



# The Regenesis Report



National Edition

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.



**RICHARD L. THOMPSON**  
EDITOR & PUBLISHER  
rich@regenesisis.net

**Regenesis, Inc.**  
PO Box 19605  
Portland OR 97280

**www.Regenesisis.net**

**O 503.977.7974**  
**F 800.979.2313**

## Protect Against Theft

From time to time, a news story breaks about an HOA management company embezzling client funds, leaving the clients to pick up the pieces. While the funds are no longer available, the bills do not stop. Unless the homeowner association has insurance to cover the theft, it can leave a financial hole that will need to be filled by special assessment. It is vital that HOAs take measures to protect against theft from a variety of causes.

Fidelity Insurance protects against theft, fraud or embezzlement by employees, board members and the management company. While a management company may carry a bond against this kind of theft, the bond rarely is large enough to cover all its clients' funds.

How much Fidelity Insurance is needed? The amount varies depending on governing documents; however, FHA (Federal Housing Administration) has a requirement that an HOA must have fidelity coverage for at least three months fees plus all reserve funds. The coverage amount needs to be adjusted annually since this total will change.

Many homeowner associations rely on online banking and computers for cash management. As a result, suffering from computer fraud is more likely. Hackers have been known to drain bank accounts and good luck finding it! To complicate matters, a computer is not needed to commit fraud. Funds can be transferred by cable, fax and telephone. While many banks insure against this kind of theft, some may not so be sure to verify the coverage of depositor insurance with your bank. Also, verify that the fraud/embezzlement coverage with your HOA's insurance applies to computer fraud.

Several fraud safeguards should be in place:

1. Have separate operating and reserve accounts. Board members (typically, the president or treasurer) should sign checks for expenses that are over preapproved limits or reserve fund expenses.
2. Have different people sign checks and reconcile the monthly bank account.

When it comes to computer use for HOA business, use a computer for HOA transactions that is not used for web browsing or email. Change bank account passwords from time to time. Computer firewall, antivirus and security software should be installed and updated regularly.

Finally, an annual audit by an independent CPA should be considered, particularly when the HOA has large cash balances which could attract the wrong attention.

Homeowner associations are a great target for embezzlers and hackers. Before your HOA becomes a victim, take action.

By Sara Eanni - American Benefits Insurance 

## Share the Love

The Regenesis Report is available by email in PDF format, in color and all hyperlinks are live! To receive the newsletter by email, send a request to [info@regenesisis.net](mailto:info@regenesisis.net)

## 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 it affects the common elements.
2. Non-conformity does reduce property values in common wall housing since the additions vary in quality and, frankly, some additions look awful (no accounting for taste).
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 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** The homeowner ordered the work, the homeowner pays 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 extra work unless it is approved in writing by an authorized HOA representative.

**REGENESIS RESERVES**  
PACIFIC NORTHWEST  
RESERVE STUDY CONSULTANTS

- Complies with Statute
- Custom Funding Plan
- Maintenance Plan
- Many Satisfied Clients

NO OBLIGATION PROPOSAL  
**503.268.1789**  
info@regenesesreserves.com  
www.regenesesreserves.com

MEMBER  
Association of Professional Reserve Analysts

**Q** I recently became a board member. Previous boards for over ten years have failed to plan and properly budget so we have no reserves. The board decided to have 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?

**A** There are several issues here:

**A** 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 other options. 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 a member comes up with a bright idea doesn't mean the board needs to spend time and money chasing down all the details. Put these members 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? There are many management companies. How do we determine which one 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.Regensis.net](http://www.Regensis.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 your ceiling 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 this predictable problem. 🗑️

**Regensis.net**  
**Ask the HOA Expert™**  
**Subscribe Today!**

## Flying Solo

Whether due to rugged individualism, frugality or lack of viable alternatives, most homeowner associations are self-managed. One might suspect that most self-directed HOAs are small or lacking in common area amenities. Actually, many are quite large, complex and the kind that would typically have professional management. What caused them to go solo and what are some of the dynamics of self management?

According to The Owner's and Manager's Guide to Condominium Management "For self-management to be successful, unit owners must have plenty of time and experience and a professional attitude toward their work for the association. For example, the treasurer must understand basic accounting and be willing to devote adequate time to the keeping proper financial records plus timely collections and deposits. The chair of the landscape committee should have gardening experience so that the landscape contractor can be properly supervised. If the association is fortunate enough to have members who have the three main attributes--talent, time and concern--self-management may be the best choice."

Size of the development is an important factor. Although it should not be the ultimate factor in deciding to self-manage, a sound case can be made for limiting self-management to HOAs of fewer than 30 units with limited common area space and no recreational facilities. The larger HOAs have more work. Most volunteers don't want or need another job, particularly an unpaid one.

