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Regenesi believes that the goal of every homeowner association board should be to promote harmony by effective planning, communication and compassion.

The Regenesi 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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Safeguarding the Board from Lawsuits

Serving on your homeowner association's board of directors can be a gratifying experience. As a board member, you make decisions that help keep the HOA's space beautiful and functional for the benefit of the entire community. On the other hand, the possibility of legal action being taken against the board is always present. Understanding the most common types of allegations against boards, as well as how to safeguard against them, can minimize the risk of such lawsuits.

If a board is named in a lawsuit, Directors & Officers Liability Insurance protects past, present, and future board members from financial consequences due to alleged wrongful acts, decisions, or omissions. In the event of a covered claim, the policy pays for the loss if the board loses the lawsuit. It also covers the HOA's legal defense costs. These costs to defend will fall to the board, regardless of whether an allegation against the board is determined to be true. Below are the most common incidents that give rise to Directors & Officers Liability Insurance claims.

Breach of Fiduciary Duty. An HOA's board of directors has a legal obligation to act in the best interests of the HOA. Boards may be sued for breach of fiduciary duty if someone alleges that this obligation was not upheld. Some common examples include failure to enforce the governing documents, enforcing governing documents inconsistently, or failure of due diligence prior to a financial decision.

Discrimination. HOAs may be sued under the Fair Housing Act or the Americans with Disabilities Act if a decision made by the board is construed as a wrongful act or discrimination. Examples include failure to make reasonable accommodations for a disabled homeowner, as well as discriminatory acts based on age, race, or religion.

Violation of Covenants, Conditions, and Restrictions (CC&Rs)- An HOA's CC&Rs

detail rules that must be followed by unit owners, board members, and the association. If someone feels the board has violated part of the CC&Rs, they may sue. These violations may include misuse of funds, failure to maintain common elements, denial of unit owner architectural modification requests, or suits challenging an HOA fine assessed against a unit owner. To help prevent lawsuits and claims against the board of directors, take preventative measures to avoid issues from arising in the first place.

Educate and Train Board Members. - Board members should understand and regularly review the governing documents and reserve study. They should understand what their fiduciary responsibilities entail.

Leverage Professional Guidance. Speak with the board's legal counsel, insurance agent, and other advisors and follow their advice.

Obtain Comprehensive Directors & Officers Liability Insurance Coverage. Ensure the HOA always carries a D&O policy that includes appropriate coverage provisions.

The first step board members can take to avoid lawsuits and claims is to understand the common issues that give rise to disputes within HOAs. With forethought and prevention, your board will be prepared for the challenge of serving.

By Vern Newcomb, ABI

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Ask the HOA Expert

Q Should correspondence between board members be confidential? We have a board member whose spouse reads internal board discussions and shares them with other residents.

A Board business needs to be transacted in a meeting forum that is open to the members unless it qualifies as an “executive session” like discussions of litigation, collections, personnel issues and contract negotiation. Using email and phone to transact business is usually not allowed so this spouse and other HOA members are probably entitled to read the board’s internal communications because they involve HOA business. And these communications should be handled in an open meeting.

Q Our rules enforcement resolution provides for a hearing before the board if the alleged violator contests the Violation Notice. We are currently facing the prospect of our first such appeal hearing. Is there a correct format or procedures for this type of hearing?

A The appeal hearing needn’t be overly elaborate. The accused should be granted a meeting with the board to appeal the ruling. If convincing evidence is provided, the board can and should rescind the violation. If not, the board should deny the appeal in writing.

Q Is it okay for a board of directors to determine who to exempt from monthly assessments and or late fees based on claims of financial hardship? Should the other members be made aware of this policy?

A The board does not have the authority to exempt anyone from the collection policy. As a matter of fact, the board has the duty to *enforce* the collection policy on all members regardless of hardship. This may seem harsh but there is no free lunch and if all don’t pay, it puts the shortfall on the rest. If the board

gets a *member vote* to waive the collection policy, that is permissible.

Q Our board recently appointed an Architectural Review Committee (ARC). The subject of retractable awnings has come up and the board is currently approving guidelines. However, one has already been installed illegally and does not conform in color and style to the standard. What should we do?

A Since no other awnings have been installed, the board could simply make this violation the standard style and color and kill two birds with one stone. If it is substantially different than the desired standard, then requiring removal and replacement with the standard is the indicated course of action. This is also a great time to communicate to all residents the purpose and authority of the ARC and that approvals involving new standards can’t happen over night. Any architectural approval request that involves establishing a new standard should require at least a 30 day review so that adequate thought and consideration can go into the decision.

