



# The Regenesis Report



National Edition

Innovative Homeowner Association Management Strategies

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**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@regenesis.net

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

**www.Regenesis.net**

**PH 503.481.7974**

## Rule Ramifications

If an HOA has rules, it needs a reasonable method for enforcing them. Typically, the procedure is 1<sup>st</sup> violation notice, 2<sup>nd</sup> violation notice then fine. Rule violations need to have an appeal process. If the HOA does not have an enforcement procedure, the board might be held responsible for the consequences. For example, if there are frequent speeders in the HOA's private streets and the board fails to post speed limit signs, install speed bumps, fine offenders and other deterrents, the board and HOA could be held responsible for pedestrians being injured.

There are several important issues relating to rules and their enforcement:

**1. What are the ramifications for failing to enforce a rule?** The three most common HOA rule categories involve people, pets and parking. Each one of these categories can address or involve a safety issue. Safety ranks higher in the hierarchy of rule enforcement than curb appeal issues. For example, people that smoke can create a second hand smoke health hazard for their neighbors. Physically aggressive dogs can attack people. Cars parked in the HOA's fire lane can block emergency response vehicles like fire trucks and ambulances. If the rule issue involves personal safety, it behooves the board to take enforcement more seriously.

**2. Why have rules without consequences?** Rules without consequences beg violation. If something is worthy of a rule, there must be an effective penalty for violation. Penalties should be reasonable and fit the crime. In the case of second hand smoke, the penalty may be a ban on smoking in the common area or altogether on the entire property. In the case of the aggressive dog, either the owner keeps it under control while in the common area or remove it permanently from the HOA. In the case of a fire lane violation, immediate towing is the most expedient enforcement.

**3. Should unenforced rules be purged?** Rules with no consequences should be unruled. Reasonable people need few rules. Unreasonable people will not respect rules that restrict something they want to do. So

enact only the few needed rules that aren't already codified by the local government. And make sure they have effective penalties for the scofflaws.

All that said, is the HOA responsible for a child getting hurt while running out between illegally parked cars? The HOA's liability insurance typically covers injuries that happen in the common area so from that perspective, yes the HOA is liable. Is the HOA responsible for a 24/7 parking patrol? No. However, if there is a No Parking Zone, there should be a reasonable procedure for penalizing or removing violators. But since enforcement usually falls on HOA volunteers, it's a hit and miss proposition. Does that mean the HOA should not have parking regulations? Absolutely not. It just means the enforcement procedures vary according to the budget available to enforce them. In those HOAs with volunteer enforcement, parents should watch their children closely.

Ramifications of rules need to be clearly defined and regularly communicated, particularly the most commonly violated. Usually, most residents will the warning and save the hassle of enforcement. ☹️



[www.Amazon.com](http://www.Amazon.com): 4.6/5 Stars

## Ask the HOA Expert™

**Q** We are going to have our annual meeting soon. There are two positions for the board coming up for election. We have two people that want to run but one is not eligible because of an outstanding HOA fee balance. He says he's going to clear it up by election time. Should we consider him a candidate?

**A** Assuming the governing documents define "eligibility" the way you describe it, no one can be a candidate for the board unless they are current with money owed to the HOA. So, you only have one eligible candidate at this point. If the delinquent member who wants to be a candidate makes good on his promise to pay, he can nominate himself at the annual meeting.

**Q** Our HOA board enacted a unit sale transfer fee of \$1000 which is creating a disincentive for potential buyers. Does the board have the authority to do this?

**A** Transfer fees can be charged if there is actual cost incurred by the HOA in handling paperwork and physical move-in or move-out tasks. For example, when moving in or out of a high rise condominium, special parking might be needed for the moving truck as well as reserving an elevator with special wall padding installed. Special janitorial is often needed to clean up after the movers. The entry access system often needs to be reprogrammed as well as parking garage openers. In this kind of scenario, the HOA is incurring real costs and is entitled to recoup reasonable costs to facilitate the move.

