



# The Regenesiis Report



Seattle Edition      Innovative Homeowner Association Management Strategies      Priceless

**Regenesiis** means making new beginnings using eternal principles in innovative ways.

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

**The Regenesiis 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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## Compensating the Board

An inquiry was received from a woman that lives in a condominium. The monthly fee was recently raised by \$25 and it appears that the board plans to raise it again. The directors decided that they should be paid for their board service. The president is awarded gift certificates from the board for anything he does. She wrote, "In all of my life I have yet to hear of a volunteer being compensated. Have times changed?"

No, times have not changed. This is a common complaint raised by board members. "We work hard, the hours are long and the pay is zero. Why not pay us for our dedicated service?"

The first thing that should be done is to review the condominium's governing documents, the Declaration and Bylaws. The Declaration creates the homeowner association and explains what constitutes the common elements and the units. The Bylaws are the Constitution of the homeowner association. It covers such issues as how many board members there should be, what constitutes a quorum to hold a legal meeting, and how assessments are to be determined. The Bylaws also spell out the rights and responsibilities of the unit owners.

The following language is often found in the Bylaws: "A director shall not receive compensation for serving on the board of directors, but a director may be reimbursed for actual out-of-pocket expenses incurred in the proper performance of board duties."

If the Bylaws contain this prohibition, the board members cannot unilaterally decide to pay themselves. If something is in the Bylaws, it can only be changed by an appropriate vote of the unit owners. Typically, a super-majority vote (66.67-75%) is required to amend the Bylaws. There is a valid reason behind this requirement. Unit owners want the security that the governing documents cannot be changed by a small cabal of owners or by the board of directors. So, it is difficult, often impossible, to amend those documents. Accordingly, if the governing documents contain such a prohibition, the board is acting improperly.

So what can be done about it? There are several options. First, send each board member a letter and attach a copy of the relevant section of the Bylaws. Tell the board members they do not have the authority to pay themselves or receive gift certificates. If this does not stop and the board does not reimburse the HOA for money already received, reserve the right to take further action.

Next, contact other owners and see if they will join in protesting the board's illegal action. They can send similar letters to the board. They can also initiate a recall petition, whereby the unit owners will seek to throw those board members out of office. The Bylaws will contain language as to the procedure for such a recall.

Even if there is no such prohibition in the legal documents, the board has no legal authority to pay itself without taking a vote of the membership. The board members were elected on the basis that they would serve without pay. Their decision now will cost more money.

While board members may work hard on behalf of the homeowner association, they should serve on the board because they want to do the right things for all of the owners and to protect their own investment. To allow board members to be compensated for their service will open the door to owners who only want to serve for the money and not for the best interests of the homeowner association.

*By Benny Kass*

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## Ask the HOA Expert

**Q** The board recently sent out a notice of new pet rules which includes that pets should not be walked within ten feet of the buildings. Violations carry a \$25 fine. Although not expressed, presumably it has to do with pet messes. Thoughts?

**A** There is a basic premise in making HOA rules: Never make a rule that is unenforceable. This one has "unenforceable" written all over it. Uncontrolled animals roam and some of the problem may be from non-resident animals. Does the board really intend to do DNA testing on all the offenders? Unless there is a flagrant and documented disregard for the pet cleanup rule, this is a rule that should never be. Deal with repeat offenders and leave the rest alone. A simple "Pet owners should clean up after their pets in the common area" rule is enough.

Last but not least, all rules should be circulated to the members for comment prior to enactment. This way, the residents are put on notice and given a chance to advise if the board has gone too far.

**Q** For the past three years, our resident manager, a unit owner who was hired as an independent contractor, has been paid \$1500 monthly with \$125 of that being "applied" to monthly HOA fees.

**A** The resident manager does not qualify as an independent contractor unless he is doing similar work for other clients, has a registered business name, Federal Tax ID, etc. I suspect that he is doing none of these things. What you describe is a common ploy to avoid paying taxes, unemployment, social security and other required withholding. Unless this individual qualifies as a legitimate contractor according to the IRS's standards, the HOA should treat him as an employee along with all proper withholding. To do otherwise, puts the HOA in jeopardy of an IRS audit, fines and penalties. And if the manager is hurt on the job, he could claim disability and medical

benefits against the HOA. This situation should be rectified *immediately*.

Finally, resident managers often receive housing and utilities as part of the benefits package because they are required to live on site. Tax regulations allow such job related benefits. But monthly HOA fees are not part of the job. To keep the accounting straight, this owner should tender monthly fees just like any other owner.

