



# 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.



**RICHARD L. THOMPSON**

EDITOR & PUBLISHER  
rich@regenesis.net

**Regenesis, Inc.**

PO Box 19605  
Portland OR 97280

**www.Regenesis.net**

**PH 503.481.7974**

## Board Overboard

On June 24, 2021 the unthinkable happened to the 12 story Champlain Towers South in Miami Florida: the concrete structure built in 1981 collapsed in 12 seconds killing 98 people. It was the third deadliest structural engineering failure in United States history.

Forensic engineering will determine why the collapse occurred, while attorneys and insurance companies will sort out the human and capital issues. As these events play out, the court system will also be predictably involved since there will be civil suits filed by the families who suffered unretrievable losses.

So why does an HOA board of directors care (or should care) about this horrible tragedy? Because it was *avoidable*. Current and prior boards of Champlain Towers had obtained expert advice from reserve study professionals and qualified engineers that the building needed substantial renovation to keep it safe and livable. Those boards chose to ignore the advice because that renovation cost a lot of money.

Boards often try to pinch pennies and rationalize deferring renovations for a variety of reasons. Money all too often drives the neglect. However, those that serve on HOA boards have a *fiduciary duty* to all current and future owners to protect the common assets, home values, and in the case of Champlain Tower, lives. The current and previous boards of Champlain Towers failed on every level.

Usually when HOA boards fail to fund and execute timely renovations and maintenance, there is loss of market value. The paint or roof fails, the decks or fences rot or the paving disintegrates. These are all plainly visible to residents and potential buyers alike and reduce the value of what for most owners is their greatest asset.

Lenders became acutely aware of how it affected their collateral during the sub-prime mortgage crisis of 2007-2010 which ultimately caused a global financial

meltdown. When HOA and condominium collateral values plummeted, lenders that foreclosed often discovered there was little or no reserves to renovate the property. While some HOAs had built up reserves, the boards often used them to prop up inadequate operating budgets when many owners stopped paying regular assessments. Now, wise lenders have a policy of assessing an HOA's financial condition before funding a homeowner's purchase there in. Common sense right?

But what happened at Champlain Towers took the issue to a whole new level. The neglect of boards at Champlain Towers resulted in both lost property value and lives. While time will tell how it all plays out, there is a very high probability that civil/criminal lawsuits will be filed against the current and previous boards to hold them accountable for what happened. There may be jail time in the cards for those board members.

Boards are usually populated with unskilled but well-meaning volunteers trying to protect their own interests. When that conflict of interest manifests itself with unrealistically low HOA assessments and deferred maintenance and renovation, bad things are predictable. The lesson of Champlain Towers is that boards are elected to manage a complex business which few have the skill to do. It's incumbent on those boards to seek and follow expert advice to protect the interests of all owners current and future. The boards of Champlain Towers went overboard in protecting their own short term interests and a heavy price was paid. If this description describes your HOA board, change must happen *today*. If you don't have professional management, hire it. If you don't have a 30 year reserve study, get one done, update it annually, increase regular assessments to adequately fund reserves and follow the recommendations.

**POSTSCRIPT:** Legislation is being proposed in Florida to require boards to get periodic engineering assessments and to perform indicated repairs. Similar legislation will surely take place in other states to avoid the avoidable.☀

## Ask the HOA Expert

**Q** Why don't more HOAs use email and the internet to communicate? I had a unit owner half-way around the world email me snow removal guidelines during a snow storm. In the old days, these notices might have been delivered door to door or posted in a common lobby or near mail boxes. Email is free and fast.

**A** There are few HOA dwellers that don't use email nowadays. While the board needs to be careful not to transact anything but emergency and preapproved business by email, other HOA matters are ripe for electronic distribution. Meeting minutes, meeting notices, newsletters, maintenance schedules, etc. can and should be emailed. If some owners still cling to paper communications, they should be accommodated but for the other 99%, it's definitely the way to go. As with paper communications, make sure that all HOA emails come from an "official" source like the manager or the board president and the email bears that authority clearly.

