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Portland Edition

Innovative Homeowner Association Management Strategies

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Regenesi means making new beginnings using eternal principles in innovative ways.

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 interest to homeowner associations 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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Lone Ranger or Tonto?

Being a person that wants to serve and protect your own interests, you get yourself elected to the board. At the first board meeting, the president gives you a pep talk about not giving instructions to contractors or discussing board issues with other members unless you preface comments with “the board policy/decision is...”. You bristle at this. Who does this guy think he is? This is America, Home of the Free and Land of the Lone Ranger. Why shouldn’t you be able to say what you want, when you want and to whoever you want?

As a director on the board, you wear two hats: one as an elected official and another as a member of the HOA. While you are clearly entitled to your personal opinion, you need to be careful how and when you express your opinion as a board member. Once elected to serve the interests of the HOA, you need to view things through corporate glasses. This can be difficult when the issues are contentious.

The homeowner association form of government is a representative democracy...a few are elected to represent the many. A fundamental concept of democracy is rule by the majority. Thus, decisions of the board do not require consensus, just that *most* agree. This may leave some directors in the minority opinion and in even direct opposition with the rest.

When it comes to being a minority position director, there are several approaches, one good and one bad. An HOA board needs diverse points of view to make good decisions. If few have an opinion, usually the loudest voice will prevail and effectively the board will run by a dictator. Dictators don’t work well within the democratic context. Having dissenting opinions expands the perspective and dissenters can often have a major impact on shaping key parts of the final decision. A Lone Ranger dissenter may not carry the day but can still impact the outcome.

On the other hand, a dissenter can choose to express opposition by churning the board’s

decision through the HOA grist mill, spinning the facts and creating ill will. It compromises the ability of the board to do its job and causes bad feelings among neighbors. That’s bad for everyone.

That said, there are times when a board or board officer is acting irresponsibly or even criminally. Whistleblowing is certainly appropriate when there is self dealing going on. If the matter is irresponsibility or neglecting HOA business, a vigilant director can be effective by promoting candidates that are more suitable or encourage ineffective directors to step down. But bad mouthing the current regime to neighbors over the back fence is usually self-defeating. It makes the Lone Ranger look small minded, he will be ostracized or minimized by the remaining directors and lose ability to impact decisions.

A Lone Ranger director can also compromise the HOA’s interests by interfering with day to day management. One of the most frustrating things a contractor goes through is trying to respond to many “chiefs”. In a professionally managed HOA, the manager is usually authorized to direct contractors. But when a Lone Ranger director steps in to micro-manage a project, the contractor will often try to respond to both the manager and Lone Ranger. But it takes more time and effort and reduces the chances of a successful outcome.

Tonto was the Lone Ranger’s sidekick and mentor. With his wise manner, he would balance the Ranger’s hero compulsivity. Between the two and creative thinking, they always figured out a way to save the day.

In the final analysis, while dissent is a fundamental part of the democratic process and can produce good outcomes, consistently being a Lone Ranger erodes the ability for the board to work as a team. Tonto understood the concept of teamwork and often gave the Ranger a different point of view by providing additional information and options. Encourage opposing points of view but strive to forge an outcome that works for the majority. Hi yo Silver! 🐎

Ask the HOA Expert

Q Our board has a running battle with various unit owners about who is supposed to fix and maintain what. As a result, the board has paid for repairs that were probably the unit owner's responsibility. How do we get this under control?

A The board should adopt a **Maintenance & Insurance Areas of Responsibility Policy** which defines responsibilities HOA vs Member. The idea is to break down the buildings and grounds into component parts and then describe who is responsible. Always review and use the governing documents as a guideline if direction is provided.

While the Areas of Responsibility Policy can be subject to interpretation under certain circumstances, it usually provides clear guidance to both the board and members. Moreover, it provides the board with the basis for consistent handling of maintenance issues. Another benefit is it clarifies for the HOA's and members' insurance carriers what things the HOA is responsible for and reduces claim disputes. This is a "must have" policy in any common wall community. There is a sample policy in the Policy Samples section of www.Regensis.net

Q We have a resident we routinely have to call the police on for disturbing the peace, verbally assaulting and stalking neighbors and threatening them with physical harm. This resident is essentially psychotic and totally unpredictable. This has gone on for years and we've reached our limit. This situation is now affecting sales! What can we do?

