



# The Regenesis Report



**National Edition      Innovative Homeowner Association Management Strategies      Priceless**

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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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## Water Wise Landscaping

Water conservation is becoming an important part of many homeowner association landscape goals. One of the best means of conserving water is to design or modify the landscape to reduce its water requirements.

In response to drought and limited water resources a number of new landscaping ideas have evolved to reduce water and maintenance requirements while still providing aesthetically-pleasing landscapes. Collectively, landscaping concepts that reduce water requirements can be called xeriscape, a word coined from the Greek *xeros*, meaning dry and the word **landscape**. Xeriscaping was originally conceived in the southwestern U.S., although it was inspired by the gardening traditions of Spain, North Africa and the Mid-East.

One component of water-conserving landscapes is the concept of natural landscaping. Natural landscaping involves plant selection based on local climate as well as site characteristics of exposure, light intensity, soil pH, soil aeration, soil mineral analysis, site drainage, and irrigation water quality. Proper plant selection based on site characteristics improve a plant's likelihood of survival and resistance pests and disease.

Native species are often preferred for natural landscapes but plant selection should take into consideration the microclimate and topography of the site. In some cases, native plants will not be the most appropriate choice. Man-made installation create desert climates (like parking lots), swamps (like detention ponds, waterways) and artificially-shaded areas. So, effective xeriscaping should match plants with the microclimatic features of the developed landscape site.

For example, plants adapted to wet soils should be used in low spots, waterways, retention ponds, spillways, and areas with poor drainage; drought tolerant plants should be used in dry spots, windy areas, exposed areas, plantings on berms, and plantings in areas

against unshaded south or west walls of buildings.

Since natural landscaping is a change in U.S. landscaping philosophy, it can meet resistance from those with preconceived notions of what a landscape should look like. One way to satisfy these notions is to use the "oasis" approach to landscape design. Oasis designing involves placing high water requiring, high maintenance, and showy plants in the areas with the most visual impact like the main entry. In less visible areas, xeriscaping can be used.

Aside from these landscaping philosophies, landscape design for water conservation can include grouping plants in the landscape according to their water requirements. By grouping plants with similar water needs, the irrigation system can be zoned so that each group receives only the amount of water required to maintain the plants. This technique has the additional advantage that plants on the same irrigation set will not be under or over watered at the expense of other plants.

An additional way to reduce maintenance and water use is to increase the use of mulches. A three- to four-inch layer of mulch should be used in planting beds to reduce evaporation from the soil surface, moderate soil temperatures, and suppress weeds. Mulches can sometimes replace turf or groundcovers in areas where they require extensive watering or do not cover an area completely. In these situations, mulches provide the additional benefits of requiring less maintenance and not consuming water.

Two more aspects of design that reduce irrigation needs are the use of drought tolerant plants and windbreaks. Drought tolerant plants inherently

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require less water because they are adapted to arid areas or to regions with frequent drought or with soils of low water holding capacity.

If using turf in the landscape, consider using one of the more drought tolerant species. Grasses with excellent drought tolerance include: bahia grass, Bermuda grass, and zoysia grass. A good drought tolerant plant is centipede grass while St. Augustine grass has a fair rating. Carpetgrass has a very poor drought tolerance rating (Augustine and Peacock, 1985). Another alternative with bahia grass is to allow turf to go dormant during dry periods; bahia grass will turn green again when rains resume.

Windbreaks can be formed by walls, fences, shrub beds, or hedges. Windbreaks reduce wind velocity and can greatly reduce water loss that occurs by evaporation during irrigation and by evapo-transpiration from plants. Properly constructed, windbreaks can reduce wind velocity by 75% to 85% and should be strongly considered for areas that experience steady winds or frequent gusty winds. Effectiveness of windbreaks is determined by height, density, and shape, with height having the greatest influence. The area protected by the windbreak extends

downwind the distance of five times the height of the windbreak. For optimum effectiveness, the windbreak should be continuous (unbroken by gaps) “stair-step” in shape, at least head-high, moderately dense (not impenetrable), and evergreen.

