



# The RegenesiS Report



**Portland 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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## Insurance Victimization

An oft repeated scenario in common wall communities is water damage which originates from a neighboring unit. Whether a broken pipe or washing machine hose, surf’s up! and usually between midnight and 4 am (disasters are funny that way).

While victim frustration and irritation always results, the most natural reaction is looking for someone to blame. However, this is a crime that usually has no perpetrator. Rarely does someone consciously set out to flood the neighbors. This is one of those irritating events controlled by unseen forces commonly referred to as “S\*\*t Happens”. What now?

Of the two entities that victims would like to blame, the neighbor or the HOA, both have legitimate alibis. The neighbor’s toilet supply line probably broke when the neighbor was gone so there is considerable damage done to their unit as well. And the event was nothing they had control over. Your neighbor may have even called his insurance agent about fixing his and your damage. The agent often replies either, “We’ll fix yours but not your neighbor’s” or “Call the HOA’s insurance carrier. They’ll pay for the damage to both”. Technically speaking correct, but practically speaking, wrong advice.

Like the neighbor, the HOA usually isn’t negligent in causing the damage. Things happen. And unless the result is catastrophic, involving many units and tens or hundreds of thousands of dollars of damage, the HOA’s insurance should not be involved in the repairs even if the policy covers it. Why? Insurance companies set their rates according to the number of claims filed and the dollar value of those claims. HOA insurance and rates assume that it will rarely be needed. To keep premiums even lower, higher deductibles like \$2500-10,000 are opted for. This encourages the board not to file small claims which may jeopardize the HOA’s

insurability. Too many claims result in cancellation.

All unit owners are required to carry homeowner insurance for a good reason: to spread the risk around and ensure that each owner has the correct amount and appropriate kind of insurance. Some need relatively little and some need more to cover valuable contents, home businesses and other special needs. It is important that owner insurance be the first line of defense when possible. In the scenario discussed here, unless either the neighbor or HOA was negligent in some way, the owner victims would file claims on their own insurance and pay the deductible out of their own pocket.

The HOA can assist in sorting out claims and responsibilities by enacting an **Areas of Responsibility Policy** which clearly defines who is responsible for insurance and maintenance according to building and grounds components. This one page document establishes the guidelines for the board, owners and insurance agents and eliminates most disputes. A sample is available to Gold Subscribers of [www.RegenesiS.net](http://www.RegenesiS.net) in “Policy Samples” section. Once adopted, the board should be careful to follow it. Fixing unit damage that the HOA is not responsible to fix will establish an expensive precedent.

Avoiding insurance victimization is a matter of proper planning and notification. Make sure all owners know what’s what with an Areas of Responsibility Policy. Then, owners won’t get caught with their insurance pants down.☹

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## Ask the HOA Expert

**Q** We live in a building built in 1939 and converted to a condo in 1987. The building has never been well maintained and needs renovation to the roof and walls, lobby and hallways at a cost \$450,000. Many of us paid high prices for our units and we want to upgrade the building to a high quality standard. What financing alternatives are available?

**A** The most expedient way to raise money is by special assessment, where each member pays a proportionate share of costs according to guidelines in the governing documents. But before you consider this, the board should order a professional reserve study which takes into consideration the cost and timing of *all* common element repairs, not just the ones you list. Reserve studies take into consideration all such repairs over a 30 year projection period. PRA (Professional Reserve Analyst) members of the Association of Professional Reserve Analysts carry the highest credential available to perform this work. See [www.apra-usa.com](http://www.apra-usa.com) for a list of PRA members.

While borrowing money is an option, it carries a higher interest rate, short term pay-back and will significantly raise the monthly assessments to all member that participate. It is usually much more cost effective to have individual members fund their own share of the costs by whatever means available and leave the HOA out of the banking business.

**Q** Our property manager is also a leasing agent for several unit owners in our homeowner association. The board has given full authority for the manager to handle HOA maintenance requests. Does the manager have a conflict of interest between the HOA and landlords?