However, sometimes the transfer fee have no basis in cost but is used as a way to extort money from new owners who have no choice but pay it, kind of like a hotel tax for tourists. The justification is often that the transfer fee will be added to reserve funds. The problem is, new owners do not owe money to reserves since they have not yet enjoyed the benefit of the common elements. Any deficit in reserves is owed by current and past owners, not by new owners.

While the board does have the authority to enact reasonable fines for failure to abide by the rules or pay dues as agreed, it does not have authority to

impose special fees on new owners over and above what it really takes to execute the task (change the lock, the records, etc.). Anything more is considered a special assessment on a select group of owners. The board has no authority to special assess certain owners merely because they are new (or landlords, another common target for special fees or treatment).

That said, if the members vote to approve a fee which all members pay including the owners already in residence, it would probably pass muster.

**Q** Can a board member also serve on a committee or should they just act as a liaison between the committee and the board? One of our committees does not want board members to attend their meetings.

**A** Yes, board members can serve on committees and often do. Committee meetings typically are not open to non-committee members. This committee may be up to something it shouldn't be. Committees should have clear marching orders. If a committee goes "rogue", the board can terminate it since it exists at the pleasure of the board.

**Q** At a recent election, an owner was elected that volunteered to act as president and property manager for no pay. She submitted reimbursement requests for office supplies and mileage related to HOA business. But recently, she asked the board to waive her HOA fees because she is performing the role of property manager. It seems to be a conflict of interest.

**A** Most HOA governing documents prohibit board members from receiving compensation. While reimbursements are appropriate, waiving her fee is not. It is just another way of receiving compensation and a clear conflict of interest. If she wants to be paid for her work, she should resign from the board.

**Q** One of our owners would like to raise chickens in the backyard. Our governing documents restrict this activity. Any advice to head off this public relations issue?

**A** Most HOA governing documents restrict raising poultry and other farm animals, or local laws may do so. The main issues are sanitation and noise (particularly from roosters). They also attract coyotes, cats and other predators.

**Q** I recently had a leak in my unit that damaged wall and flooring and I am in a battle with the HOA regarding who is responsible for the repair charges. My unit is in a mid-rise condominium. The leak was coming from a rooftop chiller pipe that feeds the air conditioning units for me and several neighbors. The plumber determined that the pipe was leaking because of improper soldering. The board says neither the plumbing repair or damage to my unit is the HOA's responsibility.

**A** This is a classic example of why all HOAs (particularly the common wall kind) should have a clear Areas of Maintenance and Insurance Policy that defines whether owner or HOA is responsible according to building component. This policy should identify all components and where the dividing line is between common and non-common. Most governing documents are not precise in defining this so the board needs to adopt a policy that gets more specific. This policy not only helps avoid disputes but directs the various insurance companies concerning their responsibility to cover certain damage claims. The importance of this policy cannot be understated.

Typically, the HOA is responsible for repairing common plumbing lines. Since the plumbing line in question serves multiple units, it would be considered common. Damage repair to units caused by the leaking pipe, however, is usually the unit owners' responsibility *unless* the HOA neglects to perform plumbing repairs in a timely manner when informed by a unit owner. For a sample Areas of Responsibility Policy, see [www.Regensis.net](http://www.Regensis.net)

**Q** A homeowner is requesting a copy of a violation letter that was sent to another homeowner. Are we required to provide that?

**A** Unless state law requires such disclosure, a violation issue is a private matter between the

board, management and offender. Such information should not be shared with other owners.

**Q** What is the proper protocol for a special assessment? Should the board hold a special meeting to announce it with the owners, then follow up with a letter to all of them?

**A** If the board is contemplating a special assessment, it should hold an informational meeting to discuss the reasons and to answer questions. It is possible that there will be people that take exception to the special assessment and want to express that opinion. They have a right to do that as long as they are civil.

The board should attempt to respond to all questions and concerns *if possible*. Trying to respond to “I don’t have the money” is a waste of time even if true. Special assessments are never pleasant and there will always be some that have a problem paying them due to disability, unemployment, divorce, too cheap, etc. Going forward, the board should have a long range plan to set aside adequate reserve funds to avoid special assessments. It would a good thing to point this out to the members now so they can prepare for the increase with plenty of notice.