Water requirements of landscapes can be reduced by using the design principles of natural landscaping or oasis landscaping. Other methods of conserving water in the landscape include grouping plants in the landscape according to water requirements, increasing the use of mulches, selecting drought tolerant plants, and using windbreaks. 🌳

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## Ask the HOA Expert

**Q** Is there an industry standard fee that HOA’s charge for document copy requests? We have a member that is hounding our management company not only for copies but information regarding the developer’s duties, responsibilities, etc. The premise is that he wants to understand how the turnover will happen. Does an HOA have the right to charge for manager time?

**A** Yes, the HOA can and should charge manager time for making copies and doing personalized research for individual member requests. Of course, much self-help information like rules, regulations, governing documents, budgets, financial statements, etc. should be available on the HOA’s website for no charge. (Your HOA does have a website, right?)

**Q** The board recently imposed a \$500 annual rental fee on all landlord owners. Is this discriminatory?

**A** It is absolutely discriminatory and probably illegal. The governing documents define how HOA fees are assessed to members and singling out a class of member (landlords) for special assessment is not allowable.

Changing the fee structure takes an affirmative vote of the members which may be as high as 100%. That only makes sense. Otherwise, a majority could simply vote to increase fees for the minority. That said, the board can pass on reasonable costs to members. For example, if manager or maintenance cost is incurred to deal with move ins and outs (changing security access, preparing an elevator for moving furniture, etc.), that cost should be passed on to the member that triggers it. But this cost should apply to all, not just landlords.

**Q** Our president likes to get only one proposal from a company. For example, we are having \$7000 worth of tree work done. Then, without a board meeting to discuss the proposal, he goes door to door and collects director signatures avoiding those that would disagree the proposal. I thought that approving expenditures required a vote of the *entire* board.

**A** Unless the \$7000 was already approved in the annual budget or reserve study, three proposals are in order. Those proposals should be presented at a regular board meeting and approved with the usual motion, second and vote of all attending directors. The meeting minutes should reflect this board action.

Based on the facts as presented, the president is playing loose with his authority and needs to be reined in. The president serves at the pleasure of the board. If he won’t play by the rules, the board majority can remove him from office and replace him with a director that will.

**Q** Our HOA has five buildings, two are three story wood structures and the others are nine story concrete towers. The towers are having substantial concrete repairs done. Some of the work is for the common breezeways but most is related to unit balconies. Should the whole HOA share the financial burden for these repairs?

**A** Unless your governing documents specifically state that repair and maintenance of limited common areas (like unit balconies) is a unit owner's responsibility, the expense is shared by all members. From a practical perspective, the HOA would not want individual owners messing with structural components or, as is more likely, simply not maintaining them at all. The only way to assure consistent and professional repairs is for the HOA to take responsibility and pay for them.

It sounds like the repair responsibility of the two types of structures (low versus high rise) wasn't separated according to ownership as it should have been. Getting that changed would require an amendment to the governing documents which often requires a super majority and a vote next to impossible to achieve.

**Q** It was discovered last year that many of our condos have defective furnaces. To verify this, the board had all units inspected by a licensed heating professional. Many unit owners replaced their furnaces but we still have a number of owners who have refused to comply. The furnaces are a potential fire hazard. Do you have any suggestions on how we should handle this?

**A** The HOA has the right to demand furnace replacement where there is a documented fire safety issue. A letter from the Fire Marshall would help together with a demand letter that the HOA is prepared to force the issue legally. If such was necessary, the owner would

be charged the related legal expenses.

But rather than swing a legal hammer, the board could offer to facilitate cost savings by arranging multiple installations simultaneously. Doing this would result in substantial cost savings over an individual installation. Each unit owner would, of course, reimburse the expense. Also, the local utility company or state energy program might offer financial incentives for upgrading old furnaces. Help the hold-outs say "yes" if you can rather than force them to comply.

**Q** I live in a single family gated community. We have had a problem with vandals destroying our entry access system. What are our options?

