



# 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@regenesisis.net

**Regenesis, Inc.**

PO Box 19605  
Portland OR 97280

**www.Regenesisis.net**

## Rule Breakers & Enforcers

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

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

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

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

1. All rules need to be written. In days before the written word, laws were passed on by oral tradition. Since clans were closely knit, this system worked pretty well. But with modern fractured families living global lives, writing has a distinct advantage for keeping newcomers informed. Funny thing is, many HOAs have unwritten rules that offenders don't discover until they break them. Judges, however, don't like the idea of unwritten rules and often smite HOAs that have them. So all rules should be written.
2. All rules should be available for inspection. When paper was king, written material was controlled by the board and the management company. Getting it was often cumbersome if the "holder of the paper" was unavailable. With the advent of email and the internet, humankind has been set free of the paper prison. HOAs can now make rules, policies and information available 24/7 by way of an HOA website and email. Newsletters can be emailed in PDF (Portable Document Format) with links to the website. Prospective buyers can also access this information to ensure there is nothing that would create a problem after closing the sale (like, the buyer has an RV and RV parking is not allowed.).
3. All rules should be consistently enforced. If a rule is important, it should apply to everyone, including the board and friends of the board.
4. All rules should be necessary. In a world gone mad with regulation, having a whole new set to adhere to at home is an unnecessary aggravation. If there is

a city ordinance to control wandering or defecating pets, the HOA doesn't need the same rule. Only add the rules the HOA really needs.

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

6. Rules can be broken. Since all humans are unique, one size does not fit all. The board may have its rules challenged in a way that is headed to a judge's ruling that the board may not like. Since the board is elected to govern, the board has the power to compromise. If faced with the prospect of an expensive court battle or compromise, it is often in the best interest of the HOA to opt for the latter. Courtrooms are nasty places that often only inflame disputes.

7. Run new rules up the flagpole. HOA boards can get myopic about the need for rules. Problems that loom large to a board may be of little importance to the majority of members. The board can make much ado about nothing. Or worse, the board can fan the flames of rebellion by enacting an unpopular rule. (Is that tar I smell?). There is no rule that is so urgent that couldn't wait for a 30 day member review and comment. Proposed rules circulated to the members generally gain buy-in and compliance, rather than defiance.

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

Bottom line...at the end of the day...win, lose or draw...HOA rule breakers and enforcers are still neighbors. If the rules don't recognize this unique dynamic, a battleground will be groomed for future skirmishes between warring neighbors. Rather

than plan for battle, groom the rules to help neighbors be better neighbors. 🐾

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### Ask the HOA Expert

**Q** I don't feel the board spends money in our best interests. I protest by withholding payment until year end. Recently, I received a notice saying if I didn't pay, they would put a lien on my home. Can they do this? Am I wrong to protest this way?

**A** Withholding assessments in protest is not the way to get your point across and, yes, the board has both the right and duty to process collection on delinquencies. Assuming that your concerns are for the community as a whole and not for personal issues, your points and solutions should be made in writing to the board. Whether the board acts on them is another matter. If they don't and you feel strongly that they should, I encourage you to run for election so that you can have a direct affect on the outcome. It's every owner's duty to serve.

**Q** Is it very difficult to change the governing documents? What's the process?

**A** If you are thinking about amending your governing documents, you should consult with an attorney specializing in your state's HOA law. There are state and federal laws to consider as well as practical applications that need to be harmonized. Once the amendments are approved, they usually need to be recorded on the public record. The attorney can assist with this as well.

**Q** I asked our property manager for a statement of the total amount of money we paid a contractor for a six month period. I was told that the work would require two hours, is considered a "special" project and would be billed at the company's normal hourly rate. Is this appropriate?

**A** If the management contract is based on performing "normal and routine" duties (and most are), yes, this would be considered a special billable project.

**Q** Can the board create or change bylaws without member approval? Ours has been doing this regularly.

**A** The board is authorized to enact policies, rules and regulations that are in keeping with the governing documents. The board may not enact anything that contradicts the governing documents. If the board proposes to amend or add to the governing documents, it usually requires a "super" majority (2/3 to 3/4) of the members to approve it and may take 100% depending on the subject matter (like changing the allocation of homeowner fees). Bylaws should never be amended without the assistance of an attorney who specializes in homeowner association law in your state.

