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Portland Edition

Innovative Homeowner Association Management Strategies

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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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Fox in the Henhouse

Theft of homeowner association funds is a rare occurrence because the vast majority of professional managers and board members are honest and trustworthy. However, when theft does occur, it has a devastating effect. The following suggestions include some basic protocols that an HOA board can put into place to greatly enhance the security of its funds.

Banking.

1. Checking & Savings Accounts. When setting up an HOA's bank accounts, make sure that the President and Treasurer are given access to those accounts even if the HOA is professionally managed. Operating funds and reserve funds should be held in separate bank accounts. For the reserve account, the board may wish to limit access only to the President and Treasurer (excluding the management company), and require two authorized signatures on any reserve check or withdrawal. (The two signature requirement is strictly a board policy. The bank will still cash a check written by one of two authorized signers.)

2. Set Up Online Banking. The President and Treasurer should be able to monitor all HOA account activity. If professionally managed, require that duplicate monthly bank statements be sent directly from the bank to the President and Treasurer. Many banks offer electronic fraud alerts which will send an email warning if a certain number of transactions or a certain amount of money is withdrawn from accounts.

Beyond electronic protections for HOA accounts, the President and Treasurer should visit the bank branch where the accounts are located and get personally acquainted with the branch manager. When a new board President and Treasurer are elected, they should visit the bank and execute a new account signature card and make sure old officer names are removed. The access password for the HOA's electronic banking should be changed periodically to make sure that only currently authorized officers have access to the accounts.

Professional Manager. If considering professional management, make sure to obtain references from their other association clients and check those references. Since the reserve account can accumulate substantial funds with infrequent expenditures, it is prudent to restrict the manager's access to the reserve account. The board President and Treasurer can sign the few checks (typically) that are required each year to pay for reserve related expenses. The board should hire an independent CPA to review financial statements annually.

Insurance. All HOAs should carry fidelity insurance to protect association funds. Fidelity insurance covers theft of funds by HOA officers, directors and employees. It can also extend to professional management, although management should carry its own fidelity coverage. A board should annually review and adjust the limits of its fidelity insurance to adequately protect the value of its funds. A good guideline to follow is to insure all reserve funds plus three months of HOA assessments. A board should also verify the management company's fidelity insurance limits. Management companies typically have blanket coverage which extends to all of their clients. Ask management for its fidelity coverage limits and how many clients it covers.

Always be cautious when it comes to the HOA's money. If something looks or sounds suspicious, investigate. With these basic protections in place, the security of HOA funds is greatly enhanced. Kill the fox before too many hens go missing. ☹️

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Ask the HOA Expert

Q Please explain the differences between the three types of CPA financial investigations (Compilation, Review and Audit) and how they relate to HOAs:

A The process for the examination of financial statements by CPAs. An audit includes examining, on a test basis, evidence supporting amounts and disclosures in financial statements. It also includes assessing the accounting principles used and evaluating the overall financial statement presentation. In conducting an audit, CPAs are required to obtain reasonable assurance about whether the financial statements are free of material errors or irregularities. An audit offers the HOA board reasonable assurance that the statements present the HOA's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles.

CPAs also offer two other types of services called reviews and compilations. In performing reviews, CPAs apply analytical procedures to financial statements and make certain inquiries of management. Review procedures, which are substantially less comprehensive than those performed in an audit, enable CPAs to express limited assurance on conformity of the financial statements with generally accepted accounting principles. In compilation engagements, CPAs put financial information supplied by the clients into the form of financial statements, but do not express any assurance on the statements.

Audits are by far the most costly type of financial review. Unless HOA governing documents or state statute require an annual audit, the board can opt for a review or compilation.

Q I requested a copy of our insurance policy and am told it will cost \$25 and take up to 25 days.

A The board should provide access to most records except collections, personnel matters and litigation. It may charge a

reasonable fee for making copies (10 cents a page is reasonable). The information should be made available in PDF for no charge. 25 days is too long to respond. 10 days should be plenty of time to get these kind of requests done.