In some HOAs, a vote of the members is required to approve a special assessment. If the board is not able to get the required vote, the project will need to be delayed until it can. This, of course, will erode the home values and hurt everyone. The board should propose to amend the governing documents to allow it to raise the money needed to do repairs and renovation. Remember, the board members have to pay their fair share of reserves and special assessments as well.

**Q** The board wants to have a special meeting with the owners to update them on what it has been doing, however, we assume that an owner who has filed a lawsuit against the board will be present. Should we let the unit owners know that there has been a lawsuit filed and that we have legal representation? If so, how much information should we offer or limit ourselves to?

**A** How much you divulge about litigation depends on the subject matter. Your attorney should be helpful in giving you direction. Some highly sensitive issues should be kept confidential. But generally, the owners should be made aware of any litigation that is headed to court and when substantial legal costs are possible. The general nature of the litigation, the board’s position on the issue(s) and current status (without naming names) is a reasonable approach.

**Q** Can the developer make exceptions to certain architectural restrictions? Our developer allowed some owners to enclose their decks and since turnover, the new board says it won’t be permitted by others.

**A** The developer has no special right to violate architectural restrictions established in the governing documents. However, it is commonly done because the developer wants to sell homes. If the developer has allowed certain exceptions, the board needs to decide if this is something which should be allowed by other owners. To avoid a double standard, the answer is often “yes”. The board should develop and approve the standard so all exceptions are done the same way with quality design and materials.

**Q** We recently had the unit chimneys inspected for fire safety reasons. This required access to the units which was facilitated by the manager. One of the units was filled with garbage, furniture blocking hallways, piles of clothing, cases of empty cans etc. The manager informed the board since there was a potential fire hazard. Should the board get involved in this situation? No neighbors have complained. The area outside the condo is tidy, the resident keeps to herself, is pleasant and not a smoker.

**A** There are several issues here. As a general rule, the board or management should not hold keys to units unless there is an emergency or a rental management contract in place. Otherwise, either the unit owner or their representative should be present to allow access.

However, assuming that the unit owner gave permission to enter, if there is a real fire hazard or sanitation problem, the manager should inform that unit owner in writing with the specifics. That said, it is up to the unit owner to respond. In other words, the board and HOA do not have the authority to dictate resident lifestyles unless they clearly are affecting the common area or neighbors. For example, if the sanitation issue creates a rodent problem, the HOA has the right and duty to control it.

In every HOA, there are certain individuals that are pack rats or live like slob. That is their right as long as their lifestyle does not bleed into the common area or adversely affect the neighbors. 🗑️

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### **Discrimination Claims**

It’s a bright spring morning and the real estate market is beginning to defrost from its long winter chill. Spring buyers are out including Polly Purchaser who is looking to move her family to your homeowner association. While looking around, Polly asks a board member what the community is like. The board member responds, “It is a great neighborhood, very quiet. Not too many kids though.”

Polly moves on and looks at the HOA next door. While speaking to the board president, he states that the community is a great area and very quiet because owners are encouraged not to sell to families with kids.

While the comments from the first board member are fine, the comments by the second expose that HOA to claims of discrimination. The federal Fair Housing Act establishes a number of protected classes that a homeowner association may not discriminate against including familial status, race, age, sex, religion, national origin and disability. Even if an HOA does not have a formal policy to discriminate, it may be subject to a discrimination claim based upon comments of the

board, a committee or members with apparent authority to govern the HOA.

If a board expresses a preference for owners to sell to families without children, that board has discriminated even though there was no formal discrimination policy.

The Fair Housing Act not only applies to the formal actions of the board, but also to the informal actions. Any actions that have a discriminatory affect on a protected class could result in liability exposure. In the examples, each board member was merely describing the neighborhood; however, one board described a policy to discourage sales to families with children.

In one court case (United States v. Latvian Tower Condominium Association, Inc.,) an HOA was required to pay \$112,500 to a victim of familial discrimination and an additional fine of \$15,000 as a civil penalty for the systematic efforts to prevent sales to families with children. So you see, discrimination claims are not taken lightly and can result in severe penalties.