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Q The old board resigned and appointed a new board to replace it without a vote of the members. Can it do that?

A A current board can appoint someone to a board vacancy but it cannot appoint someone to a future vacancy, especially a whole board. Or said another way, once the board has resigned, it has no authority to appoint anyone to anything. A new board needs to be elected by the members at a meeting called for that purpose.

Q The board bought one of our units with HOA funds without putting it to a member vote. Is

that allowable?

A Unless the governing document specifically grant that authority to the board (extremely rare), the answer is “No”. Any time common elements are expanded, it takes a vote of the members and possibly the member’s mortgagees and that vote may require a super majority (like 2/3, 3/4 or even 100%).

Q I serve on our HOA board. Certain members have circulated a recall petition against two of the directors and obtained the required number of signatures based on our bylaws. The next board meeting is coming up soon and the petitioners want the recall resolved then. What is the normal process to handle a recall?

A Normally, a recall would be handled at a special meeting called for that purpose. As such, it needs to be noticed to all owners in advance so all have a chance to attend. 🗳️

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Running for the Board?

Serving on the board of a homeowner association requires understanding the scope of work. Here are eight questions all candidates should ask themselves:

1. Do I have the time to devote to my duties and responsibilities as a board member? Being a board member can consume significant amounts of time each month. Don’t volunteer if you don’t have the time to do the job right or can’t attend meetings.

2. Do I work well with others? A board of directors is not a place for loners or rebels. To function well, board members must work as a team.

3. What is my underlying motivation to serve on the board? While there is no

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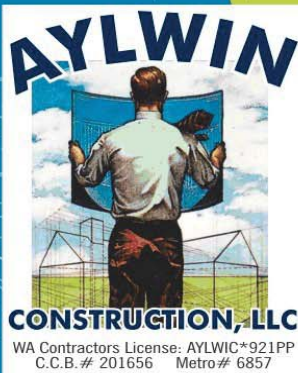
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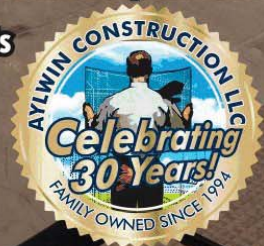
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one right reason, you should know what is motivating you to volunteer. Does it conflict with the goals of the board? Is it your desire to be a change agent?

4. What if I am sued personally for something I do as a board member? Does your homeowner association have Directors and Officers (D&O) insurance from a company that specializes in providing this type of insurance to HOAs that shifts the risk to the insurance company? Has the board done everything it can to limit liability? Is the board required to indemnify (legally protect and defend) you if you are sued?

5. Have I examined the financial records (Income & Expense Statement, Annual Budget, Reserve Study, Collection Report)? Before committing yourself you should know the financial condition of the HOA. If it is less than solvent, ask yourself if you want to spend most of your time dealing with financial issues such as reserves, assessment increases and deferred maintenance.

6. Do I know what the expectations for board members are? Are there high expectations regarding how much time is to be spent on HOA business? Are you going to be asked or expected to do or go along with something you have strong feelings against?

7. Do I have thick skin? Serving on a board is not for the faint of heart or overly sensitive people. You will likely receive criticism during your term. And some of that criticism may even be personal in nature.

8. Will I be committed to seeing my term through? HOAs don't need board members who serve only a few months. It takes that long to get a good understanding of the issues and how the board operates, not to mention the personalities. Don't volunteer if you're not committed to serving your full term. 🏠

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Neighbor Nuisances

When people live in close proximity, lifestyles are likely to clash. Noise is the most common complaint followed closely by odors, health and sanitation issues, cigarette smoke and curb appeal. The board is challenged from time to time to sort out various nuisances that interfere with a member's enjoyment of their property. To intervene or not to intervene? That is the question.

Some nuisances are clear violations of law and should be handled by law enforcement. Among these are domestic disputes, out of control parties, abuse of alcohol and use of illegal drugs should all be directed to law enforcement. These are not situations that neighbors or boards are prepared to deal with and there is a chance attempts to do so could escalate to physical altercations. The complainer should be directed to call the police immediately.

Other nuisances, like a neighbor's choice or volume of music, midnight vacuuming, hard stepping ways, or Marlboros can cause ongoing nuisance that are more appropriate for board intervention.