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Q I live in a gated community and serve on the board. We have had complaints regarding the number and type of real estate signs used in the common area. The board approved a tasteful generic sign with a place for flyers. We received a letter today from a homeowner stating that the sign is "restricting their ability to market their home". They are threatening to sue the board.

A Controlling signs in the common area is entirely fair and right for the board to do. You might bend a bit by allowing an additional real estate sign (18" x 24") to be displayed inside the unit window. Aside from that, hold your ground. There is no Right to Signage in the Bill of Rights.

Also, the HOA should carry Directors & Officers Insurance to defend the board against lawsuits like this although these kind of threat rarely get acted on.

Q Five years ago, I asked the board to approve the installation of a skylight on the front roof portion of my unit. This request was rejected but I was allowed to put the skylight in the back roof. The board has now changed the policy and allows skylights in the front of the units. I'm furious!

A Adding skylights is not recommended at all since it all too often creates leaking problems. And when the board is presented with architectural change request, curb appeal is a very important consideration. In common wall communities, uniformity is usually an asset to value while variations detract from value. The board five years ago tried to accommodate you without compromising curb appeal. You, in response, had several alternatives at the time:

1. You could have made the case that your goal was to get maximum light by placing the skylight in the front.
2. You could have asked that the board approve streetside skylights as a standard.
3. You could have decided that it wasn't worth it installing a rear skylight.

I suspect that once you got yours installed, other owners liked the idea of a skylight but realized they were better suited for the front. They apparently presented their case better than you and the board agreed. The good news is that you now have the option of adding another skylight where you wanted it in the first place.

Q Our board officers are buying items for the HOA without the approval of the board. How do we control such spending?

A The approved annual budget should allow for certain kinds of spending without the need for a board vote. For example, if the clubhouse needs a new table and chairs and the budget is there to buy it, the president or treasurer should have the authority to do so. If the amount or type of expenditure falls outside the



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approved budget, board approval should be required. The entire board does not need to micro-manage every expenditure. That is what an approved budget is designed to control. But if certain board officers are spending money without authority, either do not reimburse them or make sure vendors only sell to the manager or board president.

Q One of our condo owners is frequently gone for long periods of time. We are concerned about plumbing leaks. Can an HOA representative enter and check it out the unit periodically?

A Generally, the HOA has the right to enter owner units in emergency situations to protect the life and property of others (fire, flooding, gas leak, etc.). This may require forced entry because it is not advisable for the HOA to hold unit keys due to liability concerns. Random access for "checking up" should only be done with written approval from the owner. Or, a policy can be enacted that any member planning to be absent for longer than, say, 30 days, must have a local representative authorized to give access to the board or management if necessary.

Q I'm on the board of a condominium in Alaska that has central thermostat controlled hot water baseboard heat. During the winter, the heater does its work too well and a rash of people open their windows to moderate the temperature. The baseboard is below the window and the pipe freezes. So far, the HOA has been paying to repair the damage. Our insurance has quadrupled. Our understanding is that since the pipes are "common" we must pick up the bill. What are your thoughts?

A Damage resulting from resident negligence should be paid for by the unit owner. The HOA should arrange repairs but pass the cost through to the owner. The HOA has no direct authority over renters so should not bill a renter for damage. The unit owner should deal with the renter.

The HOA cannot afford, as you've discovered, to pay for all manner of claims without expensive consequences. In some cases, with too many claims, the HOA may lose its insurance altogether. To protect against that, all owners should be required to carry adequate insurance to protect their own finishes and personal property. If either is damaged, regardless of the cause unless there was clear negligence by the HOA, the damaged unit owner's insurance should pay the claim.

It's obvious that you need individual temperature controls for each unit so this kind of thing is less likely to happen. Temperature control should be available to all. Power to the People! Even older systems can often be retrofitted for individual controls. If not, it may be time to install electric wall heaters that don't require an electrical system upgrade.

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Q What are your thoughts on "open or closed" session board meetings regarding potential litigation?