**Q** Recently our board president requested a written legal opinion regarding an Architectural Review question without consulting the board. Is this allowable?

**A** The president has the authority to make decisions on behalf of

the HOA unless it involves an extraordinary issue and cost which clearly require board or owner approval. If legal costs are budgeted for (and they should be) and the particular cost relatively small, the president has the right to do what was done.

**Q** Does the homeowner association have the right to restrict home security system signs in the common area outside of the homes?

**A** The HOA usually has the right to limit signs in the common area and what is placed in home windows. Small security stickers on the window are usually allowed. The main concern is curb appeal. Uncontrolled signage creates a cluttered look and reduces property values.

**Q** Should we include landscape items in our Reserve Study? How about insuring trees?

**A** It's wise to include "Landscape Renovation" and "Treework" in the Reserve Study. All bushes and trees have a limited life. Bushes die and outgrow their location. While trees usually have a long life, they require expensive corrective pruning 3 - 5 years. Hiring an arborist to do a comprehensive tree inventory and report also makes a lot of sense. When each tree is tagged and referenced in the report, maintenance can be easily tracked. Consistent corrective pruning will extend the lives of the trees and keep them looking good.

Insurance for non-income producing trees provides limited coverage for claims related to fire, lightning, explosion, riot, aircraft, vehicles, vandalism and theft. Most of the claims are related to vehicle damage. Wind, freezing and pest claims are typically not honored. And the insurance does not actually insure the trees for value but provides replacement in standard nursery sizes. In other words, that

wind fallen 80 foot douglas fir will probably get you an 8-12 foot replacement. Based on the coverage available, \$5000 coverage will cover quite a few replacements.

To avoid the possibility of insect infestation, use native trees that are hardy and pest resistant. If you already have those prone to insects, consult with an arborist for the proper preventive maintenance or cut them down and replace them. 🌳

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### **Vendor Insurance**

Every homeowner association should collect insurance documentation from any vendor that works on the HOA's property. This includes vendors hired by a unit owner or tenant to perform work inside a unit or a vendor the HOA uses for common area repairs. Every vendor needs to be licensed, bonded and insured. Vendors can range from a contractor, mitigation firm, landscapers, moving companies, security firms, reserve study providers, janitorial and management company maintenance staff.

The reason why HOAs need vendor insurance information is because if a vendor causes property damage or injures someone, the HOA would have their insurance information to make a claim. If the HOA's policy pays out claim damage and is not able to be reimbursed from a vendor's insurance, the claim would go against the HOA's loss history, increase the loss ratio and increase the insurance premium. The best thing an HOA can do to keep premiums from drastic increases is to reduce and/or eliminate claims.

The minimum coverages a vendor should have include:

1. \$1 million in general liability and property damage liability (Completed Operations is the legal term).
2. \$1 million automobile insurance if

applicable.

3. Workers Compensation if the vendor has employees.

4. Vendors should provide the HOA's name as an additional insured endorsement.

The HOA should make the minimum coverages a requirement of all written vendor contracts by creating a one page contract that stipulates the insurance coverages and additional insured requirements which all owners can use even for small jobs. Having a process of collecting vendor insurance and being additional insured is a requirement of most insurance carriers. If your HOA does not have this process, adopt one this next year. 🌳

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### **Scenarios & Solutions**

Homeowner association boards can find themselves faced with scenarios that call for discernment, wisdom and compromise. If the board is too intractable in its thinking, conflict and resentment ensues. Here are some common scenarios taken from actual incidents and how they played out.

**Security Bars.** An elderly widow living in a first floor condo asks the board for permission to install security bars on the outside of her windows. There have been no break-ins in the condominium but some in the area. Since installation of security bars would be an alteration of the common area and would be aesthetically unattractive, the Board denies the request.