**A** As long as the manager is providing leasing only services that comply with HOA guidelines and is careful to

enforce all applicable HOA rules on the tenants, there is no conflict of interest. The role you describe is very common in HOAs where there are many second homes. It is important to have a local agent overseeing the rentals and the HOA manager is often the best fit.

**Q** Our treasurer owns three of forty condos and serves on our four member board. Our governing documents require 75% of the members to approve a bylaw change. We often get only a handful of members to attend the Annual Meeting. It looks he can control the vote.

**A** Normally, the 75% approval requirement means that 30 of 40 members (in this case) must approve a bylaw change, not just 75% of those that show up to the meeting. This can be accomplished in person or by proxy. A proxy allows another person to vote on behalf of a member. Your treasurer could get many others to give him their proxy to control the vote outcome but this would take a lot of work to get them.

**Q** Since the participation rate is low at our Annual Meetings, the board never holds elections and just “ratifies” the current board members every year to continue serving.

**A** This is a huge red flag. No board has the right to suspend elections or ratify existing board members. HOAs are *required* to hold elections every year so that all members have the opportunity to run and serve on the board if they get enough votes. The current board could easily engineer the process you describe by failing to distribute proxies and agendas in advance so that other members are not informed or able to attend the meeting. This board needs to be called on its illegal maneuvering *and now*.

**Q** Our HOA property manager holds voting proxies from landlord client members. Is this a problem?

**A** While anyone can technically carry a proxy on behalf of a voting member, this particular arrangement is a huge conflict of interest since the property manager is also under contract to serve the HOA. This proxy arrangement would allow the manager to vote on the members of the board that supervise him. The board should make it clear that the property manager accepting proxies is not allowed.

**Q** Our board commingles operating and reserve funds. This inevitably leads to overspending each year since there is an illusion of more spendable cash than there really is. So, every year, the board overspends the operating budget at the expense of reserves.

**A** The universally accepted protocol (and IRS mandate) is that reserves need to be held in a separate account for the very reasons you state. That means, at minimum, two checking accounts. Reserve funds are typically invested in CDs, savings or other federally insured investments to produce interest revenue. This one is a no brainer. Open another checking account and move reserve funds there *today!* Restrict check writing from that account to reserve related expenses only and limit access to selected board members (property manager excluded).🚫

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## Pluralistic Ignorance

Homeowner associations sometimes come under attack for suppressing Bill of Rights freedoms. Sometimes the accusation is one of principle (I’m not allowed to do what I want) rather than a specific instance (I’m not allowed to post signs). While the media makes it appear that this phenomena is pervasive, in reality, they are isolated cases caused by an overly aggressive





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board, member, or both, who lock horns. Most HOAs actually enjoy an incredible amount of consensus. And why is that? Is it a herding mentality?

According to ChangingMinds.org "Groups all have norms of attitude and behavior which are shared and which help form the identity of the group. Adopting these norms, even if you do not agree with them, is a part of the individual sacrifice that people accept as a price of group membership. It is thus possible for groups to have norms which hardly anyone agrees with, but with which everyone conforms. These situations typically occur when the norms are older than all members of the group or when one member or a small group is dominant and can force their attitudes on the rest of the group."

This phenomena is called "pluralistic ignorance" (PI) by social psychologists. It is a state of mind in which people mistakenly think their own thoughts and feelings are different from those of people around them and look to others for cues instead of trusting their own instincts.

PI is particularly vexing when the situation involves imminent danger. When the danger appears to be ambiguous (unsure if the danger is real or perceived), the social rules of belonging and acceptance trump looking different or alarmist. Once the situation is correctly interpreted as dangerous, pluralistic ignorance fades and logic takes hold: RUN!

But can PI explain what goes on in homeowner associations? Do HOAs really adopt norms that few agree with but with which most conform? Well, yes and no. Norms come in all shapes and sizes. Some are contentious and others really don't matter that much. Most issues in HOAs simply aren't worth fighting over. There has to be some standard and while no standard will reflect everyone's standard, some standard is better than no standard. The driving consideration is whether the standard is "reasonable".