**A** The area should be brightly lit as this kind of crime usually takes place at night. Signs should be installed that read "24 Hour Video Surveillance" along with clearly visible video cameras. While expensive security camera systems with recording capability are available, even cheap fake cameras can be effective. The goal is to get the vandals to believe that they are being watched. If persuaded, it often curbs their bad behavior. Deterrent is the goal. And a more bulletproof entry access system should be installed. 🚫

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### **Controlled Chaos**

There are those that believe homeowner associations are the essence of an insidious and malicious tyranny. To them, the board exists solely to exact misery upon the members. The nay sayers plot the demise of the HOA concept. They plant pink flamingos in their yards to thumb their noses. They fly Old Glory

or Don't Tread on Me as symbols of their freedom to do whatever they want. They distribute libelous newsletters to their neighbors. They incite discontent.

However, behind the rebellion and bravado there is an element of truth. Some boards *are* dictatorial. Some *are* out to lunch and no one is steering the HOA's ship. But that's a people problem, not a governmental theory problem. HOAs are governments not unlike others. They just have special needs. And most boards are doing pretty well considering their limited training. Governing an HOA is difficult even under the best of circumstances.

Better board education is the answer. In the past, information and education was difficult or expensive to get. The few that had it exacted a high toll for bits and pieces. Some promoted the myth of unresolvable conflict because it was in their interest to do so. By keeping boards in the dark, they could control the chaos and get paid for doing it.

For many years, it was believed that HOAs were neither a government or a business, just a bunch of neighbors sharing property. But the sharing aspect creates substantial interdependencies that don't exist in the typical subdivision. Property doesn't manage itself. Boards that didn't understand that failed miserably in long range planning, collections, rules enforcement, budgeting and maintenance.

These HOAs have paid a high price in ongoing conflict and sliding property values. These problems were all predictable. But it took decades before they hit the fan in a big way. At about 20 years, roofs, fences, decks, paving, pools and other expensive components begin to fail. But with no plan and no money, unfair special assessments are levied. Angry finger pointing and conflict ensue. This is the stuff that nay sayers use as ammunition. But these problems were all preventable.

A new day is dawning. As the HOA philosophy matures, efficient planning



processes are developed and workable solutions are devised, HOA living is becoming more enlightened and harmonious. Much of improvement is rooted in sound business practices that, when applied with compassion and clear communication, work quite well. Sunshine laws force board business into the open to help keep it accountable. And now it's understood that HOA management is very different and more challenging than every other form of property management. These revelations have all been healthy. Denial has been a major weakness of HOAs. There is a clear call to action, not more denial.

Chaos is the natural state of no government, no principles and self serving leaders. HOAs have a clear calling to maintain property values, livability and harmony. Focusing on those principles helps the board create the processes to achieve them. There are books, videos, articles, seminars, rules and policy samples to be had. Take control and chase chaos back into a dark corner. Educate thyself and be healed. 🌱

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**Life Blood Infusion**

Assessments are the life blood of homeowner associations. Without the continuous infusion of adequate funds, HOAs suffer the same fate as an individual suffering a heart attack. So, every HOA needs a cohesive and consistent collection process to thrive.

Whether they realize it or not, all HOAs have a collection philosophy. Some do it haphazardly, others consciously adopt a philosophy which fits the homeowner association. Collection philosophies run the gamut from "HOAs are businesses and must be run like businesses" to "collections are messy; if left alone, the members will eventually pay voluntarily" (Ha!).

One approach to developing a  
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collection philosophy is to prepare a Total Quality Management (TQM) style mission statement. It might look like this:

1. We want to collect as close to 100% of assessments as possible.
2. We believe in clear and regular communication with delinquent members.
3. The process should provide for graduated penalties for late payments.
4. The procedure must be written.
6. The procedure must be enforced in a consistent and uniform basis.
7. Members must be treated with respect throughout the process.

The centerpiece of an effective collection process is an administrative resolution enacted by the board and distributed to all members. Its purpose is simple: to communicate exactly what actions the HOA will take to pursue collections.

A Collection Resolution should include:

1. Assessments are due on the first of the month.
2. After \_\_\_ days, late charges of \$ \_\_\_ apply.
3. Balances due over 30 days will be assessed \_\_\_% per month.
4. A Notice of Intent to Lien is sent to members more than 30 days delinquent.
5. A lien will be is recorded against any member more than 45 days late.
6. Assessments will be accelerated to end of fiscal year (if allowed in the governing documents) for delinquencies of more than 3 months.
7. Property foreclosure will be processed for delinquencies of more than 4 months.
8. After institution of foreclosure action, all payment plans or settlements

require board approval.