**Q** We have a homeowner who is demanding to have copies of all architectural and landscaping modification requests. The board has refused due to privacy concerns. Your opinion?

**A** The board is not required to provide copies of records, only to make certain records reasonably available, privacy issues an exception. Architectural and landscaping issues really aren't privacy issues since the outcome could impact market value of neighboring homes. Arrange a time during normal business hours when records can be reviewed but not removed from the premises.

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**Q** We have a resident that is causing ongoing late night disturbances. The neighbor has made repeated requests to the noisemaker that have gone unheeded. What next?

**A** Since the neighbor has made reasonable attempts to deal with an inconsiderate neighbor, it's time for the board to take aggressive action. There should be a fine policy in place for noise violations which identifies Quiet Hours (10 pm to 8 am is the norm). The fine should be enough to get attention, like \$50 the first offense, \$100 the second and \$200 the third.

Before fining, however, have a heart to heart with the offender explaining the problem in specific terms and the need to comply with quiet hours. Try to get compliance without resorting to fines if you can. Once aggressive action starts the neighbors will most likely be alienated from one another and reconciliation will be difficult. If cajoling and fines don't do the trick, local law enforcement should be called to intervene.

**Q** Our board president often opposes bylaw amendment proposals and they never see the light of day. Can he do that?

**A** Any HOA member (whether director or general) can propose or oppose a bylaw amendment. Bylaw amendments must be approved by the appropriate majority of *general* members. The board has no authority to amend the bylaws on its own. And the board president has no power to block an amendment proposal on his own. He, of course, is entitled to his own opinion and is free to express it. He is not entitled to hold the HOA hostage because of his office. The board president serves at the pleasure of the other board members. If he is being difficult, the other directors can remove him from office.

**Q** Can the board decide to replace unit dishwashers and assess the owners?

**A** A condominium unit belongs to its owner and the HOA cannot take on this kind of expense unless every individual owner agrees to it. It often makes financial sense, however, for the HOA to arrange group buying for owners. For example, exterior windows are often a unit owner's responsibility to replace. If the building has energy inefficient windows, it makes enormous sense for the HOA to coordinate a full window replacement project because individual owners could save up to 50% of the cost plus the energy savings that result. Similarly, having the HOA purchase many dishwashers at once will doubtless save owners a lot of money. However, the HOA cannot force an owner to participate and some might opt out for any reason.

**Q** We live in a four story building. Is there any law that prohibits installing hard surface flooring because of sound transmission problems?

**A** Most new construction designs anticipate the noise issue and the desire for hardwood flooring, so install concrete subfloors to address noise transmission. In older buildings without concrete floors, noise can definitely be a real problem for downstairs neighbors.

In these buildings, hardwood flooring would definitely create a noise problem if it was installed without proper sound dampening. To safeguard all owners' quiet enjoyment, it is perfectly within the Board's authority to require hardwood flooring include sound dampening.

The board should research alternatives and adopt a standard for such installations. Once adopted, the information should be made known to all owners and that failure to comply will result in an order to remove the flooring. 🗑️

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### Updating Landscaping

Landscaping is one of a homeowner association's greatest assets. A properly managed and regularly updated landscape paints a positive picture and increases home values. A mature and overgrown landscape can date the HOA and diminish potential buyers' expectations and desirability of the homes.

Plants age just like we do. As they age, they become old and overgrown. The youthful flush they once had diminishes over time. When plants get to this stage, it's time to update! Landscape updating may be as simple as moving shrubs from one place to another or elaborate as removing everything and installing new plant

material.

The first thing to decide is what plants should be kept and what plants need to be removed. Anything that is encroaching on walkways, windows and rooftops either needs to be pruned back or considered for removal. Plants that have outgrown their space and growing wild need to be considered for rejuvenation pruning or removal. Rejuvenation pruning is the process of heavily pruning a plant so that it will fill out with new growth in the spring. However, this process is only successful half of the time so get advice from your landscape contractor about which plants respond well to rejuvenation pruning. Sometimes, replacing those overgrown plants are the best option.

Once the decision is made on what to keep and what to remove, it's time to update and add. Some HOAs like simple, low maintenance plantings and others prefer full, lush landscapes. Each is wonderful if done correctly. Spacing plant material so that plants will not grow together is the key to keeping your landscape looking clean. For a simple landscape, add few plants or none at all. A simple landscape renovation may only involve some plant removal and a layer of mulch. For an elaborate landscape with many dimensions, work with a landscape designer to create a plan that the landscape contractor can follow.

