



# 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.



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## 4 Reserve Fund Hurdles

HOA boards are faced with a challenge. They have limited time and resources, yet must meet the financial obligations of the reserve study by following a funding plan that provides adequate member contributions and additional revenue from prudent investment of reserve funds that reduce those member contributions. Here are four hurdles the board must jump when tackling reserves investment.

### Hurdle #1: Failure to use the Reserve Study or not having one in the first place.

Homeowner association boards have the duty to conduct long range planning to identify common elements, their current condition, their useful lives and current cost of repair or replacement. This exercise is called a Reserve Study. Some boards believe that a reserve study provides little benefit except to point out the obvious. These same boards either elect not to pay the cost of one or put the one they have in a file to gather dust. Both approaches are foolish because without a clear road map to follow, the board is bound to get lost in the maze.

Properly funding reserves for the standard 30 year projection period could amount to many hundreds of thousands of dollars. Larger HOAs with extensive common elements should reserve *millions*. Failure to fund reserves adequately results in unfair and sometimes uncollectible special assessments. Prudent investment of reserve funds could partially offset member contributions and reduce the risk of special assessments.

### Hurdle #2: Failure to understand investment choices.

Some boards are under the impression that FDIC insured money market accounts or CDs are the only alternatives for reserve fund investments. There are a number of alternatives. State laws vary but in Oregon, for example, HOAs are limited to direct investment in issues of the federal Government and/or FDIC bank accounts or CDs. HOAs are not permitted to invest in municipalities, mutual funds or indirect investments (investments to which the investor does not directly hold

title, such as mutual funds, limited partnerships and Real Estate Investment Trusts). Non-FDIC insured money market accounts are not to be used for homeowner association reserve investments by law.

This creates an opportunity to invest in longer term federal bonds. As of the writing of this article, the going rate of a 10 year government bond is around 1.5% compared with bank money market accounts that average around 0.1%. This increased yield could go a long way to reducing the need for a special assessment. The challenge with investing in 10 year bonds is determining how much should be invested in them. Fortunately, the Reserve Study is very useful in determining the short and long term reserve cash needs.

### Hurdle #3: Failure to utilize the Reserve Study when selecting investments.

The first step in considering higher yielding investment opportunities is to put that Reserve Study to work. The Reserve Study can be used to match the repair schedule with the investments. This allows combining shorter term/lower yield CDs with longer term/higher yield Treasury Bills. This type of investment strategy is called a Duration Study. Even though a Duration Study costs money to perform, the extra interest return that can be earned by matching the investment duration to your specific HOA is well worth it. Duration studies and the investment mix need to be redone every time a Reserve Study is updated.

### Hurdle #4: Not hiring a fiduciary.

It is in the board's interest to find someone that has the HOA's well being at heart, such as an investment advisory company that is a fiduciary to the board. By better managing your reserve funds, you avoid the hurdles described and improve reserve investment yields.

Leave the hurdling to the track stars. Use a trained financial consultant to optimize your reserve fund investments.

By William Meyer

## Ask the HOA Expert

**Q** The HOA manager told me that my swimming suit was not appropriate and that I should wear something that would cover more. I am Brazilian and I was wearing a bikini that is smaller than the others. But there's no HOA rule that says that Brazilian bikinis are forbidden. The guide only states "proper swimming attire".

**A** Aside from the provocative mental imagery of Brazilian bikinis, "proper swimming attire" means appropriate to the majority of people that use the pool. In this case, it sounds like the majority are families and/or seniors. What is normal in Brazil is not normal in the United States. You should conform to the request. Find something more modest or find a place where what you wear is the norm or encouraged.

**Q** We have \$200,000 in reserve funds that the board wants to invest long term to earn better interest. The funds are not going to be needed for about 3-5 years and we can double our return if we buy 3 year CDs. The management company thinks this is a waste of time and so far, it hasn't carried out the board's request. Is this raising a red flag about our management company?

**A** The management company is there to carry out the board's reasonable and legal requests. Doubling the return on reserve funds is certainly a worthy endeavor and, yes, the manager should make it so as soon as possible. If there is more resistance, you should investigate the current status of the reserve account to make sure all is as it should be.

However, normally, the manager does not have check writing authority over the reserve funds since there can be significant sums there and it might be an enticement to embezzle. If your management company has authority over this account, I would recommend changing that to, say, the board President and Treasurer. Board officers can also embezzle so the HOA should have Fidelity Insurance to protect

against this and insist that all checks written have two signatures.