A Board meetings should be open to all members. Executive sessions should be reserved for selected topics like litigation, personnel and contract matters. The board should use executive session rarely and announce when such is taking place and the general nature of the discussion so that it is clear it's not a violation of open meeting requirements.

Q Does a board have a fiduciary responsibility to file criminal or civil charges when a former board treasurer and long time resident admitted to "using" (but paid back) \$5000?

A From a principle standpoint, filing criminal charges seems like the right thing to do. However, it would unlikely further benefit the HOA, particularly if the money has already been recovered. Considering that the person is no longer a board member, nothing more need be done.

It does, however, raise the issue of fraud for which all boards should be ever vigilant. There are a number of fraud prevention practices that should be followed to reduce the possibility of embezzlement including having duplicate copies of the bank statement made available to another board member like the president and requiring two signatures on checks (although the bank will cash them without two signatures). Also, the HOA should have Employee Dishonesty (Fidelity) Insurance coverage in an amount equal to the reserves plus three months of assessment to protect against embezzlement.

Q Since the inception of the HOA, there have been about 44 homes out of the 113 that have a courtyard extending from the front yard to the front door. Usually a low wall and gate separate the two areas. Front yard maintenance is provided as part of the monthly homeowners assessment. Our governing documents specifically state that this care does not extend into the courtyard. However, the HOA has always taken care of the courtyards also.

The board now wants to follow the governing documents and informed the courtyard owners that the maintenance service would be discontinued. Several of the homeowners are threatening to take legal action. The board's alternative is to amend the governing documents so that maintenance does include the courtyard.

A First of all, the board has no authority to amend the governing documents. That can only be done with an appropriate vote of all members. If given that opportunity, the non-



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courtyard owners are unlikely to approve such an amendment.

Change of a routine that has been in place for so long should be handled very carefully. It's not surprising that the board has been challenged. When making radical policy changes, it is always in the board's best interest to have a knowledgeable attorney review the matter before moving forward. However, it sounds like the board made a correct judgment to correct the past. It might consider allowing the service to continue with the affected owners reimbursing the cost.

Q The board is meeting tomorrow evening about the delivery truck and resident speeding problem. Some want speed bumps, some want stop signs. Do you have or know of any sources of studies or information on the most effective ways to reduce speed and the draw backs?

A Installing traffic control is a highly sensitive issue and should be discussed in an open meeting with owners. Is this a general problem or are there relatively few offenders that can be identified? Have the police been called to do periodic speed control? Speed bumps should be your last option and may be illegal because they hinder emergency vehicles. In some cities, a low profile speed bump has been developed which spans the width of the street and is 6 feet deep. The impact is noticeable but not as radical as traditional speed bumps. And they are generally put in series, say, every several hundred feet so that driving more than 25 MPH gets to be a real pain.

There are also traffic circles that cause traffic to slow at intersections and, of course, stop signs. Your local government has a traffic flow expert that could provide the options. 🚧

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Rules That Rule

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

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

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

members vote to change it. Buyer beware.

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

1. All rules need to be written. In days before the written word, laws were passed on by oral tradition. Since clans were closely knit, this system worked pretty well. But with modern fractured families living global lives, writing has a distinct advantage for keeping newcomers informed. Funny thing is, many HOAs have unwritten rules that offenders don't discover until they break them. Judges, however, don't like the idea of unwritten rules and often smite HOAs that have them. So all rules should be written.

2. All rules should be available for inspection. When paper was king, written material was controlled by the board and the management company. Getting it was often cumbersome if the "holder of the paper" was unavailable. With the advent of email and the internet, humankind has been set free of the paper prison. HOAs can now make rules, policies and information available 24/7 by way of an HOA website and email. Newsletters can be emailed in PDF (Portable Document Format) with links to the website. Prospective buyers can also access this information to ensure there is nothing that would create a problem after closing the sale (like, the buyer has an RV and RV parking is not allowed.).

3. All rules should be consistently enforced. If a rule is important, it should apply to everyone, including the board and friends of the board.