It is important to think about seasonal interest. Are there enough evergreen shrubs in the landscape for winter appeal? It is best to plant medium, evergreen shrubs around foundations so in the winter, they don't look bare. They will also be the backdrop for flowering plants in the spring and summer. To add simple dimension to the landscape, install plants that will mature at different heights and sizes. Layer plant material from largest in the back to smallest in the front. Use a mix of plants that will be green all year long with plants that will flower and stay green only for part of the year.

Complete the updated landscape with walkways where the most traffic occurs. Accessorize the landscape with boulders, furniture, water features and planted pots. These accessories will

boost the dimension of the landscape and make it more usable and inviting. When updating a mature landscape work closely with your landscape contractor for simple upgrades and a landscape designer for complex upgrades. 🗑️

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### What are CC&Rs?

“CC&Rs” is an acronym commonly used in the homeowner association industry that means “Covenants, Conditions & Restrictions”. It is used generically for any HOA rule or policy. But it's more complicated than that. In the HOA environment, there may be policies, procedures, rules, regulations and resolutions. All are necessary to do the HOA business properly. But what exactly are policies, procedures, rules, regulations and resolutions?

**Policy:** A policy is a standard adopted by the board that sets out the beliefs, values and objectives that causes the homeowner association to act. (like a collection policy, an enforcement policy, or a conduct of meetings policy). A homeowner association's policies communicate, organize, and focus the resources of the homeowner association.

**Procedure:** A procedure is the process that accomplishes a particular objective. For example, the homeowner association should have a clear and defined policy regarding assessment collection. The detailed steps of how this policy is achieved comprises the procedure of collecting assessments.

**Rule or Regulation:** A homeowner association's board of directors adopts rules, regulations or guidelines to define desired behaviors and to set limits on allowable uses of the common elements and homes or units, architectural changes and the behavior of residents and guests. Some typical examples of rules include pets, parking,

noise and use of HOA facilities.

**Resolutions:** A resolution is a method of formalizing a decision made by an homeowner association's board of directors. Resolutions are used to adopt policies, procedures, rules and regulations or to clarify ambiguous terms in the governing documents. Resolutions should include four components:

- 1) **Authority.** The section of the governing documents that gives the board authority to adopt resolutions;
- 2) **Purpose.** Why the resolution is needed or being adopted;
- 3) **Scope and Intent.** Who will be affected, the reach, range and extent
- 4) **Specifications.** A clear and complete statement on what those bound by the rule are expected to do.

So there you have it. Now you can speak like an HOA authority. CC&Rs aren't just for acronymizing anymore.🗝️

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## Making a Clean Sweep

Chimneys are a common component of common wall communities. The chimney vents hot gas from fireplaces or from central heating. While some chimneys are brick, many are now made of out of metal. Both present problems if not properly maintained including fires, collapses and even carbon monoxide poisoning.

When wood burns, it never completely combusts. What's left forms a vaporized residue that mixes with condensation as it cools and sticks to the inside of the chimney. This material, referred to as "creosote", can be very difficult to clean and if allowed to build up, a chimney fire could happen. Chimney fires are one of the

most dangerous and devastating types of household fires. Fully engaged, they can roar like a jet engine shooting fire into the sky like an oversized roman candle. Fueled by a dirty chimney, temperatures inside can reach 2000 degrees.

According to the Consumer Product Safety Commission, having chimneys inspected annually and cleaned as needed is the best defense against a fire. But while cleaning and inspecting are not do it yourself projects, there are a few things a homeowner association can do to keep an eye on safety between those annual evaluations.

**Safe Structure.** Inspect chimneys from the outside to see if any lean or is separating from the building. Chimneys that are separating from the structure can be especially dangerous. Sometimes, the steel straps used to hold the chimney to the structure rust away and leave the chimney vulnerable to a collapse.

Next, use binoculars to look for loose bricks or cracks, especially near the top. Freezing weather can cause bricks to deteriorate or loosen up. Any deteriorated sections should be replaced. Check that the metal flashing between the roof and chimney is tight. Loose flashing can cause leaks.

Look at the chimney's crown as well. The crown is the area between the outside edge of a masonry chimney and the liner. Crowns often develop cracks that can lead to leaks and need to be caulked.

Look for vegetation at the top of the chimney. Ivy, for example, can grow across the top of the chimney and obstruct the flow of exhaust gas out the chimney.

Metal vent pipes can rust or become dislodged from high winds. Look for vents that may have separated at the seams. These may need to be rejoined, and then reinforced so it doesn't happen again.