**Q** Could you please clarify the definition of an open meeting? We have a moisture intrusion problem which needs to be investigated and possibly litigated. Based on advice from our attorney, the board appointed a task force comprised of both board members and non-board member owners. When there is task force meeting, should it be open to the members?

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**A** Board meetings are held to approve HOA business. Those meetings should definitely be open to the general members. Task force meetings are essentially committee meetings. Changing the title to task force doesn't change its purpose. As the saying goes, if it walks and quacks like a duck, it's a duck. Committee meetings do not need to be open to the members unless the board authorized the committee to make decisions on behalf of the board. But committees are generally advisory only. That means they make recommendations to the board and it's up to the board to make decisions based on those recommendations.

So if the task force is truly only there to gather information and make

recommendations, the task force meetings can be closed. However there is a caveat: If the task force is largely made up of board members, it essentially is a board meeting or would be perceived to be one. To avoid that perception, populate the task force with non-board members.

**Q** Recently, a less than enthusiastic board member sent an email suggesting that we place a limit of 1.5 hours on the board meetings. I have a strong belief that no time limits should be set for a meeting since the board has a fiduciary duty to all our members. If this particular director can't see fit to hang in there for a 2-3 hour meeting once a month then that individual should not be on the board!

**A** 1.5 hours is probably a bit too short but, generally, board meetings should not go longer than 2 hours which seems to be the limit of concentration for most people. Meetings are more effective when there is an "action" agenda and related information which is circulated in advance to the directors for review. If this is not done, rambling discussions usually ensue as directors try to get up to speed on the issues. The board is there to make informed decisions, not BS the night away. A lot can get accomplished in 1 1/2 hours if the board is prepared in advance and focused on goals.

**Q** I have repeatedly contacted the board and management company for repairs to my condo (the fence was falling down, my roof in desperate need of repair, my skylights are leaking etc.) with no action. When I call the management company, either my calls are not returned or when I do get them on the phone, they state that they are busy, will call back and don't. I have attended board meetings in person and the board promises to get the repairs done and doesn't. The HOA is financially healthy so I can't figure why I'm getting stalled. What are my rights?

**A** You have the right to prompt repairs, especially when there is potential damage to your

property. Write a detailed letter to the board with a copy to the management company making a demand for repairs and citing the previous requests (what, when, etc.). Put a deadline of 10 days to get it done. If they are not done by that time (or in progress), have the work done and submit the paid receipt for reimbursement. Hopefully, the demand letter will prompt action.

There seems to be an unprofessional attitude at work on your board and management company. I suggest you run for election the next round, get elected and start making a change.

**Q** The board recently imposed a fee of \$500 per year on all owners that rent their units. Is this discriminatory?

**A** The board has no authority to assess a special fee based on type of owner. The board could enact reasonable charges like a Move In-Move Out fee where the HOA actually incurs costs. Or, if renters damage the common area, the board certainly can require the landlord owner to pay for repairs. 🏠

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**Emperor's New Clothes**  
All governments have problems. The leadership of city, state, and federal governments is populated with people that are largely untrained in the broad variety of topics put before them. HOAs are a form of government like no other. The entire membership has a direct interest in the outcome of how well, or how poorly, the HOA business is run. This isn't the case in the other forms of government where there is little individual voters can do to make changes. Not so with an HOA. With some effort, HOA members can oust the board or vote in a new bunch.

There are other controls. The governing documents can only be amended by the

members, not the board. That is real power. Doing that with the other forms of governments is not possible. Since voters are little control over what their elected representatives do, most don't pay much attention or develop the attitude that "whatever they do doesn't affect me personally". Of course, that kind of thinking is exactly why elected officials get away with what they do.

HOAs have actually brought us much closer to the way things used to be when democracy was more accessible. An HOA board is only able to lord over the members if the members let it. HOA members have a real and viable way to gain relief from oppressive government. It does take some effort to gain that relief but the means, at least, are there.

Fortunately, the majority of HOAs are relatively well run and the community harmonious, in spite of being run by amateurs. And the amateur boards that get educated on the process really shine!

But most boards still have room for improvement in the communication department. The core philosophy here is "Transparency". Do not operate behind closed doors or withhold information that every HOA member is entitled to see. (There are exceptions to this rule, but the list is short: ongoing litigation, employment issues, competitive contract bidding). Here are several ways to keep the body politic transparently in the know:

**Annual Planning Calendar.** This is a multi-use document that combines meeting, social and maintenance dates all in one place. Meetings should be calendared a year in advance and major maintenance well in advance so that residents can make alternate plans.