**Enforcement Mechanics**

**Notice of Intent to Lien.** It serves as both a warning regarding the lien if debt is not paid by a certain date.

**Lien Recording.** It secures payment of the delinquent assessments. The preparation, recording and service of the lien is best handled by a qualified attorney who needs this essential information:

1. Member's property legal description
2. Mailing address for owner of record
3. Tax identification number of the property
4. A statement detailing amount owed, late charges, interest charges and any payments made.

**Acceleration of Assessments.** Some governing documents provide the HOA with the right to accelerate the balance of the fiscal year's assessments in case of default. If the collection process is designed to provide increasing sanctions for delinquencies, like when a four-month delinquency exists).

**Foreclosure of a Lien.** Some boards prefer to wait until a certain minimum dollar amount of delinquency has been exceeded. This approach can create problems particularly where partial payments have been accepted. It is recommended that foreclosure action be started after a specific number of months of delinquency has passed rather than a dollar amount. Foreclosure actions require the assistance of a knowledgeable attorney.

**Collection of Deficiency Judgments.** In some circumstances, there may be insufficient equity to pay off the HOA's debt and foreclosure may not make sense. The alternative is pursuing a deficiency judgment against the member. Getting a judgment does not automatically translate into payment. The judgment must be collectible by garnishment of wages or bank account or by attachment of non-exempt personal assets.

Enacting a comprehensive Collection

Resolution and adhering to it on a consistent basis is the best hope for a homeowner association to minimize uncollected assessments.

*From an article by John A. Stevens of Matheson, Parr, Schuler, Ewald & Jolly, LLP* 🏠

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### Measuring Reserves Adequacy

Each homeowner association requires a different amount of cash in reserves to perform the anticipated projects on time without requiring special assessments or loans. In addition to the difference in HOA types and ages, when one also considers the difference between reserve plans and reality, measuring reserves adequacy can be a shot in the dark. But an HOA's risk of having adequate reserves can be measured if the right kind of ruler is used.

Winston Churchill said "Saving is a very fine thing, especially if your parents have done it for you!" But how much "savings" does it take to provide an adequate level of comfort? A reserve cash balance that is adequate for one HOA is not necessarily adequate for another. But if actual reserves on hand are compared to current reserve requirements, a relative measuring scale called Percent Funded can be established. This measuring scale allows us to measure how well a reserve fund fits and meets reserve needs.

Large homeowner associations with many common area components have high reserve fund requirements. Conversely, HOAs with a few common area components have smaller reserve fund requirements. You can convert reserve information into numbers by multiplying the current cost of each component by its fraction of life "used up". The result of this computation is

called the Fully Funded Balance.

On the table below, for an HOA 0% - 10% Funded, there is more than a 50% chance that there will be inadequate cash to perform its anticipated reserve projects. This will trigger a dreaded special assessment. The higher the Percent Funded, the smaller the risk.

Percent Funded	Special Assessment Risk
0-10%	53.5%
11-20%	36.9%
21-30%	26.6%
31-40%	17.6%
41-50%	11.6%
51-60%	6.0%
61-70%	3.5%
71-80%	2.4%
81-90%	2.3%
91-100%	0.5%

An ancient Chinese proverb states: "Forecasting is difficult, especially about the future." Every Reserve Plan is destined to be inaccurate, since future events are out of our control and never happen as planned. HOAs that have a weak reserve cash balances run a higher risk of special assessment as their Percent Funded drops. Setting a goal for a strong Reserve Fund provides a margin for protection when reserve expenses are higher than expected or earlier than expected.

*By Robert M. Nordlund, P.E.* 🏠

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### Pets That Wander

One of issues that often vex a homeowner association are pet owners that feel their pets are not subject reasonable rules of restraint. To them, animals wandering about is a natural thing. To others, it's maddening. If dogs roam the common area, there is usually an enforcement action. But, then again, dogs are relatively easy to catch.