The main advantage of self-management is cost. However, if the motivation for adopting self-management is purely economic,

the board should consider that decision closely. It makes little sense to save each owner a few dollars a month in management fees when the value of their property may decrease by thousands of dollars as a result of that decision. Board members are seldom skilled in property management and all that entails.

Equally important is the question of who directs contractors, employees and volunteers. Supervision cannot come from an owner who simply wants to be the boss. Supervision should come only from a person with time and experience to oversee and control work performance properly.

The board must consider the legal implications of self-management, since the board itself is liable for its decisions or indecision. The board's responsibility is to both fellow owners and the general public.

Although many governing documents contain a hold harmless clause that seeks to protect board members from legal repercussions for their actions, this does not prevent their being sued for mismanagement.

If the members consider self-management to be an adventure, enthusiasm may be high enough to be successful. However, that initial enthusiasm usually wanes as the demands on volunteers increase. A breakdown in the volunteer system spells disaster for continuity. Today's "house-afire" is tomorrow's "burn-out".

Consider the two really nasty aspects of self-management: having to enforce rules on or collect past due fees from your neighbors. Suddenly, the neighbor relationship becomes a master-servant relationship and neither party enjoys the new role it must play.

Controlling one's own destiny in a homeowner association is a sea fraught with both storms and smooth sailing. Under the right set of circumstances, self-management can work. As long as the approach is professional and business-like with a positive, affirming attitude, it can work. 🗑️

## Wait Watchers

Homeowner association boards are often guilty of failing to act in a timely manner even for urgent issues like roof leaks, termites and hazardous structural repairs. They can wait too long to pull the trigger while residents watch the inaction with growing impatience.

Deferring maintenance has negative and lasting effects. While postponing maintenance may seem to be a money-saving technique, the consequences are usually a much higher cost of total replacement versus minor repair.

**Painting** is one of the largest elements of routine common area maintenance for many associations. If ignored, a poorly maintained paint finish will lead to extensive costs for the homeowner association at the time such upkeep is eventually completed. The paint on the exterior of any building is a very important component of any maintenance plan. Wood trim should be painted every 3-4 years. The complete painting of buildings should be done every 6-8 years.

**Gutter & Downspout Cleaning.** Rain gutters are an important component of the common area which need twice annual cleaning (more often where there is heavy tree coverage) to help insure proper water run-off. Clogged and overflowing gutters cause premature trim and siding rot.

**Exterior Light Fixtures** need to be serviced regularly. Salt air, in particular, can rapidly deteriorate and short-circuit light fixtures and wiring.

**Concrete Flatwork** needs to be inspected annually for cracks and raised areas, as well as degradation of the surface. Raised areas create a trip hazard which can be corrected by grinding or removal and replacement.

**Asphalt Paving** needs to be repaired and seal coated every 3-5 years to properly protect it so it will achieve its maximum useful life of 25-30 years.

**Roofs** need to be part of Spring and Fall maintenance plan. They need to be inspected and serviced by a qualified roofing maintenance contractor.

**Recreation Areas & Playground Equipment** should be inspected and maintained frequently to ensure child safety. Wood playground structures typically splinter and are preserved with toxic chemicals. They should be replaced with metal and plastic versions to reduce injury.

**Directional Signage** should be in good repair and easily readable in order to assist emergency response services like police, fire and pizza delivery. Directories with name and addresses also facilitate emergency response. The directory should be regularly updated for accuracy

**Reserve Study.** Completing and annually updating a Reserve Study will help the board to schedule, budget and properly maintain the common elements. It is highly recommended that the study be done and updated by experienced professionals like Professional Reserve Analysts members of the Association of Professional Analysts (see [www.apra-usa.com](http://www.apra-usa.com) for a directory PRA members).

Don't be a wait watcher. Use these items to help craft your own Preventive Maintenance Plan. Deferring maintenance is a sucker bet that will come back to bite. Stay ahead of the game. 🎯

**Regenesiis.net**  
**Cost Cutting Advice**  
**Subscribe Today!**

## New Year's Resolutions

New Year's resolutions don't have to be limited to just individuals. In the spirit of ushering out the old and welcoming in the New Year, homeowner association (HOA) boards should adopt resolutions as well. The timing of these resolutions also coincides with the time that many HOAs conduct their annual meetings and board elections, the first quarter of the calendar year. What better opportunity to adopt and implement a platform of resolutions than when the board turns over? Here are six:

**1. Devise two or three goals for the year.** Too often boards get stuck in day-to-day operations rather than acting strategically. The New Year is the perfect time for a board to hold a strategic planning session in order to adopt two or three worthy and achievable objectives for the year.