4. All rules should be necessary. In a world gone mad with regulation, having a whole new set to adhere to at home is an unnecessary aggravation. If there is a city ordinance to control wandering or defecating pets, the HOA doesn't need the same rule. Only add the rules the HOA really needs.

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

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

7. Run new rules up the flagpole. HOA boards can get myopic about the need for rules. Problems that loom large to a board may be of little importance to the majority of members.

The board can make much ado about nothing. Or worse, the board can fan the flames of rebellion by enacting an unpopular rule. (Is that tar I smell?). There is no rule that is so urgent that couldn't wait for a 30 day member review and comment. Proposed rules circulated to the members generally gain buy-in and compliance, rather than defiance.

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

At the end of the day, HOA rule breakers and enforcers are still neighbors. If the rules don't recognize this unique dynamic, a battleground will be groomed for future skirmishes between warring neighbors. Rather than plan for battle, groom the rules to help neighbors be better neighbors. 🏡

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Dealing with Difficult People

Dealing with difficult people in any setting can be a real challenge. But in volunteer-based homeowner associations, where there is none of the leverage managers have with employees, there is an entirely new level of difficulty. And, believe it or not, a new level of opportunity. The key is common interest.

Where we live means a lot more to us than any other physical environment. Our territoriality buttons are more easily pushed. Our investment is greater. We can easily get defensive of our personal space and quickly lose sight of community issues. It's worth recognizing that, to one degree or another, we all have this in common. What unites us seems to divide us and vice versa. In a homeowner association we are challenged to balance our individual and collective needs.

Most of us believe it's a good thing to work toward achieving that balance, but some people seem oblivious to it. And some people seem downright determined to undermine it. It's easy to imagine that the folks who obstruct or dismantle our meetings have malicious intent, or at least thoughtless disregard.

Why are some people so difficult? Because they learned how -- and because they didn't learn how not to. The seriously difficult person is significantly dis-inhibited. He or she didn't learn the typical social inhibitors that make for balanced exchanges. Most of us know how to "make nice," even when we don't much want to. Some people simply don't know how. We can name some of the more difficult behaviors and we can speculate about what motivates them. In general, fear is the prime motivator. Extremely difficult people are

extremely dis-inhibited in their response to fear.

Terrorist Behavior literally holds a group hostage. In extreme cases, this includes streams of abusive language, threats or emotional outbursts (yelling, crying, banging). There is frequently a relentless nature to all of this, so it's clear to the group that nothing else stands a chance of going on.

Aggressive Behavior is domineering, offensive, in-your-face and is easily triggered. In fact, the threat of aggression hangs over the group and creates an underlying tension. This behavior is more controlled than the first category in that it is less all-over-the-map and probably more directed at individuals than at the entire group.

Passive-Aggressive Behavior avoids full-blown confrontation but strikes out covertly. Hidden agendas and character assassination attempt to sabotage normal, above-board group process and interaction.

Unyielding Behavior is unable or unwilling to set a past issue aside. The issue or emotion keeps coming up, even when the subject is different and the cast of characters has changed. Everything is referenced to an unresolved past. While this behavior is less invasive and threatening than those above, its continued presence is an energy drain and source of frustration.

Persecuted Behavior is the victim response -- blaming, whining and complaining. Although most of us enjoy complaining and grouching about things from time to time, persecuted behavior stems from a non-stop, perennial point of view. And since the victim perspective predominates, it's easy for your group to join the list of persecutors.

Polarity Response is a behavior unfamiliar in name but not in most everyone's experience. Whatever the issue or opinion, the polarity responder takes the opposite view. Disagreement is automatic. This can include and goes past the devil's advocate role some people take on in groups. Most polarity

responders seem unaware of their behavior and its impact on others.

What can you do? While you were reading the descriptions above you were probably thinking of specific examples from your own experience, and that may have left you wondering what you can do to stay focused and flexible in the face of such behavior. That's not surprising. A change of focus is in order. Here are five things you can do

1. Notice your response. Is the behavior one that really "pushes your buttons"? Your first step is to consider what's going on with you in this unpleasant situation. Be responsible for your own reactions -- after all, that's one of the things you wish that difficult person would do.