Humans seem to possess an innate sense of fair play. It's sometimes described as "live and let live". Part of that sense is the willingness to sacrifice a personally held belief for the greater good, as long as that sacrifice doesn't land too close to home. So, if the board enacts a policy that is "reasonable" (not hot, not cold but juuuuust right), most will accept it and move on.

On the other hand, those that have their closely held beliefs challenged or denied often respond aggressively, even taking the matter to court, or in a few extreme cases, resorting to murder. This much is clear: challenges to matters of principle can trigger disproportionately large responses. There are numerous court cases where extensive time and money has been expended to debate those matters of principle. But when the judge's gavel has fallen, win or lose, the adversaries will return to being neighbors trying to find a way to get along. Only now, a wall of pride usually takes the place of the contested principle. The feud isn't over by a long shot.

A survey once stated: "It's said that the two greatest problems in America are ignorance and apathy. What do you think?" Answer: "I don't know and I don't care". There is a degree of those attitudes in HOAs. Some members just don't want to be bothered. That leaves HOA matters in the hands of the few that do. The rest mill around in the stockyard of indifference chewing their cud.

Of the few that remain, some serve on the board and others watch what the board does. Again, the watching generally is just that because most HOA boards do pretty well about avoiding controversy. But sometimes the board isn't handling business properly or at all. In an effort to avoid confrontation, some boards neglect to collect money or enforce the rules. Board watchers are quick to blow the whistle.

But is anyone listening? Is pluralistic ignorance getting in the way? Or is it a lone voice crying wolf in the wilderness by throwing stones at glass

houses? Holy mixed metaphor! Clearly, how well the board manages business has a profound affect on the member home values and community livability. Whether the other members are engaged or not, it behooves the board to strive for excellence. 🏠

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## Essential Professionals

The board of a homeowner association is charged with making informed decisions. To make informed decisions requires consulting with knowledgeable professionals when the topic exceeds the board's experience. Professional relationships that every HOA board should have include an attorney, CPA, insurance agent and reserve study professional.

**The Attorney.** Only work with an attorney with expertise in HOA law. Typically, there are very few such attorneys and some specialize in working with developers. Look for those that work with HOA boards. Ask local HOA management companies for references. Do not use an HOA member attorney since there is an unavoidable conflict of interest. Designate one board member to interact with the attorney, usually the board president. This not only controls costs, but eliminates confusion and miscommunication. The HOA's attorney is legal counsel to the *homeowner association*. He does not represent the board, a board member or general member.

What Attorneys Do:

- Review governing documents, proposed rules or amendments and service provider contracts.
- Provide legal opinions on HOA matters.
- Answer questions concerning legal concepts and governing documents.
- Collect delinquent assessments by demand letters, filing liens, processing foreclosures and litigating.





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- Educate and train board or committee members on technical matters
- Assist in obtaining financing

### The Insurance Agent.

- Review the governing documents to determine insurance requirement and recommend additional coverage that might be appropriate.
- Inspect the HOAs common elements and identify risk exposures that need to be addressed.
- Verify the property replacement costs.
- Review the Fidelity Insurance to ensure that those with access to the HOA's funds are included in the coverage.
- Obtain premium quotes and recommend the program that best suits the HOA's needs.
- Educate the board about coverages being offered as well as the exclusions and limitations of each option.
- Explain where the HOA's coverage stops and owners' responsibility begins.
- Offer unit owners special coverage and reduced rates.
- Provide certificates of insurance or evidence of coverage to lenders.
- Assist the board in drafting a resolution stating how claims deductibles will be processed.

- Create a claims procedure manual.
- Customize a risk-management program.
- Review claims annually and recommend how claims can be reduced.