**A Clean Sweep.** Dirty flues, the metal or clay liner inside a chimney, are the leading cause of chimney fires. The

surest way to check this is from the top of the chimney. That job, however, is best left to a professional. For chimneys that serve the heating system, inspection is equally important. These chimneys can become blocked by bird nests or other obstructions and cause combustion gas to back up into the home leading to carbon monoxide poisoning. Before turning on your furnace or boiler for the season, be sure to have the equipment serviced and the chimney or vent pipe checked for obstructions.

In general, all chimneys should be professionally inspected at least once a year and cleaned as determined by that inspection. As a rule of thumb though, a chimney should be swept by a pro once for every "cord" of wood burned. A cord is a unit of measurement for a pile of firewood that measures 4 feet high, 4 feet wide and 8 feet long.

**Hiring a Chimney Sweep.** Because proper care and attention to service can help protect people from unnecessary fires and carbon monoxide poisonings, it is important to choose the professional wisely. Question to ask should include:

- 1) How long has the chimney sweeping company been in business?
- 2) Does the company offer current references?
- 3) Does the company carry a valid business liability insurance policy to protect your home and furnishings against accidents?

Summer is the best time to do a chimney safety and cleaning. Make the arrangements early to avoid the pre-winter rush.🗝️

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## Benefits of Sharing

One of the benefits of homeowner association living is that many offer

amenities that most individual owners can't afford. Clubhouses and pools are relatively common. Some HOAs have marinas, tennis courts and lakes. These amenities are very expensive to maintain and cost sharing makes them affordable.

Members often inquire about using HOA facilities for private events. Since the facilities would usually sit vacant, it makes sense to allow limited private use by members, especially during historically low use times. Avoid renting out the facility during high use times since this will surely create disgruntled members.

Unit renters should be allowed private use as well but since the HOA has no direct authority over renters, all facility rental arrangements should flow through the unit landlords over whom the HOA has collection and enforcement authority. Generally, the HOA should not rent facilities to non-members. There are liability issues and if there is a legal problem or damage to the facilities, it's much more difficult to rectify with non-members.

Aside from adding a benefit of membership, there should be enough rent charged to justify the inconvenience to other members, to cover wear and tear and the hassle to the HOA's representative that handles all the arrangements. A modest clubhouse should carry a modest rent while a palatial one should cost much more. Use local hotel banquet facility charges as a guideline to establish rent levels. It's okay to make the rent a good deal but don't give it away.

A cleaning and damage deposit is entirely appropriate. Make it high enough to cover the cost of professional cleaning. The facility should be inspected by the renter in advance and should be returned in the same condition. If cleaning or damage repair is needed, reasonable costs should be charged against the deposit and additional, if any, billed to the renter. All such charges should be subject to the same collection procedures as normal HOA charges and fees.

A couple of other helpful hints.

1. To streamline the rental process, require rent, deposit and a signed rental agreement in advance to secure the rental.
2. If you have a non-smoking policy, make sure it's noted in the rental agreement including responsibility for smoke damage remediation.
3. If alcohol is to be served, inquire if minors will be present. If so, it's appropriate and highly advisable to require a licensed third party bartender to make sure only eligible drinkers get served.
4. Make sure you promote and advertise the rental option. This could be a nice source of addition revenue for the HOA. 🗺️

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### **Tying Up Loose Ends**

As homeowner associations age, certain illegal additions to the common area tend to creep in like storage sheds, fences, patio roofs, awnings and gardens. These add-ons flourish when the board is asleep at the wheel or disinclined to challenge the offenders. Eventually, a new board is elected that understands things have gotten out of hand and a campaign is begun to rein in the offenders. Most of the offenders will claim that a prior board or the developer gave them permission.

An HOA board has no authority to allow individual owners exclusive use of the common area unless an appropriate majority of the members approve an amendment that allows it. Votes like these never take place. Therefore, the board is either guilty of either turning a blind eye to such encroachments or giving permission it has no authority to give.

So, the new sheriff in town must tie up

these loose ends by compiling a list of violations. If the type of violation is widespread, it's easier to grandfather them rather than face an angry mob. If the violation is unique and glaring (like that 8' pink flamingo), put it on the It's Gotta Go list.

All violators should be given written notice of their violation together with a request to remove it. All requests should be done with respect, cite the reasons the violation doesn't work and offer an opportunity to appeal. If the board has a number of similar violations, it needs to be careful not to make different deals with different owners. Be as consistent as possible to avoid the perception of playing favorites. While the board may compromise, the burden of that compromise should be placed on the petitioner. That means, the owner needs to make an offer that removes the violation at the owner's expense, now or in the future. The board can compromise on the timetable but not whether it stays or not.