**Email.** Not long ago, there was still a significant amount of the population that was email challenged. Today, even the seniors do email and Facebook. Make use of this reality by communicating that way to all that want it. Save time and save money.

**HOA Website.** If your HOA does not have a website, run, don't walk, to one

of the many providers that specialize in user friendly HOA websites. Basic websites which would work for most HOAs are available for less than a \$1 a day.

**Open Meetings.** All HOA members have the right to attend board meetings. The fact that most don't doesn't mean the board should not advertise them and hold them in guest friendly venues.

**Circulate the Meeting Minutes.** All HOA members have the right to know what the board is up to. Make DRAFT minutes available within a week of each board meeting.

**Make Financial Reports Available.** All HOA members have the right to know how their money is being spent. Make them available upon request.

**Have and Follow a Reserve Study.** This 30 year plan charts a course for the board to follow for scheduling major repairs and a funding plan for accumulating the money to pay for it. If you don't have one, contact the Association of Professional Reserve Analysts [www.apra-usa.com](http://www.apra-usa.com) for a list of credentialed Professional Reserve Analysts (PRAs) that can provide this invaluable service. Oh, by the way, the HOA members are entitled to see the reserve study because, again, it's their money that will be paying for those repairs.

**Newsletters.** Publish quarterly newsletters to remind of frequently violated rules, contact information, upcoming projects and meetings. It doesn't need to be a major production. One or two pages will do. Send it by email to reduce cost.

Board transparency will reap great rewards by building confidence and trust. This is one glass house that will clearly show that the board has nothing to hide. *This emperor is fully clothed.* 🏠

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## Who Pays for Damage?

In common wall housing, unit flooding and damage can happen for a variety of reasons including roof leaks, water supply pipes leak, toilet/bathtub overflows and washer hose ruptures. Who is responsible for water damage, the HOA or unit owner?

First, determine the actual cause of the loss and whether any of the involved parties was negligent in their maintenance responsibilities (like, left the water running). Then, review the governing documents to determine what guidance there may be for maintenance and repair. Pay special attention to the definitions of: unit, common element, limited common element, maintenance responsibilities of owners and the homeowner association, insurance responsibilities of owners and the homeowner association and enforcement procedures. These provisions often differ from HOA to HOA.

Generally, owners are responsible for maintaining anything they own or that lies within the unit boundaries, and the HOA is responsible for maintaining the common elements and limited common elements. However, limited common elements are usually allocated to the exclusive use of a unit owner and the unit owner may have the maintenance responsibility for repairs.

An important principle to keep in mind is that the obligation to maintain a particular component does not necessarily mean that there is an obligation to repair damage to another unit if that component fails. For example, say that the water heater in Unit A fails and damages Unit B. According to most governing documents, Unit A bears the expense for repairing the water heater and any damage to Unit A. There is no obligation for Unit A to pay for damage to Unit B *unless* the owner of Unit A was negligent in some way. For example, if Unit A owner knew the water heater was leaking slowly and steadily and let it continue to leak for long enough to damage Unit B, Unit A owner would be negligent. On the other hand, if the water heater tank ruptured spontaneously and flooded Unit B, it

would not be negligence. Barring negligence, each unit owner repairs his or her own unit.

The same principle applies if there is a leaking roof which is maintained by the HOA. Roofs leak from time to time. If a unit owner does not inform the HOA when a leak occurs, how does the HOA know to fix it? It's like the old saying, "If a dog barks in the woods and there is no one there to hear him, is he still a bad dog?" Now, if the HOA is informed of the leak, does nothing to stop it and the unit is damaged, that is negligence and the HOA should pay for the unit repairs.

Some would argue that since the HOA's insurance is paid for by the members, unit damage should be paid for by the HOA in every case. Unfortunately, any HOA that does not carefully control the type and frequency of claims made will find itself without insurance or paying enormous premiums.

This is why it is critically important for the board to establish a clear policy on maintenance and insurance responsibility which will safeguard the HOA's insurability. This policy should identify all major building components and assign responsibility either to Owner or HOA that is consistent with the governing documents. Unit insurance agents should be provided this information so they know what their insured is responsible for. This is all about spreading risk around and saving the HOA insurance policy for the Big Claims as much as possible.