But these issues may come in several flavors: *people driven* or *building design driven* or a combination of both. People driven issues are more easily dealt with but the board's approach to building design nuisances is more problematic.

New construction generally provides for adequate sound barriers, but older properties often don't. Sound transmission is a very common problem in condo conversions using apartment buildings. In older buildings where common walls, floors and ceilings are wood frame construction, there will often be ongoing noise issues to deal with.

Correcting these soundproofing deficiencies is possible but very expensive. Carpet and sound deadening drywall will help but not totally kill the noise. Installation of hardwood and tile floors in upstairs units will virtually guarantee an

ongoing upstairs/downstairs war. The best the board can do is enact bans on hard surface flooring and encourage greater noise sensitivity between neighbors.

For people generated nuisances not better handled by John Law, the board's involvement is certainly called for. In this, the board is challenged to "balance competing interests" such as the upstairs neighbor's need to have a trampoline and the downstairs neighbor's need to sleep. In balancing these interests, the board needs to have an actual chance of reconciling the problem. As one judge put it, "The test of nuisance is not what effects it has on persons of delicate or dainty habits or living, or of fanciful or fastidious tastes, or on persons who are invalids, afflicted with disease, bodily ills, or abnormal physical conditions, or on person who are of nervous temperament, or peculiarly sensitive to annoyance or of disturbance of the character complained".

In plain English, this means that just because someone is bothered doesn't automatically make something a nuisance. People living in close quarters are called on for a higher degree of tolerance. But some just can't adjust. Some folks simply need more space, a wider buffer zone. No degree of board intervention will ever satisfy them short of vacating all adjoining units.

Most long lasting solutions for nuisances are compromises. For example, instead of banning Mr. Trampoline from his passion, maybe he will agree to bounce from 9 am to 7 pm instead of at 3 #\$\$%!! am. When settling the nuisance dust between neighbors, creativity and a lot of humor is called for (a LOT of humor). The board should deflect those which can be to the combatants or the law, and for those that can't, ply the waters of compromise. 🏠

In Record Time

A homeowner association is a business and, like any business, it generates documents and records. Invoices, bank statements, meeting minutes, contracts, communications with owners and

vendors, committee reports...the list is endless and the document management task can be onerous.

While not all HOA documents are of equal importance, what is and what is not essential can be unclear. However, good business practice dictates which records should be preserved and for how long.

HOA records generally fall under two broad categories, financial and corporate, with retention requirements varying from “retain forever” to “dump at will”.

Financial Records. Most financial records should be kept permanently because they chart the financial history and because they could contain information that would have a bearing on current decisions. This list includes the general ledgers and journals along with year-end financial statements, tax returns, audit reports and depreciation schedules.

Financial records that might be subject to an IRS audit or to an accounting-related challenge include: accounts payable and accounts receivable ledgers, expense records, canceled checks, electronic payment records, purchase orders and vendor invoices. These records should be retained for at least seven years. Important financial documents, such as bank statements, deposit slips, budgets and petty cash vouchers should be held for at least four years.

Corporate Records. These represent the HOA’s infrastructure and should be permanently retained. These include the governing documents (CC&Rs, articles of incorporation, bylaws, rules and regulations, deeds, easements, contracts and board resolutions). The historical perspective these documents provide is important because as the membership of a board changes, the collective memory remains in tact with these documents. Additionally, new board members need a basis for understanding the policies and procedures established by former boards and long serving board members have a written record to remind them of the reasons for previous decisions.

HOAs should also retain most records related to former employees for at least seven years, with the exception of their medical records, which, some experts say, should be retained for at least 30 years.

Seven years is also a good retention benchmark for expired contracts and old leases, insurance records, accident reports and settled insurance claims. Minutes of board meetings should be retained as long as the policies and decisions they document can be challenged in court, if not forever.

A similar retention policy applies to the recommendations and actions of committees and records documenting complaints filed by homeowners and how they were resolved.

Records relating to individual units or unit owners should be retained in separate unit owner files. General correspondence with unit owners, copies of work orders, complaints and violation notices should all be retained until the expiration of the statute of limitations on any legal action they might trigger. Requests for architectural modifications, decisions on those requests and other documents related to them should become part of each unit’s permanent record to provide the background information future owners will require.

Storage and Recovery of Documents. Procedures should be established to ensure the safe storage and rapid recovery of all vital HOA documents. Among other measures, boards should:

Centralize hard copy file storage for ease of access.