In conclusion, a homeowner association must treat all owners, prospective owners and renters the same in both written policies as well as in board actions. Treating someone of a protected class differently than others could result in a heavy price to pay.

*by David A. Firmin, Esq. ⚡*

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## Committee Charters

Committees serve an invaluable role in assisting the board. They allow owners to participate on focused issues without committing to years of service on the board. Each committee appointed by the board should have a written charter or marching orders which defines expectations. Here is a sample charter which can be adapted to other committee functions.

## Nottacare Condominium Budget Committee Charter

I. Purpose. The primary functions of the Budget Committee are to assist the board of directors in fulfilling its financial oversight responsibilities with respect to budgeting, finance and accounting procedures. The Committee will encourage continuous improvement of and adherence to financial policies, procedures and practices.

The role of the Committee is oversight. It is not the duty of the Committee to conduct audits or to determine whether the financial statements are complete, accurate and in accordance with generally accepted accounting principles. These are the responsibilities of independent auditors.

II. Organization. The Budget Committee shall be comprised of three or more members of Nottacare Condominium as determined by the Board of Directors.

III. Term of Office. Committee Members shall serve for one year subject to renewal by mutual agreement of the member and the board.

IV. Meetings The Budget Committee shall meet on a quarterly basis, or more frequently as circumstances require.

V. Responsibilities and Duties. To fulfill its responsibilities and duties, the Budget Committee shall:

1. Formulate a draft Operating and Reserves Budget each year and present it for approval by the board of directors by November 1<sup>st</sup> of each year. The budget shall be based on a thorough review of the current year's actual expenses, cost increases in contracts and utilities and future reserve needs.

2. Review financial reporting procedures and fraud controls annually and make recommendations to the board for improvement.

3. Review and advise the board on special assessment proposals.

4. Review and approve the annual tax return prior to submission.

5. Advise board when a CPA review, compilation or audit is indicated. ⚡

## Pool Considerations

The climate in many northern states offers limited access to outdoor pool facilities, generally from Memorial Day through Labor Day. Without the proper precautions and safety measures in place, swimming pools can be hazardous for both adults and children.

Many elements such as weather, temperature, rain, sunshine, oils, lotions, sweat and urine, etc., have an influence on water clarity and purity. It is important that regular inspections of the water and mechanical equipment be performed and recorded on a log in compliance with local or state requirements. A regular review of the maintenance and chemical treatment logs, combined with needed preventive maintenance adjustments, will assure a season of uninterrupted fun and enjoyment.

### Pool Safety Considerations:

- There is no substitute for adequate supervision. The "buddy system" is always a good practice. Even good swimmers can drown if they bump their head, become entrapped, or have a medical emergency.
- Pools are an "attractive nuisance" and most state and local statutes require, at minimum, a four foot fence with a self closing and lockable mechanism on the gate.
- Pool rules should also be prominently displayed. Rules and regulations can be community specific and should always be board approved.
- Rescue equipment should be readily accessible and include a ring buoy, life hook and backboard. First aid kits should be visible and nearby.
- Alcohol consumption should be carefully controlled or prohibited in the pool area.

### Chemical Storage Considerations:

- Store in a cool, dry, well ventilated area that is kept locked. Do not leave chemicals sitting in the sun or in an enclosed area in which heat builds up.
- Keep chemicals separate from each other and from other chemicals. Violent reactions such as explosions, fire or noxious gas production can occur. Never mix chemicals together.

- Do not stack chemicals containers on top of each other.
- Always replace lids and caps immediately and firmly after each use.
- Post Material Safety Data Sheets (MSDS) data and emergency information and telephone numbers near by.
- Never allow smoking around the chemicals; fire or explosion could result.

#### Facts and Statistics Considerations:

- 75% of drowning victims studied by the Consumer Product Safety Council were between 1 and 2 years old; 65% of this group were boys.
- Drowning incidents involving children happen quickly. A child can drown in the time it takes to answer a telephone. 75% of the victims had been missing for less than five minutes.
- Child drowning is a silent death; there is rarely splashing to alert anyone that there is trouble.
- Survival for a child or an adult depends on rescuing quickly and restarting the breathing process; seconds count in preventing death or brain damage.