To avoid future misunderstandings or misinterpretations of the governing documents, it best to enact a Board Resolution or amend the governing documents (amending is better) which outlines the issue clearly. This should include these conditions:

1. The board has no authority to grant an owner's exclusive use of the common area. It may, however, grant permission to modify a *limited* common area which is used solely by one owner such as a deck or patio as long as it doesn't involve expanding the footprint.
2. Prior written approval of the modification must be obtained.
3. The modification must receive regular and adequate maintenance, repairs and replacement by the owner. "Regular and adequate" is in the board's sole discretion.
4. Cost of repair of damage to common area landscaping and structures caused by the modification is the sole responsibility of the owner.

5. If not properly maintained and the owner does not bring it up to standard within 30 days after written notice from the board, the board has the authority to have the addition removed and get reimbursement from the owner.

6. The HOA has no maintenance responsibility for the addition.

7. A description of the modification and the conditions of approval will be recorded against the unit title to give notice to future purchasers. Document preparation and recording fees are to be paid by the owner.

Having this kind of procedure in place protects the interests of all the members and give clear guidance to the board. Don't leave loose ends that will unravel the HOA's appearance standards. Tie them up with accord.🕸

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### Color Your World

Did you hear about the homeowner who painted his townhouse a lavender color with a dark purple trim? His homeowner association board was not amused and filed suit to have it changed. While the HOA won the case, the whole issue may have been avoided with some proaction on the board's part to establish an approved color palette.

A color palette takes into consideration architectural design, geographic location and demographic of the residents. The goal is to provide acceptable alternatives that most can live with. (Mr. Purple might be an exception). Most major paint suppliers offer a free decor consulting service. These consultants will recommend different body and trim paint combinations based on what colors are currently popular. The consultant can produce color boards that can be displayed in a common area location for the owners' scrutiny.

Every ten years or so, it makes sense for the homeowner association to update the color palette to keep the property from looking dated. Buyers do pay attention to color trends so this isn't just an idle exercise. Having contemporary colors translates into market value.

The color palette not only keeps the property in step with the times, it helps protect neighbors from wildly garrish applications by setting the ground rules ahead of time. Mr. Purple aside, most owners want to do the right thing and will honor the color standards, especially if it has been generated by an "expert" (INSIDER TIP: The board should take advantage of consultants whenever expensive or controversial renovation is done. Members are much more likely to accept their recommendations than the board's. Doing so takes the board out of the HOA snipers' crosshairs).

So color your world wisely, communicate the standards and enjoy the artful results.🕸

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### Sleep When the Wind Blows

A farmer owned land in Tornado Alley and was regularly in need of hired hands. Most were reluctant to work under threat of the killer twisters that frequented the area which also had an affinity for violent and unpredictable lightning storms.

One day, a short, old man applied for a job. "Are you a good worker?" the farmer asked him. "Well, I sleep when the wind blows," answered the little man. Although puzzled by this answer, the farmer, desperate for help, hired him. The man worked well around the farm, busy from dawn to dusk, and the farmer was satisfied with the man's work.

One night the wind howled and thunder rolled. Jumping out of bed, the farmer

grabbed a lantern and rushed to the hired hand's sleeping quarters. He shook the little man and yelled, "Get up! A storm is coming! Tie things down before they blow away!" The little man rolled over in bed and said firmly, "No sir. I told you, I sleep when the wind blows."

Enraged by the response, he hurried outside to prepare for the storm. Amazed, he found all of the haystacks had been covered with tarps. The cows were in the barn, the chickens were in the coops and the doors were barred and the shutters were secured. It then occurred to him what the man meant.

When you're prepared, you have nothing to fear. Can you sleep when the wind blows through your life?🕸

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### Wordplay

Did you know that the Icelandic alphabet does not contain the letter Z? How do they sleep at night?

I was annoyed when my wife gave me a coffin for my birthday. I said, "this is the last thing that I need."

Went to the beach and fed the birds cannabis laced cake. They seemed to like it. I left no tern unstoned!

There are two words that have opened a lot of doors for me in my life: push and pull.

I have a lot of respect for giraffes. They're an animal you can really look up to.

The boss looks over the gentleman's resume and says "Wow, I'm impressed. It seems like you've got everything needed for the job. But there's a four year gap in here. The man responds "Oh, that's when I went to Yale." The boss is now impressed and hires the man on the spot. The man calls his wife. "Hey honey, I got the job!"🕸