An HOA website is a no brainer these days. There are numerous companies that provide customizable websites that can be maintained by HOA volunteers that cost only a couple hundred dollars a year. For a list of information and documents that should be posted on an HOA website and website provider companies, go to [www.Regensis.net](http://www.Regensis.net)

**Q** We are currently reviewing our governing documents. The section regarding signs limits them to For Sale or For Rent. How about a more practical approach by defining three different categories and examples:

1. **Permanent.** Statues, fountains, flagpoles
2. **Temporary.** Christmas/Hanukkah decorations and flags
3. **Signs.** For sale/rent, security, political, garage sale

**A** The main purpose of sign restrictions is to limit the number, size, number, theme

and longevity of them. Yard decorations (like statues) are not signs. The issue with yard decorations is usually how garish or tasteless they are (gnomes, pink flamingos, whirligigs). Holiday decorations can certainly be garish as well but they tend to be short lived like political signs. Flags can come in many forms including country, college and sports teams. But the US flag has federal protections. Others are subject to board rules.

It's best to have a sign, flag and yard decoration philosophy rather than an extensive list of acceptable or unacceptable items. The philosophy should stress curb appeal and good taste. Since we all know that some lack good taste, the board may need to intervene on a case by case basis. The board may also need to compromise when confronted by an intractable resident rather than squander precious emotional and financial resources trying to enforce the rules.

There is a sample sign policy at [www.Regensis.net](http://www.Regensis.net) in the Policy Samples section.

Free Speech under the First Amendment, so is it permissible for them to deny me this right?

**A** You have the right to listen to music. The HOA has the right to control the volume of that music so it doesn't disturb others' right to not listen to music.

**Q** I disagree with the principle of open board meetings. There is nothing in my state's law that requires an HOA board to have open meetings. It should be up to the board to decide if its meetings are to be open or not. The purpose of the board meeting minutes is to communicate actions of the board. That should suffice.

Discussions among the board members in arriving at a decision should be confidential. If I am going to serve on a private corporate board, I want the ability to speak my mind in discussing issues and formulating a decision. I am not running for the city council or state legislature when I agree to serve on a HOA board.

The reason that HOAs are created is to provide a private corporate alternative to governmental bodies. The additional flexibility of private, voluntary association is one of the fundamental reasons for creating an HOA.

Just as a board meeting of a private college is not open to faculty, students and donors, and just as the board meetings of private clubs are not open to the members, the meetings of an HOA may be closed if the board so chooses. Rant over.

**A** Open HOA board meetings are, in fact, required by law in many states, although yours may be an exception. And while closed meetings may be the norm for colleges and golf clubs, it is not the norm for government. And HOAs are certainly governing bodies in the same sense as city, state and federal governments. More importantly, they govern the property of shareholder members who hold their property and property rights very dear. This relationship makes the need for open meetings critical.

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**Q** My homeowner association does not allow any amplified music at the HOA's pool. I know that music is protected as

That said, HOA members rarely attend board meetings unless to petition the board. So having an open meeting policy is more symbolic than anything. But it's that willingness to keep the door open that helps keep the peace. At any given time, some member may get crosswise with the board. If they are not allowed in to see how things are run, the problems will only be exacerbated. Discontented members tend to stir up their neighbors by spreading rumors, fear, outrage and generally make the board's job more difficult. If the board has a policy of operating in the open, it takes a lot of starch out of those particular sheets.

HOA governance is very different because of issue of neighbors governing neighbors. Fortune 500 boards can operate behind closed doors because the shareholders are far away, although major shareholders can and do attend Fortune 500 board meetings. Most HOA members have the biggest investment they own and their lifestyle on the line. So there is a BIG difference here and one that a smart board should heed. While maybe not required by law, common sense says do it. 🐼

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## **Owner Bankruptcy & HOA Assessments**

Many homeowner associations (HOA) have been hit hard by owner bankruptcies and foreclosures. Although the bankruptcies and foreclosures can occur together, there are differences on how an HOA may be affected if they occur separately. A foreclosure will likely affect the homeowner association's lien on a property but not the ability to collect from an individual personally. The opposite is generally true in bankruptcy.