**2. Review governing documents.** Board members should be familiar with their governing documents (Articles of Incorporation, Declaration, Bylaws, Rules and Resolutions). Boards should resolve to review their documents at the start of each year ensure familiarity and compliance. Though sometimes containing "legalese", even directors should understand the provisions of each governing document.

**3. Amend governing documents if necessary.** Along with reviewing and fully understanding their governing documents, a board should resolve to amend any conflicting, vague or obsolete provisions. To avoid unnecessary conflict and cost, a board should amend outdated documents before a conflict or a problem arises. It will be much less expensive in the long run.

**4. Adopt a communications policy.** One of the most common problems experienced by homeowner associations relates to inefficient or ineffective communication. If the HOA does not have a communications policy, even the most basic issue can be blown out of proportion, resulting in increased conflict, cost and adverse consequences. A board should resolve to adopt a communications policy governing intra-board communication, as well as communication with members, managers and third-party consultants or companies.

**5. Reduce email.** Email has certainly revolutionized the world. Unfortunately, the proliferation of email has also resulted in inundation of written communication which sometimes can be overwhelming. Email can also be far less effective than simply picking up the phone or speaking with someone directly. As part of a comprehensive communications policy, a board may wish to define specific email protocols, including establishing limitations on subject

criteria and response times. Also, not every board member needs to be copied on every email. Lastly, to eliminate the use of personal and company servers for HOA business, a board should establish email addresses like [GardenPointSec@yahoo.com](mailto:GardenPointSec@yahoo.com) or [VillaCourtPres@gmail.com](mailto:VillaCourtPres@gmail.com).

**6. Establish reasonable protocols and expectations.** A board may wish to set expectations as to when HOA business is to be conducted. While it should be transacted at board meetings, too often it gets done by email or when confronted by a member or other board member in a parking lot. Not every HOA issue is urgent or must be dealt with by the board. A board that sets reasonable protocols and expectations for dealing with itself, members and managers is much more effective and productive.

The start of the year is as good a time for the board to consider adopting one or more of these "New Year's resolutions." And have a joyous and prosperous New Year.

By Dan Zimmeroff - Barker Martin

**Regenesi.s.net**  
**World's Largest HOA**  
**Information Resource**  
**Subscribe Today!**

## Lights, Camera, Action!

A quandry that homeowner associations face is how implement security measures when a known violent resident exists. The board has a conundrum: Fail to inform residents about a violent resident who subsequently injures someone and the board is held responsible. Inform residents of a violent resident who subsequently files suit against the HOA for libel and the board is held responsible. But failing to act is not an option. Besides taking and responding to complaints in this regard seriously, one way to monitor resident activity is by security cameras. If the board is thinking about it, consider:

1. Who is going to service the cameras  
**The Regenesi.s Report**

to make sure they are functioning properly?

2. Who is going to monitor the cameras and sound the alert if something improper is occurring?

3. How many cameras and where are they needed?

4. Do security cameras actually stop criminal activity?

5. Is the homeowner association responsible for law enforcement?

Installing video surveillance cameras is a very expensive and an uncertain method for controlling crime. Security is more perception than reality. Many of the surveillance cameras you see with the blinking red lights are just that...fake cameras with blinking red lights. Using the same theory, inexpensive printed signs that read "24 Hour Surveillance" can be just as effective as cameras assuming that the bad guys can read.

Paying the cost of cameras should be carefully considered. These measures are often a knee jerk reaction to a recent security incident. Once the hysteria passes, the homeowners' desire to fund the ongoing costs is rarely there. Give the issue time to mellow.

Most security problems should be handled by local law enforcement. The HOA is not prepared to deal with real crime in an effective way. Defer to the pros. They are trained and paid to do the job.

The HOA can and should form a security committee and all residents should be given information about Neighborhood Watch and other self help security programs.

The board can also have local law enforcement attend a board meeting to discuss the issues and solutions. This is particularly important since it will be recorded in the minutes that law enforcement was formally put on notice of problems. Obviously, if law enforcement suggests corrective measures, the HOA should take specific action to increase security (like improved lighting, fencing, reduced landscape cover, etc.). the board needs to act. But in the final analysis, leave playing cop to the cops.

## Lawyer Baker's Dozen

There are times when a homeowner association (HOA) board needs competent advice to make informed decisions. One key area of competency involves matters of law. Since lawyer fees are high, the board needs to be prudent about the reason for ringing them up. Some things to consider:

**Business Judgment Rule.** Directors are protected against personal liability by the Business Judgment Rule which states that they perform their duties in good faith, in a manner believed to be in the best interest of the HOA and with care that a prudent person would use.

