



The Regenesis Report



National

Innovative Homeowner Association Management Strategies

Priceless

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

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

The Regenesis Report provides resources and management tools for just that purpose. Every month, articles of common interest to homeowner associations nationwide are offered along with innovative strategies for addressing common problems.

Managing an HOA can be a lonely and frustrating task. Take heart. Help is on the way.



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The Fine Print

Each year, thousands of homeowner associations across the country engage in complicated renovation projects that run the gamut from siding replacement to roof overhauls to dryrot repair to new decks and fences. Aside from the complexity of the tasks themselves, all need a carefully crafted construction contract that not only describes the scope of work and price but includes the FINE PRINT.

Contractors typically present contracts that address what's most important to them: the money. The scope of work described is usually very general, like "paint buildings". The contract rarely includes the "how" details, which is the most critical part to the HOA. For this, get independent consultants to provide the scope of work. Local paint suppliers, for example, will provide custom specifications to fit your surface and location. They will often even provide a free progress inspection service to ensure the work is being done properly so that the material warranty is not voided.

Similarly, take advantage of other knowledgeable consultants for complex and costly projects. While they aren't free, they are generally worth their weight in gold in making sure the work gets done right. They can often steer you to reliable contractors and substantially lower costs..

Below is a list of contract clauses that should be included. Simply attach them as an addendum to your contractor's contract and make them a condition of acceptance. You should have a knowledgeable attorney review the contract as well.

- ☛ Names and business addresses of the parties.
- ☛ Date that the contract is signed.
- ☛ A short narrative that summarizes the agreement. For example, "Nottacare Condominiums is hiring I.M Manly Contractors to remove the old siding and install new siding on Buildings A-D followed by a total repaint of all buildings. (see Scope of Work for specifics)"
- ☛ Obligations of Each Party: For example, the Contractor agrees to provide the labor and material to complete the scope of work

(attached) in a timely and professional manner. All changes or additions must be approved in writing by the President.

☛ The HOA is obligated to pay the Contractor in four progress payments within seven days of billing.

☛ Deadline for Performance. This clause usually includes the phrase, "Time is of the essence" to imply that work must be completed barring only unforeseen circumstances like material delay or weather. Working six different jobs at the same time is not a valid excuse for delay.

☛ Time Effectivity of the Contract.

☛ The Cost of the Work and Materials. This could either be a set price or an hourly labor rate with material at, say, cost plus 10%.

☛ Payment Schedule. Is it due on completion or in installments?

☛ Late Payment Penalties. Can interest be charged?

☛ Warranties. These come in two forms, material and labor. Material warranties come from the manufacturer and are subject to proper installation. That means that even though the material warranty is, say, 20 years, improper installation will void the warranty. Labor warranties are offered by the installation contractor and are usually relatively short, a few years at most. In either case, be crystal clear what the conditions for honoring warranties are and get them in writing.

☛ Terminating the Contract. Define under what condition either or both parties could terminate the contract. Breach of contract can be enforced by either. There should also be a mutual agreement clause to terminate.

☛ Arbitration or Dispute Mediation. If there is a problem that cannot be worked out, it's usually in both party's interest to have a trained mediator help sort it out rather than engaging dueling lawyers.

☛ Paying Attorney Fees. If the matter lands in court, the prevailing party should be entitled to payment of attorney fees and legal costs.

While the FINE PRINT seems cumbersome and unnecessary, these clauses ensure either performance or consequences for failure to perform. These are clauses with a true cause. ☛

Ask the HOA Expert

Q For many years, the board has not enforced architectural and design restrictions. Consequently, many unit owners have installed storm doors and/or changed the exterior light fixtures on their units. There is now little or no conformity regarding those additions or changes. Our recent reserve study shows that we are woefully underfunded, so conformity is the least of our worries! Should the board ignore reserving for these items and move forward until we are financially solvent? Will the non-conformity affect property values? Is a little individuality such a bad thing in an HOA?

A Yes, your board should reserve for these items for a number of reasons:

1. The HOA is responsible for doing so since they are common elements.
2. Non-conformity does reduce property values in common wall housing since the additions vary in quality and, frankly, some of these additions look awful.
3. Individuality should be limited to the unit interior. That is what the governing documents allow and if adhered to, no one will object other than guests.©
4. The board has no authority to allow owner changes to the common area. Doing so does not legitimize the action, it only complicates enforcement for future boards and exposes the directors who approved such to personal legal liability for exceeding or abrogating their authority.