Filing for bankruptcy to discharge a debt is an age-old practice. When a

person successfully completes a bankruptcy, any HOA fees or assessments that were due prior to filing are discharged. But, importantly for homeowner associations, any assessments that accrue after the date of the bankruptcy filing are not discharged and still payable. Most owners who file for bankruptcy but plan to continue to live in their home in an HOA know that they still have to pay assessments incurred after filing for bankruptcy. Notably, even if an owner/debtor plans to surrender his home as part of the bankruptcy proceeding, post-bankruptcy HOA assessments are not dischargeable and must be paid as long as the owner/debtor or the trustee has a legal, equitable, or possessory ownership interest in the property. In fact, even if an owner/debtor has vacated the unit, he or she still owes post-petition assessments.

The varying types of bankruptcies available to owners/debtors complicate the situation too. The most common forms of bankruptcy for individuals are Chapter 7 and Chapter 13. Chapter 7 is a liquidation, whereby the owner/debtor must generally liquidate his/her assets to pay creditors as much as possible. In a Chapter 7 bankruptcy, pre-petition debts are discharged subject to a variety of exceptions, including the exception discussed above in relation to assessments.

A Chapter 13 bankruptcy filing provides for financial reorganization for individuals. In a Chapter 13 bankruptcy, a debtor creates a payment plan in which the debtor still pays creditors, but at a discounted rate. Once the debts have been paid according to the plan, the debtor is discharged of remaining debts that were included in the plan. Importantly for HOAs relying on assessments, the Chapter 13 owner/debtor is responsible for all assessments incurred after the filing of bankruptcy and during the pendency of the bankruptcy plan.

As HOA boards well know, assessment collection can be difficult at times. A lender's foreclosure sale will extinguish (nullify) junior liens like an HOA's lien and, unless the property is sold for

more than the lender is owed, the HOA will likely receive nothing. Moreover, an owner's bankruptcy also reduces and complicates the recovery of an HOA debt. When an owner files for bankruptcy or is in foreclosure, legal advice should be sought regarding the HOA's collection rights.

*Amanda Anderson - Ball Janik LLP 🐼*

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## **Security Goes Green**

Every homeowner association deals with security in one form or another. It could involve an entry gate, clubhouse, elevator, parking garage, fence, wall, storage room or common area lighting. For those HOAs that have an entry access system, it includes a door opener, key fob or card which must be recorded and replaced as needed.

Residents using old technology security access control can relate to how easily security breaks down. Isn't that person at the pool a friend of Unit 9's owner? But where is the Unit 9 owner? Or, the pizza delivery guy just punched in a code to open the front gate. As the saying goes, "Locks keep your friends out."

High tech access control was once a big city concern but today even areas with few security problems are taking proactive initiative. New technology includes Fingerprint Biometric Access. The physiological uniqueness of each person's fingers defines the difference between individuals. Other biometric systems include facial and eye recognition. One advantage of biometric systems is never having to use external credentials like keys, etc. Biometric systems can usually be



accomplished without any change in wiring and software downtime.

Security access systems have the capability of controlling access according to time of day. For example, residents can be given 24/7 clearance, renovation contractors Monday-Friday 7 am to 6 pm and security services 8 pm to 6 am. Besides tracking individuals that access the grounds and buildings, lighting and heating/air conditioning can be controlled for maximum energy efficiency and savings. The system can also monitor doors that are ajar.

Security alerts can be sent to personal computers and smart phones. There is a plethora of options available to answer the most intricate security conundrums. From self-help Neighbor Watch Programs to cutting edge biometrics system, there is something for every HOA budget. As residents become more and more security conscious, explore what today's technology has to offer. 🏠

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## **Leadership Lessons from Abraham Lincoln**

In a scene from the movie **Lincoln**, Mary Todd Lincoln tells her husband: "No one is loved as much as you by the people. Don't waste that power." While the movie focuses on the passing of the 13th Amendment abolishing slavery, it also gives a lot of insight to Lincoln's strong leadership skills - those things that have made him so admired.