### Reserve Study Professional.

A reserve study is a budgeting tool that informs the board of directors concerning long term renovation scheduling and funding requirements to pay for those events. The reserve study includes all common components (like roofing, painting, fencing, etc.), current cost of replacement or renovation and estimate useful life of each component. With this information, a 30 year plan can be produced that the board can use for planning. While a reserve study is required by some state statutes, it is a budgeting tool that is needed by all HOAs regardless where they are located. Credentialed Professional Reserve Analysts (PRA) members of Association of Professional Reserve Analysts are available to assist HOAs with this invaluable tool. For a list of PRAs, go to [www.apra-usa.com](http://www.apra-usa.com)

Having a team of these professionals will serve the HOA's core and essential needs. Identify those experts in your area and put them to good use. 🏠

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### Unfeather Your Nest

When people are elected to positions of power, there is always the possibility that a conflict of interest will develop. As often as not, there is no intention to fall into one. However, anyone can find themselves in circumstances that lead to a conflict of interest. It's almost impossible to avoid them. But how they are handled is critical. They come in several shapes and forms:

**Imbalanced Reserve Repairs.** Due to poor reserve planning, the board is called on to make judgment calls based on inadequate money. Invariably

someone gets service and others don't. If the board president approves painting his building instead of others, there is a conflict of interest, even if that building clearly needs it more than the others. So, while good reserve planning can help clear up the inequity, the question remains on which building gets painted today. Avoid the perception of self dealing by having an outside "expert" make the call. Rather than be exposed to criticism, why not ask a local paint company design consultant to make the call? This same principle can be used for many other kinds of repairs.

**Voting.** Another technique for avoiding conflict of interest is to abstain from voting when the outcome is self-benefitting. And make sure the secretary records in the meeting minutes that "(fill in blank) abstained due to a conflict of interest". That way, the written record will show no intent to affect the vote.

**Disclosure.** The idea behind disclosure is that any possible conflict is brought to the attention of the board up front. If the board has no problem with it, it *may be* okay. But beware. Technically, if you advise the board to hire your brother in law, the landscape contractor, you've provided disclosure. However, to an outside observer, it would still be nepotism (hiring family members) or possible money kickbacks. The board fiddles while the members burn. While disclosure may explain away a conflict, look at the situation with a critical eye. If the issue is significant or costly, it's best to shy away from it rather than have to justify it again and again.

**Deal Openly.** One of the best ways for the board to avoid self dealing is to hold open board meetings, even if other members don't attend. Draft minutes should be completed within a week of the meeting and distributed to all. Regular newsletters (at least four per year) should advise of significant board business and upcoming events. Board business should be *transparent* (nothing to hide). If the board knows the owners are watching and aware, it's less likely to engage in self serving activity.

**Ban Board Scofflaws.** To have a director who violates the rules is bad



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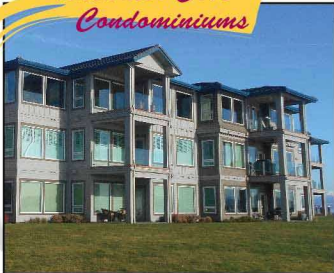
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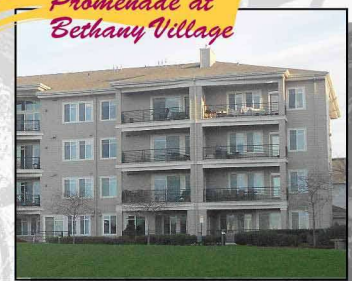
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enough. But to allow this kind of conflict of interest to continue is unconscionable and invites challenge from every community member accused of rule infraction. Habitual board rule breakers should be held to the same standards as everyone else including fines and sanctions.

**Developers.** Many HOA developers are shortsighted when it comes to conflict of interest. The goal to make a profit causes them to set the budget too low to keep HOA fees low and attract buyers. This strategy will invariably backfire after the HOA is turned over to the homeowners since there won't be enough money to properly cover costs. When the HOA runs out of money, guess who gets blamed? To avoid this problem, all HOA developers should use outside budget consultants to eliminate the conflict of interest. Using consultants keeps the developer "arm's length", more credible to buyers and defensible if the homeowner board ever raises the question of the developer under budgeting.