But since cats don't bark or bite, they

are easier to overlook. But they do damage to the common area and cause disturbances. Cats often use planting beds as litter boxes causing offensive smell and unsanitary conditions. Male cats fight and cause middle of the night disturbances. They wreak havoc around bird feeders. Some folks are allergic to cat hair and dander.

Tracking cats is difficult because cat owners often don't license or tag their pets. Also, much of cat wandering is done nocturnally. And non-resident cats can roam the common area just as easily as resident ones.

When it comes to enforcing pet rules, it's important to understand that pets are considered family members. This means that pet owners are often very sensitive to criticism. Violation Notices should stress concern for the pet's safety as much as the rights of the other community members. This helps balance the issue for many pet owners.

Repeated notices and reminder will have a positive effect for most. For the harder cases, tougher measures like fining, trapping or chemical repellents may need to be considered.

All pets that wander are not lost. To make them welcome members of the community, remind their owners of the need for restraint. Then there'll less need to wonder if they wander. 🏠

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### Pool Primer Checklist

Now that pool season is back, it's important to stay on top of the many moving parts that keep the pool in optimal condition. The following is not only good maintenance practice but will keep the pool in compliance with state pool inspections:

- ✓ Gates. Must be self-closing and latching
- ✓ Fencing. Must not have gaps exceeding 4" between bars

- ✓ Decking. Must be free of tripping hazards, not abrasive or have exposed aggregate.
- ✓ Coping (edge material around perimeter of pool). Must be sitting flush with deck. Joint between coping and deck should be sealed with mastic to prevent water from penetrating beneath which causes deck shifting and cracking.
- ✓ Plaster. Crack free and free from delamination, rough spots and algae.
- ✓ Tile. Crack free. Depth marker tiles must be present and legible.
- ✓ Skimmers. Crack free. Skimmer baskets must be periodically removed and cleaned.
- ✓ Life Safety Equipment. Life ring accessible at all times. 12' rescue pole with shepherds hook next to life ring. Pool signs visible, good repair and legible.
- ✓ Water Chemistry. Regularly checked, balanced and recorded in inspection book.
- ✓ Time Clocks. Required for pools and spas.
- ✓ Flow Meters, Vacuum and Pressure Gauges. In proper working order. Pool must have 6-8 hour water turnover rate.
- ✓ Pump Room. Clean and free of trash. No leaks. Health and service date records stored here.

While this maintenance list seems simple, the implications for failure to execute it are profound. Pools are sophisticated and labor intensive systems that should only be maintained by knowledgeable, trained and experienced technicians.

*Information from Gator Pools* 🌿

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### God Speaks

Man whispered, "God, speak to me." A meadowlark sang. But man did not hear.

Man said "God, speak to me." Thunder and lightning rolled across the sky. But man did not listen.

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Man said, "God, let me see you." And a star shined brightly. But man did not see.

Man shouted, "God, show me a miracle." And a life was born. But man did not notice.

Man cried in despair, "Touch me, God, and let me know you are here!" God reached down and touched man. But man brushed the butterfly away and walked on.

God surrounds us in things we take for granted. Don't miss his miracles because they aren't packaged the way that you expect. Expect the unexpected. 🌿

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### Rules of Life: O to P

**Orion's Observation:** Among economists, the real world is often a special case.

**O'Reilly's Law of the Kitchen:** Cleanliness is next to impossible.

**Putt's Law:** Technology is dominated by two types of people: Those who understand what they do not manage. Those who manage what they do not understand.

**Ralph's Observation:** It is a mistake to let any mechanical object realize that you are in a hurry.

**Sausage Principle:** People who love sausage and respect the law should never watch either one being made.

**Mudhead's Second Law of Comedy:** If you push anything hard enough, it will fall over.

**Nick Danger's First Law Of Advice:** The correct advice to give is the advice that is desired.

**Rococco's Second Law Of Communication:** The information conveyed is less important than the impression.

**Thompson's First Law Of Innovation Management:** Change is the status quo.

**Tirebiter's First Law Of Communication:** The purpose of the communication is to advance the communicator.

**Zaro's Second Law Of Innovation Management:** Management by objectives is no better than the objectives. 🌿

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