While you may not be leading revolutionary change in the country, here are four leadership lessons from our 16th president on how to lead revolutionary change at your business.

**1. Say NO to "Yes Men".** At a time in history when the United States was at war with itself, Lincoln surprisingly chose to fill his cabinet with a team of his rivals. These were men he

considered to be the best and brightest minds in the country. And they were unafraid to challenge Lincoln and assert their opposition. A self-confident man, Lincoln welcomed strong opinions as it provoked thoughtful debate as well as inner reflection. It proved to be an important tactic during his presidency.

Rick Lepsinger of OnPoint Consulting agrees: "Don't hire in your own image," he says. "Get comfortable with conflict and learn how to manage differences productively." He suggests that leaders not allow conflicts to fester, but bring them to the surface as soon as possible. He also recommends avoiding the overuse of compromise, looking instead for common ground and alternatives.

**2. Be decisive.** While it's helpful to get more than one opinion, strong leaders know when and how to make decisions. Cabinet members could have argued forever, but Lincoln had the ability to know when he had all of the information he needed. Walking away to seek solitude, he was able to determine the best solution and make a decision without wavering. Good leaders clarify their decision criteria, says Lepsinger, identifying musts and wants, and using that as a guide to compare options. "Assess the risk of each option as well as the benefits," he says. "These practices will increase confidence that you've selected the alternative that is the best balance of risk and reward."

**3. Look for inspiration in unlikely places.** As a member of Congress, Lincoln studied mathematics to gain wisdom in reasoning. In the movie, Lincoln shares some of this wisdom with two young clerks at the telegraph office: "Euclid's first common notion is this: 'Things which are equal to the same thing are equal to each other.'" Lepsinger says leaders are continuous learners and look outside their industry for ideas and innovation.

**4. Connect on a personal level.** We know "Honest Abe" was fair, but Lincoln was also known for his jokes and storytelling. It's how he broke the ice and blazed a trail to common ground. Lincoln also made himself accessible. As President of the United States, he kept regular office hours and citizens were allowed to see him. "It's not how smart you are - strong personal

relationships and high levels of trust are the foundation of effective leadership," says Lepsinger. "[Good leaders] demonstrate empathy, take an interest in others and find out details about them."

Lincoln's leadership style has survived the test of time because it is built on hard experience and fueled by passion for what is good and right. 🏠

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## **An Unhidden Agenda**

Homeowner association board meetings have a reputation for running longer than necessary. However, if properly organized and focused, most can and should take no longer than two hours. In order to conduct an effective meeting, you need to start with a concise meeting agenda.

The meeting agenda should be drafted by the manager (if one exists) and reviewed by the board president, since it is the president who conducts the meeting. At the top of the agenda should be the date, time and location of the meeting.

### **Agenda Points in Order:**

- Call to order. Done by the president.
- Review & Approve Minutes from Last Board Meeting. President asks for additions and corrections. If there are none, the president requests a motion to "approve minutes as distributed".
- Financial Report. Given by treasurer or manager. Includes year to date Income and Expense Report and overview of collection activity.
- Committee Reports. Given by committee chairs (Budget, Architectural & Design, Newsletter, Landscape, Pool, Social, etc.)

- Unfinished Business from Last Meeting.

- New Business.

- Open Forum. This includes general members who want to address the board. It can be held before the board meeting so that speakers can leave if they want or after the business portion of the meeting so general members can listen to issues facing the board which may address their specific concern.

- Action Item Review. Sometimes added to the end of an agenda to review the action items to be addressed before the next meeting. This assures that all are clear about the decisions made and who is assigned to what task. Finally, the board should set its next meeting date before adjourning the meeting.