File storage facility should be weather (rain, floods, etc.) and fire proof.

Regularly back up computer files in a secure, off-site location.

Records Requests by Members. Most HOA records should be made available for examination by members or a member’s representative. Certain records may be withheld such as:

1. Privileged communication between

the board and the HOA’s attorney;
2. Pending litigation;
3. Meeting minutes or other records of an executive session;
4. Personal, health and financial records of a member or employee, and
5. Records relating to job performance, compensation or complaints against an employee

Properly managing homeowner association records is a mundane but necessary task. Follow these guidelines to get your records in record time. 🗑️

Meeting Mechanics

Meetings are the mechanism for conducting homeowner association business. They should be properly choreographed to ensure that real business gets accomplished. While HOA meetings are typically less formal than those of Congress (and thankfully shorter), using parliamentary procedure goes a long way to turning endless discussion into done deals. Here are a few ways to run an effective board meeting:

Schedule & Publicize the Meetings. Board meetings should be scheduled and noticed well in advance to avoid conflicts. Rather than schedule them on the fly, set dates, times and locations *a year in advance*. Strive to hold meetings consistently (like the second Tuesday of January, April, July and October, 6:30-8:30 pm at the Clubhouse). Post the schedule on the HOA’s website, newsletters and common area postings. Distribute it by e-mail and/or regular mail.

Distribute Agendas & Supporting Material in Advance. Directors should receive the agenda and related information at least one week in advance. Include the most recent financial report, manager’s report (if applies), details of delinquencies (who, amounts owed, how long, action taken to date), minutes of last meeting, requests by owners (architectural modification, petitions) and committee reports. Directors should review the information *before* the meeting and come prepared to discuss it.

No Alcohol. HOA meetings are designed to get real business done. That requires clear headed and sober focus. Save the wine tasting for after the meeting or for another time and place altogether.

Use a Location Conducive to Business. While meeting in someone's home may be cheap, it is generally not conducive to meetings or large enough for guests. Homes often have disruptions like phones, kids and pets. If your HOA doesn't have a meeting room or clubhouse, use a local church, library or community center which are often cheap or free. The facility should have a table large enough for the board and additional room and seating for a reasonable number of guests. The room should be well lit and temperature controlled for comfort.

Set a Time Limit. Most meetings should be limited to no more than two hours. Using a "timed" agenda actually puts time limits on each agenda item (like Review & Approve Minutes: 5 minutes, Landscape Contractor Review & Approval: 15 minutes, etc.).

Follow Parliamentary Procedure. Parliamentary procedure is designed so that business is handled systematically and to avoid rambling discussions. If a director wants to discuss something new, it should be proposed as a motion, seconded and voted "aye" by a majority of the directors. If the motion fails, move on. Parliamentary procedure allows discussion as long as it presents new information for consideration. If a discussion of a motion is clearly headed for pass or fail, the Chair can terminate the discussion by asking for a vote. At times it's like herding cats but in the long run, getting business done within a set time frame will reward accomplishment, not talk. (*For a simplified version of Parliamentary Procedure, see www.Regenesis.net Meetings section.*)

Start on Time. Waiting for

chronically late directors shortens available meeting time and encourages tardiness. If the meeting is scheduled for 6:30, start at that time. Avoid the temptation to bring straggling directors up on what they missed. This too encourages tardiness.

Start with a Member Forum. Let the members have their say, ask questions and criticize if they must. Limit the forum to 15 minutes or less. Ask how many want to speak, do the math and limit each to a set time limit. If only one wants to speak, five minutes is usually enough and move on to the agenda. This is not a time for members to ask for board action on any complex topics. If the topic requires research, board response should be delayed until adequate information is developed.

Follow the Agenda. The agenda is the meeting map. Stray too far from it and you may not find your way back. The Chair should monitor discussions carefully and rein it in when it drifts too far afield. Adding impromptu agenda items is rarely productive because they rob time from the set agenda and usually produce a rambling and uninformed discussion. Save the impromptu for a future meeting.

Directors and members will appreciate the results of productive meetings. Meeting mechanics like these are designed to get business accomplished so volunteers can get back to their lives. Gear up and gitter done!🌟

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Recruiting Directors

From time to time, it is necessary or desirable to recruit new directors. It may be due to a vacancy or an upcoming election. Often volunteers are reluctant

to commit until they fully understand the scope of the job and time commitment. Here is a sample solicitation letter that outlines director duties:

To All Members,
At the Annual Meeting, two positions for director of the board will be voted on. Anyone that is a owner in good standing (current in HOA payments and no outstanding violations) is eligible to run in this election.