Q A homeowner at our HOA recently presented a written work order to the landscape maintenance company. The contractor performed the unauthorized task which also happened to be beyond the scope of their contract. Can the HOA be held responsible for payment of unauthorized work? Should the owners be held responsible for directives given to contractors who have been hired by the HOA?

A If the homeowner ordered the work, the homeowner should pay the contractor's bill. If the work impacts the common area

and is not in compliance, the board should have it corrected, if possible, and bill the homeowner. Advise the homeowner that no further communication should take place directly with the landscape contractor. The board should also inform the landscape contractor that the HOA will pay for no work unless it is approved in writing by an authorized HOA representative.

Q I recently became a board member. Previous boards failed to plan and properly budget so we have no reserves. The current board approved a special assessment of \$1000/unit to boost the balance in reserves. We are also in the process of having a reserve study done. We are already getting blowback from members on the special assessment. One member questions whether we need to continue operating the swimming pool since it is lightly used. Another suggests selling off the clubhouse to raise money. How should the board respond?

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A There are several issues here.
1. Special Assessments. It's best to have the reserve study done first to determine how much money is needed and how soon. The board wouldn't want to have to do two special assessments close together.

2. Closing the Pool. Operating a pool is one of an HOA's biggest expenses. If a majority of the owners no longer want to pay for it, it may be time to discuss permanent closure. Of course, you need to read your governing documents to see what the process may be, if any, for discontinuing an amenity. Shutting down an amenity may require the consent of the mortgagees. If only a vote of the members is necessary, it may be possible.

3. Selling the Property. This is a much more complicated issue that needs to involve an attorney. It may require

100% agreement of all the owners and their mortgagees.

Just because an owner comes up with a bright idea doesn't mean the board needs to spend time and money chasing down all the details. I would suggest you put these unit owners to work investigating the feasibility of their suggestions. First, a petition should be circulated to the members to see if there is significant support for closing the pool or selling the clubhouse. If a significant number are in favor, say at least 25-35%, it's reasonable to schedule a special meeting to discuss the topics. Be sure to discuss the process with the HOA's attorney to make sure it conforms with applicable state statutes and the governing documents.

Q Our management company seems too busy to handle our HOA business. The board wants to evaluate other management options. Is there some form or checklist we can use? How do we determine which company is best for our needs?

A Changing managers should be a last resort since every company comes with strengths and weaknesses. The board should discuss specific concerns with the current manager to see if expectations can be aligned. If the manager agrees, she should be given a reasonable time period to accomplish the changes. If the manager is not interested or able to comply, beginning the search for a new manager should start with the goal of making a change within three to six months. This kind of transition is complex and the board should take its time.

Managing HOAs is a specialty. While there are many real estate management companies, there are relatively few that do this kind of work. Do not consider any that don't specialize in it and have the clients to prove it. You will want a list of references from HOA clients comparable to yours.

Develop a scope of work. HOA managers charge according to the tasks outlined in the Management Agreement. The more you ask of them, the more they charge. Regular management tasks include:

1. Financial reporting, collections and bill payments.
2. Supervision of maintenance and contracts.
3. Rules enforcement.
4. Attending meetings to advise the board.
5. Responding to information requests (if it involves a unit sale, it usually carries additional charge).
6. Processing insurance claims (may involve additional charge).

There is a HOA Management Screening Checklist in the Manager Issues section of www.Regenesis.net available to Gold Subscribers.

Q My unit is on the ground floor. When I bought and moved in to my condo seven years ago, the upstairs unit was carpeted except for the bathrooms, foyer and kitchen. But recently, the upstairs owner switched to hardwood flooring. I can now hear footsteps and other noise coming from upstairs at all hours of the day and night. I notified both the upstairs owner as well as the board but nothing has been done to correct the problem. What can I do?

A You have the right to peace and quiet. If the upstairs owner wants hard surface flooring, an appropriate sound barrier should have been installed under it. There are options for soundproofing at www.acousticalsolutions.com that may be cheaper than fixing the neighbor's floor but in either case, the cost should rightly be borne by the neighbor who created the need for it. Press the issue with your neighbor, with an attorney if necessary, until appropriate measures are taken. The board should also enact a detailed policy on unit flooring to avoid a repetition of this predictable problem. ⚠️

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HOA Like Family

While homeowner associations are clearly business enterprises, some
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feel they should be run and have the feel of healthy family...a kinder, gentler corporation. But even families have to deal with their internal issues and the outside world in order to survive and prosper.