Pools are a great way to socialize with neighbors and friends. Properly maintained and controlled pools can offer many hours of fun and games. Heed these considerations and enjoy! 🌟

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#### Newsorthy Newsletters

A homeowner association manager complained that he spent hours each month preparing newsletters for his clients that “no one ever reads”. Upon closer inspection, those newsletters were little more than a collection of rants about noise problems, pet clean up

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and parking violations. Considering the content, who would *want to* read or look forward to the next issue?

So, what could he do to improve readership?

**Refrigerator Magnet Test.** When a child brings home a great spelling or math test, it often gets stuck on the refrigerator door with a magnet. An HOA newsletter should have the same appeal. It should look good enough to be worthy of the honor and the content should be relevant enough that a member wants to keep it close at hand.

**The Golden Rule.** The Golden Rule of HOA Communications is “Speak of others as you would like to be spoken of yourself”. If your HOA newsletters simply admonish and threaten those who violate the rules, expect a poor result. Every homeowner association has rules broken from time to time. The rule breakers usually represent a very small portion of the whole. Instead of focusing on the bad players, *why not celebrate the actions of those that follow the rules* and thank them for being such good citizens? A pat on the back feels better than a kick in the pants.

**Positive vs Negative.** Think about some of the great communicators of our time. They know that a positive message is better received than a negative one. Use positive energy throughout your publication and you will end up with a newsletter that is both highly read and enjoyed. Use negative energy and you will end up with a largely unread newsletter that does little more than waste resources both in its production and its effectiveness.

**Content is King.** If you want to draw readers to your newsletter, provide something that they want. They want to know what is going on, especially those items that affect their pocketbook. If the board is discussing plans for a major renovation project, members want to know how it will benefit them and how much it will cost. Nothing draws readers in like learning about the parking lot pavement project that will get rid of the potholes they hit every day. The more interesting the content is, the more the readers will look forward to learning more in the next issue.

**Add Human Interest.** HOA members like to feel as though they are part of something more than a housing system. Don't be afraid to add some human interest that will intrigue the readers. Who is new in the community? Who just celebrated their 50th anniversary? Who has a new baby? These news items may seem trivial to some but are very interesting to members who are more social in nature.

**Looks are Important.** Making your newsletter look its best is critical to making it effective. Spelling, grammar and design all require close and careful attention. If your HOA can afford color printing for its newsletter, it will carry a higher value by your audience.

Creating a newsworthy newsletter requires attention to detail and knowledge of how to create a winning publication. If your publication highlights only negative items and does little more than provide a platform to admonish readers, don't be surprised if few read it. If you take the time and effort to create a positive experience for the reader, you will be rewarded with an effective tool for communicating and members will actually look forward to each new issue. 🌟

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#### Fraud Squad

Fraud can devastate the finances of a homeowners association. The treasurer or property manager can often have access to tens or hundreds of thousands of dollars with little oversight. Embezzlement can be both planned or spontaneous and the perpetrator young or old.

HOAs are at risk because they are vulnerable. Board members may not be financial gurus who know what to look out for. HOA managers do not require any kind of special licensing or education in most states. Many boards simply don't want to be bothered and delegate too much responsibility to one individual.

In accounting terms, fraud is the misappropriation (theft) of assets. "Assets" often means cash, but can include other assets such as furniture, equipment and supplies. Misappropriation of assets can be accomplished in several ways. Examples include:

**1. Theft of cash receipts.** The board should have a policy that all payments be made payable to the HOA, not the management company or the treasurer.

**2. Stealing assets.** If someone walks off with your expensive pool furniture, you have been defrauded. That's why pool keys should be controlled and locks are changed from time to time.