Conflicts of interest always feather someone's nest and raise suspicion. And no matter how hard you try, one will appear. Ask yourself if something the board is doing could be misconstrued by outsiders. Trust is a fragile thing so treat it like fine crystal. Find ways to "unfeather" your nest. 🦄

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### **Noise Ploys**

Noise is a common complaint in common wall communities. That new and beautiful hardwood floor in Unit 2A is Unit 1A's worse nightmare. Suddenly, a normally soft shoed neighbor sounds like a flamenco dancer at full crescendo. While new construction usually provides an extra measure of sound protection, older construction is often woefully inadequate. Is there anything the board can do besides turn a deaf ear?

Since construction related noise complaints are bound to be heard again and again, the board should indeed be proactive and there are a number of things it can do. Here are some ploys to deal with noise.

**Quiet Hours Policy.** Have a formal policy that promotes a quiet environment. Quiet hours like 9 pm to 9 am Monday through Friday and 10 pm to 10 am Saturday - Sunday are reasonable. In defining what noise is, rather than get into specifics like stereos and barking dogs, something like "any sound disruption that significantly interrupts sleep and the quiet enjoyment of the neighbors" works best.

**Dealing with Complaints.** The board should not get involved in noise complaints unless several documented attempts have been made by the affected parties to resolve the issues. They need to recite the nature of the disturbances, frequency, dates, times, action taken by the complainant and response from the noise maker. Do not circumvent this step by accepting requests to intercede prematurely. In most cases, neighbors dealing directly with neighbors will solve the problem.

Accept only the hard and documented cases. And never intercede in events that normally would be handled by the police (domestic disturbances and other violent activity). Also, frequency of the disturbance is a critical element. There is a big difference between two complaints over a six month period and two within a week. A repeat disturbance within no more than two weeks is a reasonable standard.

**Call in the Experts.** If there is a flaw in the building sound design, it isn't necessarily fatal. There are a variety of corrections varying from lifestyle changes to architectural modifications. To help sort them out, hire a qualified architect or engineer to analyze the problem and provide a list of solutions that can be shared with owners. Those should include modifications made by both noise senders and receivers. A soundproofed ceiling may be more expedient than expecting the upstairs neighbor to rip up the oak floor. Most

neighbors do not want to be a pain and will follow the recommendations.

**Set Architectural Standards.** In the interest of community peace and quiet, the board does have the authority to establish reasonable standards for architectural design. While this generally applies to exterior appearance, structural components that impact the neighbors, like floor surfaces, can also be included. For example, any owner that wants hardwood flooring should be required to install a sound proofing material under or over it to reduce or eliminate sound transmission. Let remodeling owners know the requirements before the floor is installed.

**Facilitate the Upgrade.** One of the real advantages of homeowner associations is group buying power. If there is a building wide problem, even if it exists within the units, the owners can join together by way of the HOA to address the problem as a whole rather than sending individual owners off on their own. By joining together, the whole problem is solved at the same time and at a volume discount.

**Fines.** Fining is usually a last resort solution for hard cases. The noise fine policy should lay out a series of increasing penalties like first disturbance, a written warning; second, \$25 fine; third, a \$50 fine; fourth, a \$100 fine...make the penalty enough to get their attention but not so outrageous that a judge would spank the board for being dictatorial.

**Right of Appeal.** All notices of violation and fines should be in writing and include an appeal process. That ensures a record of the event and no misunderstanding of the issues. Fines should be billed and collected just like regular assessments. If not paid, follow the normal collection routine.

**Defensive Action.** Sometimes a good defense is the best offense. Some noise complaints are the result of over sensitivity or mismatched schedules like a swing shift worker trying to sleep during the day. In such cases, it makes more sense that the complainer take defensive action rather than expect



unreasonable changes from the neighbor. Using "white noise" like a box fan or fountain can drown out many noise problems and cost little.