For example, homeowners that undertake remodeling must deal with bids, contracts, know how to negotiate, deal with problems in contractor performance, etc. Budgeting for short and long-term expenses, managing cash flow and bank accounts, paying taxes, understanding financial statements related to investments and net worth, purchasing insurance, etc., are things that families and homeowner associations alike must deal with. Ditto for managing physical assets like roofing, decks, paint and other things that require repairs and preventive maintenance and periodic replacement.

Healthy families have rules, duties, mutual expectations of courtesy and consideration, and accountability amongst members. These things may be unwritten, but still play a significant role in day-to-day life, just as with homeowner associations. Some families function via consensus and have family meetings, processes common with associations. Further, family members require education and training, just like boards and committee members.

Accomplishing objectives and maintaining harmony requires listening skills, compassion and the powers of logic and persuasion. Dictatorial, selfish and abusive treatment produces the same negative results in both environments. And there are unpleasant extremes in both environments -- Jimmy Cagney in the lead role of the movie "One, Two, Three" ran his family just like he ran his business. His domineering style worked with the business but not the family.

Perhaps the most notable distinctions between homeowner associations and families are assessment collections and the use of professional overseers. Although with the latter, some say that is why God created in-laws.

By M. Timothy Swallow ⚠️

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Target, Process & Objective

The lack of communication is often one of the biggest complaints that many boards receive. Yet, good communication is a fundamental imperative of every homeowner association. If the board is to succeed with its objectives, it needs cooperation from the members. So how is this cooperation best obtained?

The board needs to identify priority **targets** to aim for. Hitting each target requires a **process** to achieve a positive **objective** that will improve the the HOA. Here are some examples of priorities:

A. Target: Long Range Planning. Reserve studies provide a multi-year projection of common element repairs and replacements like roofing, painting, fencing and decks. The components all have varying life cycles and costs. Some have long lives, like roofs, and others have shorter lives, like paint. The reserve identifies all of the common element components, predicts useful lives and current cost of repair or replacement. With this information, a schedule and funding forecast can be generated to assist the board in planning.

Process: Hire a Professional Reserve Analyst (PRA) and follow the recommendations. See www.apra-usa.com for options.

Objective: To maintain the property in best condition to maximize values.

B. Target: Stewardship. The board

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is entrusted with two things that mean a lot to HOA members: their money and their homes. Stewardship is a form of fiduciary responsibility. Good stewards handle the property of others with extreme care, making sure it is protected from forces that will do it harm or diminish its capacity. This requires careful handling of money and property.

Process:

1. Review and revise the HOA budget each year several months before the beginning of the new fiscal year.
2. Increase HOA fees *a minimum* of the inflation rate and more if expenses indicate.
3. Keep funds segregated according to whether they are for operating (normal annual expenses) or reserves (cyclical repairs or replacements).
4. Get three qualified bids on large contracts and projects.
5. Perform regular preventive maintenance.
6. When comparing bids, focus on *value*, not price.

Objective: When it comes to money, the board should not penny pinch by keeping HOA fees the lowest around. Lack of money diminishes services that reduce HOA member property values. Spending money prudently will maintain highest property values and member satisfaction.

C. Target. Fostering Harmony. It's a dog eat dog world out there. It shouldn't be like that in the HOA.

Process:

1. Only enact rules that are necessary and eliminate those that aren't.
2. Provide for an appeal process.
3. Offer a mediation alternative.
4. Promote social events that introduce neighbors to neighbors.
5. Promote charitable events that showcase the HOA's kinder side.
6. Promote team maintenance events like park cleanups

Objective: There is no "I" in TEAM. Find ways for HOA members to resolve conflict and promote friendships.

D. Target: Accountability. Hold members responsible.

Process:

1. Have a clear and enforceable
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collection policy.

2. Have reasonable and enforceable rules.

Objective: Encourage individual responsibility through clear guidelines.

Identifying your HOA's priority Targets, Processes and Objectives will help the board focus on what's most important. Go TPO! 🗡️

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HOA Course Changes

Boards of homeowner associations are often challenged to change the status quo for the better. A common scenario includes a newly elected board that promises to start enforcing rules or architectural policies. The problem is, there are HOA members that like it just fine the way it is and they resist the board's proposed changes. If certain board members are single minded about forcing change, the resulting brouhaha will take center stage, the goals moved to the peanut gallery and little accomplished other than ruffling feathers. Flexibility is the key to success. Consider the following observation:

"What prevents human beings from successfully managing the natural environment and other complex systems? Dietrich Dörner, a cognitive psychologist, performed experiments and found out. Using computer simulations of complex environments, he invited intellectuals to improve the situation.