The owner has the bars installed anyway and the HOA's attorney demands she remove them or suffer fines. The owner's lawyer counters that the owner is fearful and that an accommodation should be granted. The parties negotiate a settlement wherein the owner is allowed to keep the bars under the conditions that they be painted the same color as the trim



and upon sale, she remove them. The agreement is memorialized in a written document which is recorded in the deed records so that future purchasers will be aware of the agreement.

**Heat Pumps.** A condo owner petitions to install a heat pump to increase the efficiency of his heating system and provide air conditioning. The only location available for the heat pump is outside in the common area. The Architectural Review Committee denies it due to encroachment in the common area. The owner appeals to the board which agrees to the installation provided that the owner pay to modify the landscaping to screen the heat pump from view and be responsible for all maintenance and related damage it may cause. The agreement is recorded on the deed record.

Other owners make the same request of the board which are denied due to visibility from the street and inability to screen the installation properly. The board formalizes the heat pump installation criteria in a resolution articulating under what conditions they may be installed.

**Handicap Ramps.** A wheelchair restricted owner requests permission to install a ramp in the common area to overcome steps to his unit entry door. Permission is granted provided the ramp is built to code, painted to match the building and that the ramp is removed when the owner moves. The agreement is memorialized and recorded.

Several years later, the owner must move into an assisted living facility and leaves the unit to a family member. When the board demands removal of the ramp, the new owner claims a work related injury caused a back injury and the ramp is easier to negotiate. The board agrees to extend the use of the ramp if the new owner can produce the worker's compensation determination and a letter from her doctor stating the need for the ramp.

**Decks/Patios/Fences/Awnings.** In a condominium with enclosed courtyards for each unit, an owner builds a deck

and installs a hot tub without permission from the HOA. A neighbor makes a formal request for the same and is denied. When it's pointed out that there is an existing installation, the board agrees to grant the request and grandfather the existing installation provided the owners handle all maintenance, pay for related damages (dryrot, water leaks, etc.) and restrict usage to certain hours. The same standard is applied to all future such requests.

**Pets.** In a planned community with a mandatory leash requirement, a reclusive owner keeps two pit bulls. They have broken their leashes on several occasions and scared the living daylights out of passerbys. The board advises the owner that the dogs must go but the owner won't budge.


The HOA's attorney files suit for injunctive relief and the court awards it with attorney fees. The costs are levied against the owner. When the owner threatens to set the dogs on the board, he and his dogs are removed permanently, the HOA's attorney gets a court order to have the dogs removed permanently and the HOA eventually gets paid when the condo sells.

**Conclusion.** An important consideration in reaching compromises is the cost of attorney fees and who pays them. In protracted disputes, the fees can get quite large. On the one hand, incurring such fees may be worthwhile because the HOA should avoid setting a poor precedent simply because someone resists complying with the covenants.

On the other hand, the board doesn't want to squander precious cash to enforce a relatively insignificant issue when a compromise can be reached that would satisfy the owner and protect the HOA.

HOA covenants will usually be upheld by the court if they are clear on their face and are uniformly and consistently enforced. If the board enacts a rule that goes beyond the covenants, it must be intended for the health and happiness of the residents or to reinforce home market values.

That said, the board is encouraged to seek compromise whenever possible as long as it doesn't impair the power of the HOA to enforce the covenants. When faced with the option to fight or compromise, lean toward the latter.

*By J. David Bennett* 

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### **Insurance Deductible Wisdom**

The past few years have seen homeowner association insurance premiums rise dramatically. Whereas deductibles on HOA policies used to be \$1,000 not many years ago, today it is more common to have \$5,000, \$10,000 even \$25,000. As insurance deductibles continue to increase, HOAs are reviewing how to allocate those deductibles.

Insurance professionals note the insurers' biggest concern is frequency of claims. Even small claims can be expensive. In addition to the claim itself, the insurer has the expense of adjusting the claim. A number of small claims may wipe out the insurer's profit. One of the key elements of risk management is risk transfer. This practice allows an HOA to shift certain risks of loss to another party.

There are different philosophies as to how insurance deductibles should be allocated. Some take the position that all deductibles should be paid by the homeowner association as an expense in the same manner that insurance premiums are allocated to the members. Others take the position that the person who receives the benefit of the insurance proceeds should pay the deductible. Yet others conclude that since many claims are the result of inadequate or deferred maintenance by owners, those responsible for the lack of maintenance should bear the cost of the resulting damages.