**Breach of Duties.** As part of their reasonable inquiry or "due diligence", boards can seek the advice of legal counsel. Failure to seek advice on an important legal issue that results in damage to the HOA could serve as the basis for an action against the board for breach of their fiduciary duties.

That said, here are thirteen valid reasons to engage an attorney:

**1. Amending Documents.** Whenever the governing documents are revised, legal counsel should be involved in drafting and recording the changes.

**2. Architectural Restrictions.** Failure to enforce or arbitrary enforcement of architectural restrictions can lead to costly litigation. Whenever an architectural dispute arises, legal counsel should be called to assist in proper resolution.

**3. Fee/Assessment Collection.** Setting up proper collection policies and consistently following those policies is important to maintaining the HOA's finances and minimizing legal challenges.

**4. Contracts.** Agreements not reviewed by an attorney can have significant hidden liabilities.

**5. Ethics.** Whenever a director or committee member has a conflict of interest and refuses to recuse themselves, it is time to call legal counsel.

**6. Injuries.** Whether it be a slip and fall  
**February 2017**

or another type of injury in the common area involving residents, guests, employees, vendors or otherwise, injuries should immediately be reported to insurance and to the HOA's attorney so conditions can be documented and steps taken to protect against further injury.

**7. Lawsuit Threatened.** In addition to putting the HOA's insurance carrier on notice of a potential claim, boards should talk to legal counsel about how best to respond to the threat to reduce the risk that a claim is actually filed, better position the HOA to defend itself in the event one is filed and take the matter into mediation if appropriate.

**8. Lawsuit Served.** Tendering a claim to the HOA's insurance carrier is the first order of business. Sending a copy of the complaint to the attorney is the second. General counsel needs to know of the litigation so he can protect the HOA's interest in the event insurance is slow to respond or declines coverage. In addition, the board may need guidance on how to respond to the plaintiff on issues outside of the litigated matter.

**9. Personnel.** The most common high-risk areas are when an employee is hired, disciplined or fired. Employment litigation tends to be expensive so it is best to avoid it.

**10. Recall Petition.** Emotions run high in recall elections and issues of defamation often arise. Failure to properly handle a recall can lead to significant problems.

**11. Request for Reasonable Accommodation.** Failure to properly evaluate and respond to a request for disability accommodation can result in costly litigation.

**12. Rules & Regulations.** The HOA's rules and regulations rules should be reviewed to make sure proper fine and hearing procedures have been established and to ensure they are enforceable and not discriminatory, such as rules against children or restrictions on who may use pools, etc. If enforcement issues are more than routine because of the particular individuals involved or because the

issues may be more complex than normal such as with architectural issues, then legal counsel should be consulted before matters deteriorate into litigation.

**13. Vendor Disputes.** Disputes between the HOA and its vendors can lead to litigation. Legal counsel needs to analyze appropriate contract provisions, evaluate the alleged breach and advise the board on how best to resolve the dispute.

By Adams Kessler PLC 



## Learning from Mistakes

Experience is that marvelous thing that enables you to recognize a mistake when you make it again.

A young homeowner was elected Chairman of the board of his homeowner association. He had no experience at the job so he inquired of the outgoing Chairman, "I was wondering if you could give me some advice. How can I be successful as Board Chairman?"

The reply was simply: "Make right decisions!"

The young man had hoped for more than that, so he said, "That's really helpful, and I appreciate it, but can you be more specific? How do I make right decisions?"

The reply was simply, "From experience!"

The young man said, "Well, that's just

my point. I don't have the kind of experience I need. How do I get it?"

Came a terse, "Make wrong decisions!"

How does this apply to our lives? Wrong decisions, mistakes--we all make them. Do you learn from your mistakes, and then move on to new challenges? Or do you take mistakes personally, and form a negative attitude toward yourself and life?

"Failure is the opportunity to begin again, more intelligently." Those words are from Henry Ford, the famous automobile maker. Most people don't know it today, but Ford saw his plans collapse around him, and he went broke five times before finally succeeding. Ford refused to let failures make him a failure--remember his approach. There is something else to remember. Don't try to carry life's burdens alone. Find people you can trust, and lean on them--even if it is just someone to whom you can talk. There is strength in numbers.

Observation #2: As many people have learned by experience, "There is no failure except in no longer trying."

Adapted from an article by Rich McLawhorn 

# REGENESIS RESERVES

PACIFIC NORTHWEST  
RESERVE STUDY CONSULTANTS

- Complies with Statute
- Custom Funding Plan
- Maintenance Plan
- Many Satisfied Clients

NO OBLIGATION PROPOSAL  
**503.268.1789**  
info@regenesisreserves.com  
www.regenesisreserves.com

MEMBER  
Association of Professional Reserve Analysts