They often made it worse. Those who did well gathered information before acting, thought systemically, reviewed progress, and corrected their course often. Those who did badly clung to their theories, acted too quickly, did not correct course, and blamed others when things went wrong. Dörner concludes that our failures in managing complex systems do not represent any inherent lack of human capability. Rather they reflect bad habits of thought and lazy procedures." *State of Fear* by Michael Crichton

These observations point to several courses of action an HOA board might consider when endeavoring to make changes:

1. Do Your Research. If the board wants to change long standing policy, lack thereof or tradition, it's important to truly understand why it stood so long. Don't automatically assume that previous boards just failed to do their job. Homeowner associations have the ability to establish norms that vary if the members want it that way. So, failing to enforce rules may be the way most of the members may like it. Your HOA may have too many rules that need to be weeded out instead of enforced. So, rather than charge in to smite the offenders, consider polling the community to see just how important a new "get tough" policy is.

2. Organize Your Plan. Repointing the board takes careful planning since not every issue has the same priority. Even if the board and members are generally agreed on, say, correcting architectural violations, those violations come in large and small size, visible and not so visible. Prioritizing the plan of attack and laying out a time frame that doesn't require the board to deal with everything all at once makes sense.

3. Do Progress Reports. As the board attacks individual issues, some will resolve quickly while others fester. Resolution is great because that reduces the number of issues. Progress reports will allow the board to celebrate its successes and refocus on remaining issues.

4. Rethink Solutions. The board has the authority to make judgment calls. Not all issues are black and white. In the case of an architectural violation, the board can compromise if it's in the best interests of the HOA. For example, if an owner has illegally expanded a deck into the common area, the board's order would normally be to remove it. However, if the owner has spent considerable money and a previous board granted permission (even though it had no authority to do so), the owner might mount a legal defense and be willing to go to court over the matter.

The board could expend thousands of
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dollars of HOA funds in legal costs and possibly lose the case or compromise by getting the owner to agree to remove the deck upon sale of the property. The compromise allows the owner to save face, the HOA to save money and ultimately get the deck removed...it just will take a bit longer than anticipated. The lesson is to not get too entrenched in one solution. Circumstances may warrant creative thinking and the board has the authority to be creative.

The board usually steers the HOA ship across calm seas with business per usual. But from time to time squalls and shallow rocks dictate a change of course. While governing documents and state laws point a direction that often works, be prepared to deviate when circumstances dictate. ⚠️

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Authority Principle

If a policeman came up to you in the street and told you to move out of the street, would you go? What if he said you fit the description of someone who was wanted for burglary, and that you should go with them to clear this up. Would you go?

In fact, most people would obey unquestioningly, which is a fact well known by con men. We see the uniform and never dream to question the possibility that the policeman may not, in fact, be a policeman.

The double bind of authority is that not only are we compelled to obey it, but we are not even permitted to challenge it. This makes it a very powerful persuasion principle. There are several hierarchies of control:

Basic conditioning. From a very young age, we are trained to obey. First our parents (and by default all adults), then teachers, policemen, managers and so on. Eventually it defaults to anyone who seems to be our superior.

We thus divide the world into those

who are superior to us (and who are thus to be obeyed) and those who are inferior (and who should obey us). We then make the critical error of equating superiority with authority.

Control and trust. The basic pact between parents and children, policemen and citizens, managers and employees is one of trust and control. We all have a need for a sense of control, which can be gained in two ways: We can either control things ourselves or we can trust someone else to provide the control for us. One implicit message of authority is thus "Don't worry, everything is under control".

The reciprocal agreement. There is a tacit reciprocal agreement in situations of ceded authority that happens in two ways. In a coercive sense, a suppressed threat to use force leads us to give control. In the nurturing sense, we promise the rewards of love. Either way, obedience is gained through a promise of future action.

Indicators of authority. How do we know when someone else is in a position of authority? Other than known people like parents and managers, here are some deliberate cues set up to remind us of who is in charge.

- **Uniforms.** Uniforms are very overt symbols of authority. They show membership of and allegiance to specific groups. Mostly, we associate uniforms with police and military forces. We also stretch the authority-acceptance to security guards, postmen and more. What the uniform covertly says is, "I belong to a big and well organized group. If you don't do as I say, I'll get all my other friends to come and beat you up!"