A Have you been in contact with this person's relatives to ask for their help? If there are no relatives or they refuse to help, your attorney needs to file a civil lawsuit and ask the judge to mandate remedies like mental health treatment, a restraining order, etc. The fact that this person has violent tendencies cannot be ignored. Unfortunately, the court route may take longer than you would like but you simply have to stay the course and assume the court will

The Regensis Report

provide a permanent answer to this. In the meantime, continue to have him arrested if necessary. It will only strengthen your case once the matter makes it to trial.

Q I am researching HOA pool liability. Recently, the board enacted pool hours which don't seem safe: 8 a.m. to 11 p.m. I'm concerned about allowing people to swim after dark since the pool has no lighting.

A Pool hours should be tied to dusk and dawn. Of course in Alaska, the Land of the Midnight Sun, all bets are off. But the pool is probably frozen anyway. If there is a noise concern, the pool, even if lighted, needs to be closed during Quiet Hours, say, 10 p.m. to 7 a.m.



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Q Our governing documents have a provision that limits rental agreements to 12 months except for extenuating situations approved by the board. Since the HOA has not been turned over by the developer yet, is the developer the "board" and does this give him the power to change the rules for his own benefit? For example, the developer rented several units for 18 months.

A Yes, prior to turnover, the developer controls the board and can grant himself an "extenuating circumstance" although this would be a clear conflict of interest. Since the developer controls the board, it puts a lot of responsibility on the developer to govern "equitably" which means he should not grant himself special favors. But developers want and need to sell units and sometimes bend the rules to make a sale by granting a buyer some special right, like installing a fence that is prohibited in the governing documents. In most cases, these are verbal agreements since the developers know it will come back to haunt them if they put it in writing.

Usually, the rules developers bend are minor since major ones could have some nasty consequences when the turnover board takes over. If a developer is grossly out of line during his control period, the new board can hold him legally and financially accountable.

That said, during down real estate markets, developers are forced to do things they did not plan to do, like rent units, until the market recovers. Failing to take measures like these would likely force the developer into bankruptcy or foreclosure by the bank. Banks are generally not good substitutes for the developer so it may behoove the current owners to be somewhat flexible with the developer if he is struggling but doing his best to fulfill his developer obligations.

Q Must all HOA business be discussed, debated and voted on at board meetings open to the members? We have a group of dissidents that routinely disrupt and interfere with the board discussions. It's hard to get business done.

A The board should deal with *most* business except legal matters, contract negotiations, private collection matters and a few other topics at open board meetings. Part of the disruption issue may be related to how the board seats itself at board meetings. If the board is sitting firing line style facing the audience, it encourages the audience to engage and interrupt since board

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comments are aimed at the audience. If this is the case at your meetings, the board should reorient itself around a conference table large enough for that purpose and seat the audience elsewhere but **not** at the conference table.

Regardless of the seating arrangement, if the board chairman is not effective in restraining members of the audience that interrupt, the problem will persist. The issue can be handled tactfully in a short statement preceding the opening of every board meeting where there is an audience by simply stating "Please remember that this is a *board* meeting, and that guests are not to interrupt unless asked to speak by the chairman." The chairman, of course, must quickly seize control if an interruption happens and ask the person to leave if they do not cease and desist. If your chairman is not up to this task, someone that is should be appointed to the office and run the meetings. 🗺️

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Model Remodeling

Owning one's own home is an American dream. In urban settings, homeowner associations have become a dominant form of new construction, often representing over two thirds of new homes. While HOAs come with rights and privileges, members must concede certain freedoms enjoyed in non-HOA home ownership. One particular area of concession involves remodeling.

To control uniformity, look and feel, many HOAs have material, color and design standards which must be adhered to. In common wall and multi-story HOAs, structural integrity demands that changes made in one unit do not compromise the remaining units. For these reasons, it is important for the homeowner association to keep the owners informed and reminded of material standards and remodeling guidelines to avoid inadvertent violations.