There is a sample Areas of Maintenance & Insurance Responsibilities policy available to Gold Subscribers of [www.Regensis.net](http://www.Regensis.net) 

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## Prune Tune

I think that I shall never see  
A billboard lovely as a tree.  
Perhaps, unless the billboards fall,  
I'll never see a tree at all. *Ogden Nash*

Trees are one of a homeowner association's greatest assets. They provide beauty, shade, block wind and stabilize soil movement. One of the most common questions asked of arborists is: "Why does a tree need to be pruned?" There are six basic reasons to prune trees:

**1. To create a strong branch structure.** During the first several years after a tree is planted, it can be easily pruned to correct poor form. Prune to give proper branch spacing and strong attachments. Eliminate double leaders to create a strong single leader trunk. This approach prevents future problems and trees are less susceptible to storm damage.

**2. To reduce or eliminate hazards.** Limbs can unexpectedly fall, damaging property and harming people. Prune to remove deadwood, broken branches or weakly attached branches to reduce hazard potential. Thin large trees like Douglas Fir to reduce wind resistance.

**3. To control growth and size.** Prune to keep fast growing trees contained within a certain landscape footprint.

**4. To create aesthetically pleasing landscapes.** Pruned trees reveal their unique branch structure, yet retain their natural shape.

**5. To correct improper pruning or storm damage.** Create a new canopy and branch structure on a previously topped or storm damaged tree by selective pruning and crown thinning. This may require multiple pruning visits over several years to restore the natural crown shape.

**6. To reduce disease.** Remove diseased parts to prevent further infection and improve looks. Reduce disease infection by increasing air circulation and light penetration by thinning branches and foliage.

When it comes to trees, prune is the name of the tune. Do some soon. In June. Beneath the moon. 🌕

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## Website Information

Accurate and reliable HOA information is extremely important for homeowner associations. Prospective buyers, real estate agents and title companies need to know who to contact to provide sale closing information. HOA members need to know who to contact for general information, rules enforcement and money matters. Providing the information online provides for 24/7 self-help and reduces time requirements for both the board and management. Providing contact information conveys openness and responsiveness.

Try these steps to guarantee your contact information is useful to your community:

1. Provide board member contact information as long as the individual approves releasing this information. If not, have an HOA phone number with voicemail and an HOA email address like [info@nottacarecondos.com](mailto:info@nottacarecondos.com).
2. If you have committees, describe each committee's duties and the names of those that serve
3. Post a calendar that includes board, annual and committee meetings as well as social events and major renovation events (painting, roofing, etc.)
4. Provide as much self-help information as possible like newsletters, governing documents, approved budget, reserve study and rules.
5. Update the contact information when there is a change

While organizing and updating this information does take some time, in the long run, it will save time and time is money. 🌕

## Quelling the Quarrel

"Quarrel" has been defined as "the minimum number of people required to hold an argument". One of the many challenges facing homeowner associations is resolving disputes between neighbors. Noise, parking, pets, fences and other territorial imperatives can erupt into all out war with seemingly little provocation. Most conflicts result from a failure to communicate. Neighbors, wanting to avoid confrontation, stew over issues until their emotional pots boil over, usually scalding innocent bystanders.

Conflict is a natural part of human relationships. Self interest almost always outweighs the neighbor's interest. Neighbors become embroiled because interests are at odds. Here are a few suggestions for quelling the quarrel:

**Know What's What.** Some issues belong to the HOA, some do not. Don't get involved unless it affects the general harmony of the community. The board wasn't elected to police neighborhood squabbles so don't take them on. People that can't get along often look for others (you) to blame.

**Let Them Deal With It.** If asked to intercede, suggest they discuss and resolve it like adults. If they won't, so be it. Don't encourage immature behavior by facilitating it.

**Clarify the Issue.** If the issue impacts the whole community, clarify it. What seems to be isn't always what is. Ask each party what they think "it" is. Often it boils down to personality issues that need to be resolved by the conflicting personalities, not by the board.

**Facilitating Discussion.** If the homeowner association's interests are involved, here are several tips for facilitating the discussion:

- Schedule a convenient time to talk
- Agree on a neutral place for the meeting.
- Stick the facts. Steer clear of "He said, she said".
- Avoid blaming, insults and exaggerations which make it difficult to consider other viewpoints. Listen,

even if you disagree, to better focus on the issues.

- Defuse hostility. Let them know you understand they are angry or upset. Explore what's behind the emotion.
- Direct the conversation toward solutions.
- Question claims and assertions:
  - ~There are too many/much/little/few... Compared to what?
  - ~ You never...What would happen if we did?
  - ~ We've tried that already... What was the outcome?
  - ~The only way is...Yes, that's one option. Any others?
  - ~ It will never work...What would work?