**3. Paying for goods and services not received.** This is probably the hardest fraud to detect. Examples include:

- The president has his home remodeled and charges it to repair and maintenance.
- The resident manager adds a brother to the payroll even though he does no work for the HOA.
- The manager has bogus companies bill the HOA for nonexistent repairs and maintenance. The auditors don't detect the fraud because the billings are supported by official looking invoices and the canceled checks have been endorsed in the names of the phony companies, giving the appearance of valid transactions.

Fraud may be concealed through:

**1. Falsified documents.** Fictitious invoices, forged check requests or purchase orders, and forged signatures on checks. Altered checks are those where either the payee was changed, the amount altered or the endorsement forged. A cash shortage can be concealed in a bank reconciliation by using a false total for the outstanding checks. For example, the outstanding checks may add up to \$5,252.11, but the bookkeeper shows the total as \$5,752.11 to hide a \$500 theft.

**2. Collusion.** Collusion means two or more people working together to perpetrate the fraud, making detection more difficult: A crooked board member who authorizes a bogus payment to a crooked manager who shares the booty. An auditor sees that the transaction was approved and believes it to be valid.

Fraud can often be detected by merely paying attention to your financial statements, bank statements and budget variances. Missing documents, a general ledger that is out of balance, strange budget variances should alert the board that something may be wrong. These signs should cause the board to ask questions. If evidence of fraud is compelling, never accuse anyone directly. Let your attorney do the talking.

Fraud occurs when too much authority rests in a single individual. Whenever one person has all three of these powers, fraud is possible:

**1. Initiates transactions:** Can have checks prepared, people added to the payroll, money transferred, bank accounts opened, accounts receivable written off.

**2. Approves transactions:** Can approve own requests: a treasurer or manager who not only prepares the checks, but signs and mails them too.

**3. Records transactions:** Allows bogus transactions with phony accounting entries. Examples: Receives cash from a delinquent owner, then writes it off as a bad debt; Records an alimony check as "Repairs-General"; Makes a cash withdrawal and posts it as "Administrative Expense." All thefts, of course, are charged to expense categories that are under budget so there won't be any unusual variances.

An effective system of internal financial control requires "division of duties". First, do not allow any one individual to complete a transaction from beginning to end.

1. Checks should have two signatures.
2. Have supporting invoices, contracts, time cards, etc. when signing checks.
3. Do not allow the manager to keep HOA money in a company "trust" account. The HOA's money should be kept in an HOA bank account.
4. When using an outside payroll service, monitor the payroll each period.
5. Don't pay any large expense that wasn't preauthorized.
6. Be alert to a deteriorating accounting system. Financial statements, records and files should be up to date and furnished to the board on a timely basis. Beware of financial reports that are consistently 2 or 3 months late, bank reconciliations that don't agree with the

books, accounting entries that are unexplained or don't make sense -- all of these things are cause for alarm.

7. Check manager references before you hire or contract. Do not rely on professional affiliations. These organizations cannot assure the competence or honesty of their members.

In the final analysis, you can't prevent a determined crook, but you can increase the odds in your favor. Be alert, but don't be paranoid. Put Fraud Squad precautions into place, chances are the issue will never surface.

*By Gary Waltrip, CPA* 🐶

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## Do You Know Me?

A small town prosecuting attorney called his first witness to the stand in a trial--an elderly woman. He approached her and asked, "Mrs. Jones, do you know me?"

She responded, "Why, yes, I do know you Mr. Williams. I've known you since you were a young boy. And frankly, you've been a big disappointment to me. You lie, cheat on your wife, manipulate people and talk behind their backs. You think you're a big shot when you haven't the brains to realize you never will amount to anything more than a two-bit paper pusher. Yes, I know you."

The lawyer was stunned. Not knowing what else to do he pointed across the room and asked, "Mrs. Williams, do you know the defense attorney?"

She again replied, "Why, yes I do. I've known him since he was a youngster, too. And he, too, has been a real disappointment to me. He's lazy, bigoted and has a drinking problem. He can't have a normal relationship with anyone and his law practice is one of the shoddiest in the state. Yes, I know him."

At this point, the judge rapped the courtroom to silence and called both lawyers to the bench. In a very quiet voice, he said with menace, "If either of you asks her if she knows me, you'll be in jail for contempt!" 🐶