frame every disaster with these words: "In five years, will this matter?"
2. Always choose life.
3. Forgive everyone everything.
4. What other people think of you is none of your business.

5. Time heals almost everything. Give time time.

6. However good or bad a situation is, it will change.

7. Your job won't take care of you when you are sick. Your friends will. Stay in touch.

8. Believe in miracles.

9. God loves you because of who He is, not because of anything you did or didn't do.

10. Whatever doesn't kill you really does make you stronger.

11. Growing old beats the alternative - dying young.

12. Your children get only one childhood. Make it memorable.

13. Read the Psalms. They cover every human emotion.

14. Get outside every day. Miracles are waiting everywhere.

15. If we all threw our problems in a pile and saw everyone else's, we'd grab ours back.

16. Don't audit life. Show up and make the most of it now.

17. Get rid of anything that isn't useful, beautiful or joyful.

18. All that truly matters in the end is that you loved.

19. Envy is a waste of time. You already have all you need.

20. The best is yet to come.

21. No matter how you feel, get up, dress up and show up.

22. Take a deep breath. It calms the mind.

23. If you don't ask, you don't get.

24. Yield.

25. Life isn't tied with a bow, but it's still a gift. *by Regina Brett* 🗑️

**Regenesi.net**  
**Ask the HOA Expert™**  
**Subscribe Today!**

## Expect the Unexpected

Rich stood helplessly next to a huge flatbed rental truck. He had just moved to a new city and had come to collect his household goods from the moving company warehouse. Everything he and his family owned was in two plywood boxes measuring 4' x 8' x 8' but weighing a hefty two tons.

The forklift operator did his job quickly and set them on the truck. It was Quittin' Time on a Friday night and the operator soon vanished leaving Rich in a vacant parking lot to finish the job. Before he could leave, he needed to secure the cargo.

Rich wasn't in the best frame of mind. His family life was a mess, he was unemployed and in a strange place. It was cold, he felt abandoned and alone. He looked at the small nylon rope he brought and it soon became clear it was a two man job and the rope was woefully inadequate for the job. Dusk became twilight as he struggled in a fruitless effort. Finally, his frustration turned to despair. NOTHING was working in his life, and this was just one more example.

"That rope ain't gonna work", a voice spoke from darkness. Rich turned around and a middle aged man walked up with a couple of coiled heavy duty tie down straps. "Why don't you try these?"

The man's look radiated friendliness and compassion, something Rich hadn't seen in a good long while. "Here, I'll give you hand" he said. Within five minutes, they, really "he", had secured the load. The man turned to leave and Bill called after him, "Hey, what's your name? Where do you live? Where should I return the straps?"

"Name's Carl and I gotta get back to my rig and get pointed south. Got to make Grants Pass by midnight. Don't worry about the straps. I got plenty. Give'em to someone that needs them." With that, he turned and walked away.

An incredible sense of relief and well being swept over Rich. He had come to expect the worst from life. So Carl took him totally by surprise. He apparently wasn't aware of Rich's expectations and bulled right past them.

There are moments like these in everyone's life, inexplicable blessings that present themselves out of the blue. These events are no more random than the very beginnings of the universe. They show the folly of believing in the survival of the fittest. Selfless acts are the glue that binds us one to another and makes us different from all other species. Carl understood this and put it into practice. You can do the same. Where ever you are Carl, thanks for showing the way. 🌟

**Regenesis.net**  
**Sample Rules**  
**Subscribe Today!**

### Golf Giggles

These greens are so fast I have to hold my putter over the ball and hit it with the shadow. *Sam Snead*

I was three over. One over a house, one over a patio, and one over a swimming pool. *George Brett*

Actually, the only time I ever took out a one-iron was to kill a tarantula. And I took a 7 to do that. *Jim Murray*

The only sure rule in golf is - he who has the fastest cart never has to play the bad lie. *Mickey Mantle*

Sex and golf are the two things you can enjoy even if you're not good at them. *Kevin Costner*

I don't fear death, but I sure don't like those three-footers for par. *Chi Chi Rodriguez*

After all these years, it's still embarrassing for me to play on the American golf tour. Like the time I asked my caddie for a sand wedge and he came back ten minutes later with a ham on rye. *Chi Chi Rodriguez*

The ball retriever is not long enough to get my putter out of the tree. *Brian Weis*

Swing hard in case you hit it. *Dan Marino*

My favorite shots are the practice swing and the conceded putt. The rest can never be mastered. *Lord Robertson*

Give me golf clubs, fresh air and a beautiful partner, and you can keep the clubs and the fresh air. *Jack Benny*

Professional golf is the only sport where if you win 20% of the time, you're the best. *Jack Nicklaus*

I never pray on a golf course. Actually, the Lord answers my prayers everywhere except on the course. *Billy Graham*

If you watch a game, it's fun. If you play at it, it's recreation. If you work at it, it's golf. *Bob Hope*

If you think it's hard to meet new people, try picking up the wrong golf ball. *Jack Lemmon*

You can make a lot of money in this game. Just ask my ex-wives. Both of them are so rich that neither of their husbands work. *Lee Trevino*

I'm not saying my golf game went bad, but if I grew tomatoes, they'd come up sliced. *Lee Trevino*

After being struck by lightning on the golf course and recovering, Lee Trevino was asked if he'd ever play again during a storm. He replied, "If I got caught in one, I'd hold up my One Iron and walk back to the clubhouse. Even *God* can't hit a One Iron!" 🌟

**REGENESIS RESERVES**  
PACIFIC NORTHWEST  
RESERVE STUDY CONSULTANTS

- Complies with Statute
- Custom Funding Plan
- Maintenance Plan
- Many Satisfied Clients

NO OBLIGATION PROPOSAL  
**503.268.1789**  
info@regenesisreserves.com  
www.regenesisreserves.com

MEMBER  
Association of Professional Reserve Analysts

Have  
a  
Peaceful  
and  
Prosperous  
New  
Year