Good conflict resolution focuses on needs, not positions. Keeping peace in the "hood" should be a top priority and with the proper approach, you will quell the quarrel. 🌕

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## Sitting on the Sidelines

(A True Story) Larry Walters had a habit of spending his weekends in his backyard near LA International Airport (LAX). He'd sit in his favorite lawn chair drinking beer and staring at the houses around him. Not a real exciting life to say the least.

One day in 1982, Larry bought some weather balloons and a tank of helium. He figured that by tying helium filled balloons to his lawn chair, he could float up a 100 feet or so for an aerial view of the neighborhood. Just in case he got too high, he'd take his BB gun to regulate his altitude by shooting out a couple of balloons.

After tying the balloons one by one to his secured lawn chair, he gathered up a six-pack, a couple of peanut butter and jelly sandwiches, his BB gun and took a seat. He gave his neighbors the high sign to cut the ropes securing the chair by yelling "Let's go!". Instead of 100 feet, he shot to 16,000 feet! He

ended up directly in the flight path of LAX airport. The pilot of an approaching Continental DC10 reported that he had just passed a man in a lawn chair and the control tower told him to report in immediately upon landing. They thought he was hallucinating or drunk.

Larry eventually used his BB gun to shoot out some of the balloons and descend into the Long Beach area getting hung up on some power lines. When he finally got down, he was surrounded by TV crews, police, fire and rescue squads and plenty of curious people.

"Were you scared?" asked a TV reporter.

"No, not really" said Larry.

"Are you going to do it again?" asked another.

"No," said Larry.

"What in the world made you do it?"

Larry Walters thought about it for a moment and said, "Well, you can't just sit there."

Strangely, Larry Walters was right. God has something exciting in store for each of us. Don't sit out life watching from the sidelines. Be a participant. Loose your tethers and let'er rip!🌳

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### Like a River

Last night I went paddling and was reminded yet again why I love rivers so much. Wild or quiet, no river is ever the same from day to day, season to season.

Water transforms the world. To enter the water is to enter another universe. The river takes the solid world we walk around in every day and shape-shifts it

into another reality, a fluid reality of change and flow.

Flowing water is time itself unfolding. There is no other place where it's possible to experience so vividly how time moves into the future as on a river. It is not the inexorable march of seconds, each the same as the next, or the hands of a watch ticking away. On a river, time moves because the world flows, now accelerating and then slowing, eddying and swirling to push and tumble ahead, never the same but always downward and onward.

The river is a constant reminder that we are capable of continual evolution, that every shape is only temporary, that time is always moving, that the world is constantly creating itself anew.

Science suggests that all elements heavier than hydrogen and helium have been through the life of at least one star. The oxygen and iron in our blood, the carbon that is the backbone of our metabolism and life tissue, the potassium and sodium that allow us thought and action, they all have an ancient pedigree billions of years old, born of stellar explosions, of planets dying and being reborn, of life beginning and evolving.

Everything within us has gone through this most epic journey. And through it all, a true miracle, that somehow we are given self-awareness. Over time, everything with us flows like water. Our very being is as transient as the surface of a river.

The river speaks all this and much more. It speaks of time and the currents of the world, of shaping canyons and cutting through continents. Of this instant and eternity.

*Excerpts from an article by Doug Ammons🌳*

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## Job Review A-H

Below are common job interview comments/observations and their true meaning:

A keen analyst: Thoroughly confused.

Accepts new assignments willingly: Never finishes a job.

Active socially: Drinks heavily.

Alert to company developments: An office gossip.

Attention to detail: A nitpicker.

Average: Not too bright.

Bridge builder: Likes to compromise.

Character above reproach: One step ahead of the law.

Charismatic: No interest in any opinion but his own.

Competent: Able to get work done if supervisor helps.

Conscientious and careful: Scared.

Consults with co-workers often: Indecisive, confused and clueless.

Delegates effectively: Passes the buck well.

Demonstrates leadership: Has a loud voice.

Enjoys job: Needs more to do.

Effective application of skills: Makes good coffee.

Exceptionally qualified: Has committed no major blunders to date.

Expresses self well: Can string two sentences together.

Fluent in several languages: BS artist.

Gets along well with others: A coward.

Happy: Paid too much.

Hard worker: Usually does it the hard way.🌳