Here are a number of guidelines which can be included in a Remodeling Policy as appropriate:

1. For smaller projects (aesthetic, no structural or utility work involved), prior to commencement of work, submit a description of the work to be performed, who will do it and the anticipated schedule to the board for written approval.
2. For involved projects (includes structural, utility work) submit architectural plans, copies of permits and contractor agreements to the board for written approval prior to commencing work. If warranted, the board may seek the review and approval of an architect or engineer with related costs to be paid by owner.
3. If view (mountain, ocean, etc.) is a consideration, require disclosure of proposed structure height and whether removal of trees is planned for better view.
4. Contractors are permitted to work only from 9:00 a.m. to 5:00 p.m. Monday through Saturdays. No work permitted on Sundays.
5. All demolition and construction material shall be disposed of off property, not in HOA trash receptacles.
6. Contractor shall clean up construction debris *daily*.
7. Owner will provide adequate parking for contractor. Contractor may not use guest parking or block fire lanes.
8. Common utility (electrical, water, gas, etc.) interruption must be approved and coordinated by the board.
9. For landscaping renovation, a comprehensive plan should be submitted to the board showing proposed changes.
10. The board should approve standards (brand, model, color, etc.) for paint, roofing, storm/screen doors, awnings and other exterior add-ons.

Since the desire to remodel can happen anytime the spirit moves the remodeler, the board needs to be proactive in

keeping owners informed of expectations. Publish the Remodeling Policy on the HOA website and reference it in all newsletters and periodic email updates. Since remodeling will happen, make sure you do all possible to direct a model outcome. 🗺️

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Management Plan Calendar

In conjunction with completing the homeowner association's annual budget review, a Management Planning Calendar should be compiled to reflect budget events, meetings and other action items. This calendar should be distributed to all members so they can plan accordingly for events that impact them personally. Result: No surprises and more gets done. Here is an example:

Nottacare Condominium Management Plan Calendar

JANUARY
13 Board of Directors Meeting
15 Newsletter
Inspect decks for repairs
Forward Year End Financials to CPA

FEBRUARY
Newsletter

MARCH
File HOA tax return by the 15th
Install barkdust

APRIL
1 Maintenance Committee Inspection
12 Board of Directors Meeting
15 Newsletter
~ Send Pool Rules
~ Announce Summer Social
15 Pool work project begins
Clean Clubhouse and stairwell carpets

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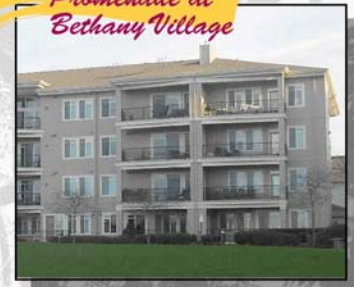
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MAY

5 Work Party - Plant spring flowers
25 Pool Opens
Clean gutters
Wash windows

JUNE

Roof replacement project begins
Deck repair project begins

JULY

12 Board of Directors Meeting
~ Appoint Budget Committee
13 Mail Annual Meeting Notice/Proxy
~ Request Board Candidates
15 Newsletter

AUGUST

Corrective pruning project begins

SEPTEMBER

10 Close Pool
12 Chimney Inspections & Cleaning
15 Budget Committee Meeting
~ Review manager's draft budget
~ Review insurance coverage
Wash windows

OCTOBER

5 Work Party - Plant fall flowers
22 Board of Directors Meeting
~ Review & approve budget
15 Newsletter
Winterize exterior faucets
Mail winterization notices to residents
Walkthrough with Landscape Contractor

NOVEMBER

1 Grounds Committee Inspection
12 Annual Homeowner Meeting
~ Election 2 Directors
~ Review Bylaw Amendment - ARC
~ Review & Approve Parking Resolution
~ Appoint Social Committee
~ Appoint Maintenance Committee
~ Appoint Landscape Committee
~ Appoint Architectural Control Committee
Newsletter
~ Announce Christmas Party
Mail budget & fee notice by the 30th
Clean roofs & gutters

DECEMBER

Get proposals for roof replacement
Get proposals for pool work
Get proposals for corrective pruning
5 Clubhouse Cleaning Party
12 Christmas Party at Clubhouse

Questions? Phone 666.666.6666 or
info@nottacare.org 📧

Defining Director Duties

From time to time, it is necessary or desirable to recruit new directors. It may be due to a vacancy or an upcoming election. Volunteers are reluctant to commit unless they fully understand the scope of the job and time commitment. To overcome this uncertainty, distribute something like the following that outlines director duties:

To Members of Nottacare Condominium,

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 business including maintenance and financial oversight, rules enforcement and architectural design approval. The board has the authority to hire and oversee the management company.

The board meets four times a year for two hours to review 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 or in line with the approved budget.

Serving on the board gives you direct impact and influence on how HOA 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 members have an obligation to serve in some capacity. We hope you will consider running for the board. You may be nominated by another owner or by 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 April 1st. Please contact me if you have any questions.