Overview of Director Duties. The board has the authority to direct Nottacare business including maintenance and financial oversight, rules enforcement and architectural design approval. The board has the authority to hire and oversee the professional management company.

The board meets four times a year for two hours to review Nottacare business and to make decisions and enact policy. Between those meetings, there may be an occasion special meeting to deal with an urgent matter that can't wait for a regularly scheduled board meeting. The President has the authority to act on behalf of the board between meetings as long as the matter is authorized by the governing documents and rules or in line with the approved budget.

Serving on the board gives you direct impact and influence on how Nottacare business is handled. While a management, financial or construction background is helpful, no special training is required other than the willingness and availability to serve. The office of director carries a term of three years.

All Nottacare members have an obligation to serve in some capacity. We hope you will consider running for the board. If you are interested in running, you may be nominated by another owner or nominate yourself. If you are interested in being nominated,

please email that desire and your contact information to info@nottacare.org or mail to Nottacare Condominium, 123 Easy St, Anytown USA by no later than 10 days prior to the Annual Meeting. Please contact me if you have any questions.

I. M. Incharge

incharge@nottacare.org

President - Nottacare Condominium

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Confidence Principle

We all have a need for certainty, and confidence is the outward sign of inner certainty. By giving the other person confidence, you are fulfilling this need in them.

Emotions and attitudes are catching. If you are uncertain in your arguments and appear to lack confidence in yourself, the other person will not be persuaded. A confident persuader creates confidence in the persuaded.

Confidence is a message. A non-confident person and a strong message leads to mixed messages. For the other person to be confident in their decision to agree, all of your messages, verbal and non-verbal, must align.

Confidence starts with yourself. If you have sound self-esteem and a strong self-confidence, then this will naturally appear in everything you do. Being loud and brash, by the way, does not signal confidence - it is often a sign of someone who lacks confidence and is trying to compensate for this.

A more powerful confidence is that which is quiet and confident enough in oneself to embrace the paradox of

being open when you are unsure about something (which acts as the exception that proves that you are truly confident the rest of the time).

Whatever you are selling or seeking to persuade, you need to believe that it is truly valuable and worthwhile. A salesperson who does not believe in their products will communicate this, no matter how slick an act they put on.

When you are persuading another person, if your arguments are weak and easily challenged, then you will probably have difficulty in being confident about them. If, on the other hand, you understand and believe what you are saying, you will appear far more confident.

You also need confidence about the other person. If you see them as a threat then you will react very differently from if you see them as a person to be cared for and who you can help.

Confidence can be over-done and appear as arrogance. This particularly happen when the other person is uncertain and the persuader is making them feel stupid or pressurized.

To lead others, the confidence of the persuader needs to be at an attractive place in front of them towards which they can move. If it is too far away, they are likely to react negatively towards it.

Build self-confidence by doing internal work on your belief system. Make friends with your subconscious. See your self as equal to others. Know that you are a good person with sound values.

Build confidence in what you sell by studying it in detail. This will also help you to explain it to the person to whom you are selling. If you are persuading about non-products, then likewise build a deep understanding of what you want.

Confidence in other people starts with confidence in yourself and with your

overall beliefs about people. Just as you should research the product and what you will say, it is of great value to find out more about the other person.

Always make your confidence attractive. Do not act as if an unconfident person is stupid. Show understanding that they are not confident and position your confidence where they can seek to be as confident as you.

By www.ChangingMinds.org 🏠

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Sunday School

The Sunday school teacher said to her children, "We have been learning how powerful kings and queens were in Biblical times. But, there is a higher power. Can anybody tell me what it is?" A child blurted out, "Aces!"

The Sunday School teacher was describing how Lot's wife looked back and turned into a pillar of salt, when little Jason interrupted, "My mom looked back once while she was driving and she turned into a telephone pole!"

The Sunday school teacher was telling her class the story of the Good Samaritan in which a man was beaten, robbed and left for dead. She described the situation in vivid detail. Then, she asked the class, "If you saw a person lying on the roadside, all wounded and bleeding, what would you do?" A little girl broke the hushed silence, I think I'd throw up. 🏠

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