Timed Agenda. One way to control the length of the board meeting is to use a timed agenda. To do this, the preparer of the agenda should note the actual start time next to each heading and then provide an estimate of how much time each section of the agenda should take.

The meeting agenda, along with related information, should be given to board members at least one week prior to the meeting date. This allows time to review the meeting material prior to the meeting. A well prepared board should come prepared to get business done. 🌟

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## Understanding Change

There is an expression, "To truly understand something, just try to change it." In HOAs, routines established long ago can become tradition and difficult to change.

A well-known psychological experiment started with five monkeys in a cage. Inside the cage, a banana was hung on a string and a set of stairs was placed under the banana. Before long, one monkey went to the stairs and

started to climb towards the banana. But as soon as he placed one foot on the stairs, all of the monkeys were sprayed with cold water.

After a while, another monkey made an attempt with the same result - all the monkeys are sprayed with cold water. After this action was repeated a third time with the same result, when the fourth monkey tried to climb the stairs all of the other monkeys tried to prevent it.

Then one monkey was removed from the cage and replaced with a new one and the cold water was stopped. The new monkey sees the banana and starts to climb the stairs but to his surprise all of the other monkeys attacked him. After another attempt followed immediately by another attack, the newest monkey has learned his lesson and does not try again to climb the stairs.

A second of the original five monkeys is replaced with a new one. This newcomer goes to the stairs and is attacked and the previous newcomer takes part in the punishment with enthusiasm.

Then the third original monkey is replaced with a new one, then the fourth and then the fifth. Every time the newest monkey takes to the stairs he is attacked.

At the end, the monkeys that are beating the newest addition have no idea why they were not permitted to climb the stairs or why they are participating in the beating of the newest monkey as none of the remaining monkeys have ever been sprayed with cold water. Nevertheless, no monkey ever again approaches the stairs to try for the banana.

This experiment depicts a tendency in human beings to do things the same way that they have always been done, even though it may not make sense any longer. "That's the way we have always done it" is not a very good answer. Instead, consider the statement, "That is the best way that we have come up with so far." That leaves things open to the possibility of improvement. 🌟

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## Deja Vu Times Two

Lawrence Peter "Yogi" Berra played Major League Baseball for 19 years for the New York Yankees. He played on 10 World Series Championship teams, is a MLB Hall of Famer and has some awe-inspiring stats. His name is consistently brought up as one of the best catchers in baseball history and he was voted to the Team of the Century in 1999.

Yogi is a nickname given to him by a friend who likened his cross-legged sitting to a yogi. Yogi was famous for his fractured English, malapropisms and sometimes nonsensical quotes. Here are some Yogi Berra quotes that will make you shake your head and smile.

1. "It's like deja vu all over again."
2. "We made too many wrong mistakes."
3. "You can observe a lot just by watching."
4. "A nickel ain't worth a dime anymore."
5. "He hits from both sides of the plate. He's amphibious."
6. "If the world was perfect, it wouldn't be."
7. "If you don't know where you're going, you might end up some place else."
8. Responding to a question about remarks attributed to him that he did not think were his: "I really didn't say everything I said."
9. "The future ain't what it use to be."
10. "I think Little League is wonderful. It keeps the kids out of the house."
11. On why he no longer went to Ruggeri's, a St. Louis restaurant:

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"Nobody goes there anymore because it's too crowded."

12. "I always thought that record would stand until it was broken."

13. "We have deep depth."

14. "All pitchers are liars or crybabies."

15. When giving directions to his home: "When you come to a fork in the road, take it."

16. "Always go to other people's funerals, otherwise they won't come to yours."

17. "Never answer anonymous letters."

18. On being the guest of honor at an awards banquet: "Thank you for making this day necessary."

19. "The towels were so thick there I could hardly close my suitcase."

20. "Half the lies they tell about me aren't true."

21. As a general comment on baseball: "90% of the game is half mental."

22. "I don't know if they were men or women running naked across the field. They had bags over their heads."