- **Wealth.** We assume that if someone is wealthy, then they are successful, and if they are more successful than us, then they must somehow be superior to us. We hurry to help and obey those who seem richer than us, perhaps also in the hope that some of their wealth will fall our way.

- **Symbols of Power.** Symbols of power are used to attract people (join my gang and I'll protect you) or bully people (join my gang or I'll hurt you).

Symbols can include weapons, wealth and the trappings of a recognized position. Leaders and senior members of organizations all use symbols to remind other people of their power, from stripes on a sergeant's arm to the size of an executive office.

- **Physical Attributes.** A taller, stronger person could hurt us, and our programming tells us to play safe. We tend to yield to such people, even though our social rules protect us from physical harm in most situations. It is a fact that more top jobs in companies are taken by taller people. Taller men and taller women are seen by most of us as being more authoritative. There is also a reciprocal effect: we will perceive people in authority to be taller than they really are. Thus we talk about someone who is "Walking tall".

- **Attitude.** If you act like you're in charge, many people will not challenge you. You will be protected by the double bind whereby they feel unable to challenge you, just in case you are in charge.

So what? Dress smartly. Drive a nice car. Talk like you are in charge. You can also leverage vested authority, for example pointing out how those in authority have given you their blessing. The reverse of this is to gain time by pointing out that you do not have authority to decide now and need to consult your superiors or other the members of your team.

A double reverse is to build up the sense of authority of the other person so they have no excuse not to decide here and now.

For more persuasion principles, see www.ChangingMinds.org

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Checklists

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Sitting on the Sidelines

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

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

After tying the balloons one by one to his secured lawn chair, he gathered up a six-pack, a couple of peanut butter and jelly sandwiches, his BB gun and took a seat. He gave his neighbors the high sign to cut the ropes securing the chair by yelling "Let's go!". Instead of 100 feet, he shot to 11,000 feet! The BB gun was useless since he was using both hands to hang on for dear life. He ended up directly in the flight path of LAX airport. The pilot of an approaching Continental DC10 reported that he had just passed a man in a lawn chair and the control tower told him to report in immediately upon landing. They thought he was hallucinating or drunk.

Eventually, helicopters were sent to rescue him while LAX flights were diverted elsewhere. When they finally got him down, he was surrounded by TV crews, the police, fire and rescue squads and plenty of curious people.

"Were you scared?" asked a TV reporter.

"No, not really" said Larry.

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

"No," said Larry.

"What in the world made you do it?"

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

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

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Article Archive

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Pithy Comments

I saw a very large woman wearing a sweatshirt with "Guess" on it. I said, "Left Tackle?"

I don't do drugs. I find I get the same effect just by standing up really fast.

I don't like political jokes. I've seen too many get elected.

The most precious thing we have is life, yet it has absolutely no trade-in value.

Every day I beat my previous record of consecutive days I've stayed alive.

No one ever says, "It's only a game!" when their team's winning.

Ever notice that people who spend money on beer, cigarettes and lottery tickets are always complaining about being broke and not feeling well?

Marriage changes passion . . . suddenly you're in bed with a relative.

Why is it that most nudists are people you don't want to see naked?

Snowmen fall from heaven unassembled.

I signed up for an exercise class and was told to wear loose fitting clothing. If I had any loose fitting clothing, I wouldn't need the class!

Don't argue with an idiot; people watching may not be able to tell the difference.

Wouldn't you know it! Brain cells come and brain cells go, but fat cells live forever.

Why is it that children can't read a Bible in school, but can in prison?🚬

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Accounting Issues

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Ten Puns

1. It's hard to explain puns to kleptomaniacs because they always take things literally.

2. I used to think the brain was the most important organ. Then I thought, look what's telling me that.

3. The midget fortune teller who kills his customers is a small medium at large.

4. A farmer in the field with his cows counted 199 of them, but when he rounded them up he had 200.

5. What is Bruce Lee's favorite drink? Wataaaaaah!

6. The dyslexic devil worshiper sold his soul to Santa.

7. You kill vegetarian vampires with a steak to the heart.

8. There was a prison break and I saw a midget climb up the fence. As he jumped down I thought "that's a little condescending".

9. If you want to catch a squirrel just climb a tree and act like a nut.

10. How do you make holy water? Boil the hell out of it.