Ima Daboss daboss@nottacare.org
President - Nottacare Condominium
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Snipers & Terrorists

Out of the blue, an irate homeowner launches a smear campaign aimed directly at the board. It's relentless and focused. The motivation may be some personal grievance, hatred of a board policy, disagreement on how the board does business in general or loathing for the whole HOA concept. Rather than seeking redress in an orderly and open way, however, often it takes the form of poison pen letters, back alley rumor mills or a terrorist-like assault at a board meeting.

Board meeting terrorism is designed to hold the board hostage to relentless rants and demands. This form of HOA terrorism is designed to directly challenge board authority and to disrupt the orderly process. As with any terrorist attack, the board's initial reaction is usually disbelief. But, the cold reality of the assault soon becomes clear and the need to act urgent.

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How should the board deal with this kind of attack? When presented a list of demands, should the items be discussed point by point? Should they be recorded in the minutes? What should be done?

Rule #1: Never negotiate with terrorists. The board is not obligated to discuss anything off the agenda. And it's unreasonable to expect informed answers to firing line questions. The response should be, "Thanks for making your points. We'll review them and give you a response in writing or consider them at the next board meeting."

Rule #2: Don't record a list of demands. Minutes are intended to discuss in broad terms the business accomplished by the board. Specific motions should have enough detail to describe them and the outcome of the vote. It is not a forum for soap boxing, editorializing or where items are entered into "evidence". It's enough for the minutes to state, "Mr. Sniper asked that the board consider issues relating to (general description)."

Rule #3: Control the Owner Forum. To encourage owner input, an Owner Forum before the meeting should give each speaker owner up to, say, 5 minutes to speak, so the board can get on with its business. Letting someone hold the board hostage should never be allowed and it's up to the president to control such actions. An abusive person should not be allowed to continue for any length of time.

Rule #4: When attacked, respond quickly and firmly. When the attack becomes apparent, it's the president's job to interrupt and, if necessary, ask the attacker to leave the meeting. If the attacker refuses to comply, the president should adjourn the meeting and advise that such conduct will not be allowed at future meetings.

HOA terrorist attacks are designed to fan the flames of emotion and to promote rash responses. The board needs to walk the high road. While this isn't easy when the attack is intense, the directors outnumber the attacker and with a unified response, should be able to defeat the challenge

and even help point the terrorist toward a better way. 🗺️

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Sample Rules

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Earmarking Reserves

All homeowner associations have common elements which must be maintained, replaced or renewed. All of this costs money. But borrowing this money is a very bad idea because it comes at a very high price in the way of interest and fees which must be repaid along with the principal. The cheapest and fairest way to pay for these expenses is to earmark a portion of the regular fees and hold this money in reserve for future expenses. A reserve study provided by a qualified professional will inform the board how much the earmark should be so that all pay a fair share of a 30 year plan. If this is done, special assessments will not be needed and the board will have the money to fund the projects.

But keep in mind that even the best reserve study has its limitations. While it predicts useful life spans and replacement costs, it can't guarantee either one. A reserve study is based on assumptions that change over time. The climate, weather, soil conditions, preventive maintenance, design and construction quality play a role in the aging process, causing some components to age differently than expected. The financial climate is also variable. Investment earnings and inflation change. To keep the reserve study accurate, the reserve study must be updated annually.

How Much Do You Need? For the typical brand new garden style condominium, it is necessary to reserve, on average, at least 35% of the annual budget to meet future needs. For older projects, that number could be much higher.

Communicate with Owners. For HOAs that are not currently contributing enough to reserves, the

solution is to start contributing more by increasing the monthly fees. Lenders shy away from HOAs that have little or no reserves because it negatively impacts the lender's collateral. Once the reserve study is completed, provide owners with a copy and encourage them to read it. Hold a special meeting and invite the reserve study provider to explain it. Make sure owners understand the reserve funding schedule and emphasize the relationship between the reserve level and property values. It is not just lenders that will be scrutinizing the HOA's finances. Savvy buyers will be scrutinizing them as well.

Don't Commingle Funds. Reserves should not be used to pay for ongoing preventive maintenance and repairs. Those should be paid out of the operating budget. Reserve funds should be segregated in a special bank account apart from operating funds. Typically, the portion of HOA fees earmarked for reserves is swept into this separate account monthly. Only reserve related expenses should be paid for out of this special account.