2. Change what you're doing. Since you can't really change someone else, change what you can. The results can be surprising and rewarding. First of all, it shifts you from being at the mercy of the situation. As soon as you begin to consider exercising new options, you step out of the problem frame and onto a larger canvas. This re-framing is an important shift in perspective.

3. Ask the person "What do you want?" You may think you know but you may learn a few things you didn't know by asking. Of course, it's hard to ask the question after things have spiraled out of control. Hopefully you can find a good time to ask, because it's the ideal starting point for building rapport and trust.

4. Focus on outcomes. Your group needs to ask itself the "What do you want?" question. Spend whatever time it takes to generate a set of goals and objectives as well as how to meet them. Now comes the really important part of this formula (in bold italics): Once you have specified your outcomes, decide what behaviors will support getting them like: *Patience. Assuming Positive Intent. Willingness to Listen.* Generate your list of behaviors during meetings in a conspicuous place. This will be a great reminder for even the positive contributors in the group. And when

the negative behaviors erupt, you can point to the list, not at the person. Stay focused on what you want. If the difficult person is unwilling to change behavior, you will also need to specify how the group will respond.

5. Consider alternatives. What will you do if the difficult behavior persists? One option could be to take a five minute break. (This is sort of like pushing the group re-set button). During the break, clarify for the difficult person what the goals for the meeting are and which behaviors support those goals. Then state what the next step will be if the difficulties arise again. Be prepared to quickly adjourn your meeting if the behaviors continue. For the extreme behaviors, it may be the only useful choice. Consistently applied, it will send the message that certain behaviors aren't acceptable.

Common interests are the basis for improving cooperation. The more clearly you identify how your interests overlap and become shared, the stronger you'll be in your response to the whole range of difficult behaviors.

By Ken Roffmann 🐘

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The Donkey and The Well

One day, a farmer's donkey fell into an abandoned well. The animal cried piteously for hours as the farmer tried to figure out what to do. Finally, he decided the animal was old and the well needed to be covered up anyway.

He grabbed a shovel and began to shovel dirt into the well. Realizing what was happening, the donkey at first wailed horribly. Then, a few shovel fulls later, he quieted down. The farmer peered into the well, and was astounded by what he saw. With every shovel full of dirt that hit his back, the donkey would shake it off and take a step up on the rising layer of dirt. He continued to

shovel in dirt, the dirt rose, and eventually, the donkey stepped out of the well, walked over to the farmer and bit him!

Moral: Life is going to throw you in a deep hole and shovel dirt on you at one time or another. The trick is not to let it bury you, but to shake it off and take a step up. Each trouble is a stepping stone. You can get out of the deepest problem by never losing hope and never giving up.

Free your heart from hatred.
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And never forget. When you cover your ass, it could come back to bite you. 🐘

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Pithy Comments

If you don't like my driving, just take another road. That's why the highway department made so many of them.

Into every life some rain must fall. Usually when your car windows are down.

I love playing cards with children. They can't tell you're dealing off the bottom of the deck.

Remember: you can catch more flies with honey than with vinegar. Of course, how you spend your leisure time is your business.

A man's best friend is his dog. That's assuming you want a friend who messes on your carpet and drools on your newspaper.

If I won the lottery, I wouldn't be one of those people who immediately quit their jobs. I'd make my boss's life a living hell for a week or two first. 🐘

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I have to say over the years that I was in the HOA your insightful, thoughtful and precise information got used more than you will ever know. I got the other members of the board to sign up and use your information as a way to run our group.

Stacey Frank

The Regenesis Report is a must read cover to cover every month.

Michael Gallagher - Oregon

I love The Regenesis Report! Very useful information. I cannot wait to get next month's edition.

Jan Simon - Washington

I love, love, love The Regenesis Report! It seems like you're peering into our HOA every time you write it!

The Regenesis Report

Rich Thompson

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