Noise can be a vexing issue, especially when the offender is insensitive. The board can reduce widespread complaints by enacting noise reduction standards and providing proactive solutions. Using these creative noise ploys in your community, peace and quiet will soon be heard loud and clear. 🌲

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## The Man from Samaria

One day, a priest was walking down a dusty road when he heard cries coming from a ditch. "Help me! Please!" He strained to see into the ditch, saw a bloody man and said, "What happened to you?" "I was traveling to town when I was attacked, beaten, and robbed. Please help me, I can't move," the voice responded.

The priest paused for a moment, then yelled back, "Listen, there's this guy called the Good Samaritan who always helps people in need. He should be coming down the road any time now. He'll help you. I don't know anything about first aid and I wouldn't want to make things worse."

"Wait, you don't understand.." But the priest had already gone.

Soon, another man came walking along the road. "Help me! Please!" I need your help!" "Oh," said the man, gazing into the ditch. "You do sound like someone who could use some help. Wait a minute! Attacked? Beaten? Robbed? What a coincidence. That reminds me of a story I heard once. Actually, I'm in quite a rush. But I'm sure that someone else will be along shortly to help you. Someone called...um...the Good Samaritan! He'll be along soon. This is a busy road, you know."

"Couldn't you help me? I'm feeling very weak, I can't..." "I'm sorry, but I'm not the Good Samaritan. If I helped you, it would ruin the story. You wouldn't want me to do that, would you?"

"Ohhhh...I can't last much longer," the wounded man said softly.

Soon another man came walking along the same road. He ran over to the ditch when he heard the man crying. "Goodness! What happened?"

"I was attacked, beaten and robbed. Two other men have walked by and haven't helped me. Please help me. I can't move." The traveler peered in at the wounded figure lying on the ground in front of him. Finally he said, "Wait a minute...you look familiar. Where are you from?" "Samaria."

"Oh sure...the Good Samaritan. I was the man you helped! I've been looking for you because I wanted to repay you! Here are two silver coins--exactly what you gave that innkeeper. I feel so much better. This is wonderful!" The grateful man laid the two silver coins in the dust next to the Good Samaritan and cheerfully went on his way.

And so, the Good Samaritan died quietly in a ditch by the side of the road.

Love is more than words, more than a feeling and more than doing what's convenient. Love means getting down in the ditch to give them what they really need. *By Wayne Rice* 🌲

## Two Cows

**Liberal:** You have two cows. Your neighbor has none. You feel guilty for being successful. You vote people into office who put a tax on your cows, forcing you to sell one to raise money to pay the tax. The people you voted for then take the tax money, buy a cow and give it to your neighbor. You feel righteous. Barbara Streisand sings for you.

**Conservative:** You have two cows. Your neighbor has none. So?

**Socialist:** You have two cows. The government takes one and gives it to

your neighbor. You form a cooperative to help him manage your cow.

**Communist:** You have two cows. The government seizes both and provides you with milk. You wait in line for hours to get it. It is expensive and sour.

**Capitalism American Style:** You have two cows. You sell one, buy a bull, and build a herd of cows.

**Socialism American Style:** You have two cows. The government taxes you to the point you have to sell both to support a man in a foreign country who has only one cow, which was a gift from your government.

**Bureaucracy American Style:** You have two cows. The government takes them both, shoots one, milks the other, pays you for the milk, then pours the milk down the drain.

**American Corporation:** You have two cows. You sell one, lease it back to yourself and do an IPO on the second one. You force the two cows to produce the milk of four cows. One cow drops dead from exhaustion. You do a press release stating you have downsized and are reducing expenses. Your stock goes up.

**French Corporation:** You have two cows. You go on strike because you want three cows. You go to lunch. You drink government subsidized wine. Life is good.

**Japanese Corporation:** You have two cows. You redesign them so they are one-tenth the size of an ordinary cow and produce twenty times the milk. They learn to travel on unbelievably crowded trains. Most are at the top of their class at cow college.

**German Corporation:** You have two cows. You re-engineer them so they are all blond, drink beer, give excellent milk and run a hundred miles an hour. Unfortunately, they also demand 13 weeks of vacation per year.

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