23. "It gets late early out there." 🌃

## The Little Match Girl

It was so terribly cold. Snow was falling, and it was almost dark. Evening came on, the last evening of the year. In the cold and gloom a poor little girl, bareheaded and barefoot, was walking through the streets. Of course when she had left her house she'd had slippers on, but what good had they been? They were very big slippers, way too big for her, for they belonged to her mother. The little girl had lost them running across the road, where two carriages had rattled by terribly fast. One slipper she'd not been able to find again, and a boy had run off with the other, saying he could use it very well as a cradle some day when he had children of his own. And so the little girl walked on her naked feet, which were quite red and blue with the cold. In an old apron she carried several packages of matches, and she held a box of them in her hand. No one had bought any from

her all day long, and no one had given her a cent.

Shivering with cold and hunger, she crept along, a picture of misery, poor little girl! The snowflakes fell on her long fair hair, which hung in pretty curls over her neck. In all the windows lights were shining, and there was a wonderful smell of roast goose, for it was New Year's eve. Yes, she thought of that!

In a corner formed by two houses, one of which projected farther out into the street than the other, she sat down and drew up her little feet under her. She was getting colder and colder, but did not dare to go home, for she had sold no matches, nor earned a single cent, and her father would surely beat her. Besides, it was cold at home, for they had nothing over them but a roof through which the wind whistled even though the biggest cracks had been stuffed with straw and rags.

Her hands were almost dead with cold. Oh, how much one little match might warm her! If she could only take one from the box and rub it against the wall and warm her hands. She drew one out. R-r-ratch! How it sputtered and burned! It made a warm, bright flame, like a little candle, as she held her hands over it; but it gave a strange light! It really seemed to the little girl as if she were sitting before a great iron stove with shining brass knobs and a brass cover. How wonderfully the fire burned! How comfortable it was! The youngster stretched out her feet to warm them too; then the little flame went out, the stove vanished, and she had only the remains of the burnt match in her hand.

She struck another match against the wall. It burned brightly, and when the light fell upon the wall it became transparent like a thin veil, and she could see through it into a room. On the table a snow-white cloth was spread, and on it stood a shining dinner service. The roast goose steamed gloriously, stuffed with apples and prunes. And what was still better, the goose jumped down from the dish and waddled along the floor with a knife and fork in its breast, right over to the little girl. Then the match went out, and she could see only the thick, cold wall. She lighted another match. Then she was sitting under the most beautiful Christmas tree. It was much larger and much more

beautiful than the one she had seen last Christmas through the glass door at the rich merchant's home. Thousands of candles burned on the green branches, and colored pictures like those in the printshops looked down at her. The little girl reached both her hands toward them. Then the match went out. But the Christmas lights mounted higher. She saw them now as bright stars in the sky. One of them fell down, forming a long line of fire.

"Now someone is dying," thought the little girl, for her old grandmother, the only person who had loved her, and who was now dead, had told her that when a star fell down a soul went up to God.

She rubbed another match against the wall. It became bright again, and in the glow the old grandmother stood clear and shining, kind and lovely.

"Grandmother!" cried the child. "Oh, take me with you! I know you will disappear when the match is burned out. You will vanish like the warm stove, the wonderful roast goose and the beautiful big Christmas tree!"

And she quickly struck the whole bundle of matches, for she wished to keep her grandmother with her. And the matches burned with such a glow that it became brighter than daylight. Grandmother had never been so grand and beautiful. She took the little girl in her arms, and both of them flew in brightness and joy above the earth, very, very high, and up there was neither cold, nor hunger, nor fear—they were with God.

But in the corner, leaning against the wall, sat the little girl with red cheeks and smiling mouth, frozen to death on the last evening of the old year. The New Year's sun rose upon a little pathetic figure. The child sat there, stiff and cold, holding the matches, of which one bundle was almost burned.

"She wanted to warm herself," the people said. No one imagined what beautiful things she had seen, and how happily she had gone with her old grandmother into the bright New Year.

## Happy New Year to One and All