Typically, if deductibles are allocated to the owners, they are allocated in one of three ways:

1. The owner who would have maintenance responsibility in the absence of insurance is responsible for the deductible;
2. The owner who has maintenance responsibility for the damaged property in the absence of insurance will pay the deductible, unless another owner has negligently caused the damage; or
3. The owner from whose unit the problem originates will pay the deductible, even if the damage is to another unit, whether or not that owner was negligent.

The first option has the advantage of simplicity, yet an owner who has done nothing wrong may have responsibility for a deductible.

The second option is attractive because it assigns the liability for the deductible to the party who may negligently cause damage. The disadvantage of this approach is that it is more difficult to administer because determining whether or not a person has been negligent is not always clear cut.

The third option also has the advantage of simplicity, yet as with the first option, an owner who has not been negligent or done anything wrong will be strictly liable for any damage that results from a problem in the unit.

As HOAs look for ways to shift risk to the owners, it becomes even more important to educate owners on the importance of maintaining HO-6 policies. Individual insurance may assist with the payment of HOA deductibles. Depending on the scope of coverage on the owner's policy, the deductible will often be covered under either the loss assessment coverage or under Coverage A of the property section. In some instances, an owner may increase such coverage with an endorsement at a small additional cost.

If your governing documents do not address the allocation of deductibles and your board is seeking ways to shift insurance risks to owners, you should consider adopting insurance guidelines that will allocate deductibles to the

owners under one of the three methods described above. If the guidelines are not simply a reiteration of the provisions of the recorded documents, the board should record a board resolution setting forth the allocation of deductibles to ensure that all owners are on record notice of the requirements. The board should also distribute the guidelines to all owners and address the deductible issue in the community newsletter to enhance awareness of the guidelines so owners may take appropriate steps to protect themselves under their insurance policies.🌲

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### Here We Go

*My daughter Annie had a birthday in January 2024 and shared some thoughts that inspire and apply to all of us. Enjoy! Rich The HOA Expert*

Here we go 36! I woke up to a new year of life today and messages that make me smile from dear ones near and far (thank you, thank you!).

What they don't tell you when you're little is that life in so many ways keeps on getting better. (It doesn't mean there aren't some really hard days along the way). With every year, I'm more grateful for each fresh day of breath and movement, for learning and even the challenges that are a part of it, for a body that is kinder to me than I often am to it, and especially for you all who bring sparkles, meaning and laughter to each day.

I'm excited for this next twirl around the sun. Another 365 days of light, love and this one precious, tender thing we call life.🌲

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### Murphy's Golf Laws

1. If you really want to get better at golf, take it up at a much earlier age.
2. The game of golf is 90% mental and 10% mental.
3. Since bad shots come in groups of three, a fourth bad shot is actually the beginning of the next group of three.
4. Any change works for a maximum of three holes or at a minimum of not at all.
5. No matter how bad you are playing, it is always possible to play worse.
6. When your shot has to carry over a water hazard, you can either hit one more club or two more balls.
7. The less skilled the player, the more likely he is to share his ideas about the golf swing.
8. If it ain't broke, try changing your grip.
9. Golfers who claim they don't cheat, also lie.
10. A golf match is a test of your skill against your opponent's luck.
11. It's surprisingly easy to hole a 50-foot putt when you lie 8.
12. Counting on your opponent to inform you when he breaks a rule is like expecting him to make fun of his own haircut.
13. It's not a "gimme" if you're still away.
14. The shortest distance between two points is a straight line that passes through the center of a large tree.
15. There are two kinds of bounces: unfair bounces, and bounces just the way you meant to play it.
16. You can hit a 2-acre fairway 10% of the time, and a 2-inch branch 90% of the time.
17. Every time a golfer makes a birdie, he must make two triple bogeys to restore the equilibrium of the universe.
18. Hazards attract; fairways repel.
19. A ball you can see in the rough from 50 yards away is not yours.
20. Don't buy a putter until you've had a chance to throw it.🌲

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