Borrow Reserves Funds Carefully. Borrow from reserves only in an emergency or because of seasonal high expenses like an insurance premium that comes due early in the year and not enough fees have accumulated yet to pay it. If you must borrow, document the board vote approving that decision, establish a reasonable repayment plan and stick to the plan.

Develop a Reserve Investment Plan. Reserve funds are typically placed in FDIC insured savings accounts, money market accounts and Certificates of Deposit. Most state laws don't have specific reserve investment standards for homeowner associations. The governing documents usually give the board investment discretion. Boards should develop a written investment policy that defines the investment goals, establishes the objectives against which the investment performance will be measured, and identifies the boundaries within which investment selections will be made.

The investment policy should include:

- Keep the reserves safe (don't risk the principal).

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Nestor Correa - Netscore REsource Management

"Trade HOA Stress For Success should be required reading for all HOA board members. I plan to make sure that a copy of it is distributed to all new members!"

George Burns - Board President

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- Preserve earning power by choosing investments that match or exceed the inflation rate when possible.
- Ensure that the funds are available when they are needed.

Other issues to consider include:

- Consider working with an investment professional. This is particularly important when the reserve fund is large.
- Remember that this is OPM (Other Peoples' Money). Tread carefully.
- Document the investment decisions in meeting minutes.
- Diversify the investments (savings, CDs, etc.)
- Focus on liquidity. Industry experts recommend holding 5% of reserves in cash for emergencies, another 10-15% in short term (six months or less) securities and the rest spread among varied investments with varied maturities. The reserve study provides the schedule for work and projected cost for investment planning.
- Review your investment strategies annually to make sure they still match near and long term goals. Don't let cyclical changes in the market alter the investment strategy which should remain long term.

Maintaining adequate reserves is a fundamental part of the board's fiduciary duty. Make sure to earmark the budget for reserves. 🏠

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Pat Answers

"Pat answers" suggest fool-proof solutions. There aren't any. But there are unifying principles like honesty, integrity and respect that ensure effective policy and rule making. The board can either focus on making rules to deal with problems (exceptions to the rules) or adopting unifying

principles from which a code of conduct springs. If policies are formulated to deal with problems, the board is forever chasing new problems. On the other hand, if your policies grow from unifying principles, the exceptions become obvious and new policies become unnecessary.

George Orwell's "Animal Farm" is a parody on socialism where farm animals overthrow their oppressor, Farmer Brown. The first thing the animals agree on is a unifying principle: "Two legs bad, four legs good". That principle brings all of them, the horses, cows, mice, cats, dogs, etc. together as a team.

This principle works well until the pigs, who have taken over the leadership role, decide they want to be exempted from the rule and walk upright. They modify the unifying principle with an exception: "Two legs bad, except for the pigs". That exception erodes and destroys the community.

In our own society, the Ten Commandments are under attack because they are perceived by some to be restrictive. In reality, their effectiveness in building a healthy and happy community is legendary.

Like the Ten Commandments, a homeowner association's unifying principles must be guarded carefully. Complacency and neglect allow weedy exceptions to take root and grow. Weedy exceptions soon crowd out unity and life becomes a free for all. 🏠

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Dog Rules

1. Dogs are never permitted in the house. The dog stays outside in a specially built wooden compartment named, for very good reason, the dog house.
2. Okay, the dog can enter the house, but only for short visits or if his own house is under renovation.

3. Okay, the dog can stay in the house, provided his dog house can be sold in a yard sale to a rookie dog owner.

4. The dog is not allowed to run free in the house and is confined to a comfortable but secure crate.

5. Okay, the crate becomes part of a two-for-one deal along with the dog house in the yard sale, and the dog can go wherever he pleases.

6. The dog is never allowed on the furniture.

7. Okay, the dog can get on the old furniture but not the new furniture.

8. Okay, the dog can get up on the new furniture until it looks like the old furniture and then we'll sell it all and buy new furniture... upon which the dog will most definitely not be allowed.

9. The dog never sleeps on the bed. Period.

10. Okay, the dog can sleep at the foot of the bed.

11. Okay, the dog can sleep alongside you, but he's not allowed under the covers.

12. Okay, the dog can sleep under the covers but not with his head on the pillow.

13. Okay, the dog can sleep alongside you under the covers with his head on the pillow, but if he snores he's got to leave the room.

14. Okay, the dog can sleep and snore and have nightmares in bed, but he's not to come in and sleep on the couch in the TV room, where I'm now sleeping.

15. The dog never gets listed on the census questionnaire as "primary resident," even if it's true. 🏠

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