



# The Regenesis Report



**National Edition**

**Innovative Homeowner Association Management Strategies**

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

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

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



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## Dealing with a Crazy Board

Usually, the number of irrational or unreasonable owners greatly outweighs the number of irrational boards. That said, there are instances where boards or individual board members act outside their authority, act irrationally, or simply ignore legitimate complaints or calls for action by homeowners.

What should be done when a board or manager fail to enforce the governing documents fairly and consistently? What if a board or manager refuse an owner's request to review HOA documents? Or denies an owner's request for a hearing? In each of these circumstances, the owner should be able to point to particular provisions of the governing documents which require explicit action and compliance by the board.

If a homeowner believes the board is failing to respond appropriately or acting irrationally, they should:

1. Articulate the issue(s) in writing as succinctly as possible;
2. Gather all relevant written documentation;
3. Review the HOA's governing documents (Articles of Incorporation; Declaration, Bylaws, Rules & Regulations) and identify which provisions control over the issue(s); and
4. Identify all relevant persons who are witnesses, parties or have other persons with knowledge of the facts and circumstances giving rise to the issue.

The owner should then draft a concise written letter or request to the board that embodies the four factors described above. If the HOA is professionally managed, then a copy of the letter should be sent to the manager.

The homeowner association's governing documents should have a process already in place to resolve the dispute. If so, the owner should identify the process and

insist on board compliance. If not, and if the board does not respond adequately to the owner's letter, then the owner can request a meeting with the board.

If the board continues to dismiss or ignore the owner and if the manager is ineffective in helping to resolve the dispute, then the owner should seek legal counsel. Keep in mind that many association governing documents require mediation or similar dispute resolution process be conducted prior to a lawsuit being filed.

If an owner does not wish to seek legal assistance, and if they feel the board is failing to follow its governing documents and otherwise acting irresponsibly or irrationally, then the owner may wish to try to unseat the board through a special election. An HOA's governing documents ordinarily outline the process for removing a board member or entire board.

The key to reducing and resolving disputes between the "crazies" (whether homeowners or boards) is to rely strictly upon the homeowner association's governing documents. A modicum of common sense and reasonableness also go a long way to solving the problem. If all else fails and the board cannot be removed via special election, then mediation or court interaction may be required. If so, in claims arising from enforcement or disputes, many governing documents allow the prevailing party to recover reasonable attorney's fees and costs.

*By Dan Zimmeroff of Barker Martin*

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## Ask the HOA Expert

**Q** In our HOA, many of the original old wooden fences need to be replaced. The governing documents address fence design and material but do not mention height. The board has issued fence guidelines which state that the maximum height is five feet. Some of our members have challenged the board's policy since they want a six foot fence.

**A** Architectural and design policies like fences are often enacted by the board. If the board has a reasonable basis for setting the five foot limit (like that has been the standard for years), it has every right to do so. The fact that some may not agree is no surprise. Welcome to America. But the board has the authority to set such policies and amend them later if there is a compelling reason to do so.

**Q** Our HOA has a strict policy in order to preserve the streetscape and prevent clear-cutting. The board gets requests from time to time from members asking permission to cut trees. We will inspect and sometimes approve the cutting if there is disease or damage. If not, the requests are denied.

We now have a resident who is requesting to cut two tall pine trees that are close to his house due to the potential of the trees falling. He is stating that the HOA will be liable if the tree falls. Is the HOA exempt from such liability if the governing documents state that significant trees cannot be cut?

**A** Besides the falling tree issue is the potential fire hazard. Trees should be located at least 30 feet from structures, especially if they are highly flammable like pine trees. There is also the issue of tree limbs damaging the roof and the trees causing foundation damage when they sway in the wind.

But to address a specific request, it would be prudent to get a licensed arborist to review the trees in question.

If the arborist believes they are a danger, they should be removed. Otherwise, they should not. The board is not responsible for acts of God, only for handling business in a prudent manner. Use experts to your advantage.

**Q** What do you think about placing a time limit on the board meetings? There are some members that believe that there should be no time limit and others that believe there should be.

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**A** Generally, board meetings should not go longer than two hours. This seems to be the average time limit for sustained human concentration. Board meetings should always have a set agenda together with proposals, information and recommendations circulated in advance to the directors for review. In other words, the directors should not arrive at the meeting cold and clueless. They should have a good idea about the topics of discussion and be prepared only to clarify the issues before an up or down vote. Board meetings should never involve rambling discussion. Board meetings are intended to transact business. Stick to the agenda, get business done and adjourn the meeting in two hours or less.

Having short board meetings is an effective recruiting tool for good board members. Successful business people value their own personal time and will be more inclined to volunteer if the meetings are run in a businesslike way.

**Q** Our pool and clubhouse are 15 years old. The board wants to build a larger pool and upgrade the clubhouse which would require a \$200,000 special assessment and drain our reserves.

**A** The board has no authority to expand the common area amenities. Its authority is to maintain existing amenities in good condition. However, if an appropriate majority of the members are in favor of raising and spending this money for this purpose, that is acceptable. However, the "appropriate" majority may be a super majority of two thirds or more depending on how your governing documents read. This requirement could effectively kill the proposal.

**Q** We did not have a quorum at our last annual meeting. So, the manager passed out blank proxies for people to sign just in case they couldn't attend the rescheduled meeting. When I asked who would be the appointee for the proxies, I was told that they would be divided among the board members. Is this the way it is usually done?

**A** Proxies should have been distributed and collected in advance of the *original* annual meeting to ensure there was a quorum. It's up to the board and manager to make sure those proxies are collected before the meeting to make sure a quorum is secured, not simply hope enough people show up. Getting members to return proxies in advance takes persistence but is extremely important.

As far as the proxy process itself is concerned, a member has the right to designate a representative to act on their behalf at an annual or special member meeting. If that member either does not select a representative or the chosen representative fails to attend the meeting, the proxy could include an

alternative to allow “one of the directors of the board” to vote on their behalf. If a member isn’t comfortable with a board member voting, the proxy should include another alternative which states “If my designated representative fails to attend the meeting, this proxy is to be used for quorum purposes only.” This way, the show can still go on.

For a sample proxy, see [www.Regensis.net](http://www.Regensis.net) Forms sections. 🗳️

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### Going It Alone

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 accounting and be willing to devote a significant amount of time to the maintenance of proper financial records and timely collections. The chair of the landscape committee should have gardening experience so that either a landscape contractor or a gardener 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 many decrease by thousands of dollars as a result of that decision.

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 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 click. If it isn’t clicking, consider the alternatives that professionals can offer. 🗳️



### Rule Enforcement Guide

One of the functions of a homeowner association (HOA) is to enforce certain rules and covenants. It's good to periodically review old practices and check against established norms to confirm that your HOA runs a sound enforcement program.

Generally, it is the board's fiduciary duty to enforce the rules but the board has some latitude when and what to enforce based on its best business judgment. The key is for the board not to be selective, arbitrary or capricious in how it handles enforcement. It is impractical to expect that a board can maintain absolute vigilance and catch each and every rule violation. Instead, the board should react when informed by a reliable source.

Here is a list of the typical remedies available to an HOA that seeks to enforce its rules:

**1. Impose a Fine.** This power is typically derived from the governing documents. A fine could be monetary or a suspension of privileges like pool or clubhouse. Of course, suspension of privileges is only effective if the member actually uses the amenities. Monetary fines can be escalating (like

\$5/day until cured).

**2. Impose a Lien.** If a fine is not paid, the HOA usually has the right to file a lien against a member's HOA property. This may not immediately get the fine paid but in most cases, the *threat* of filing a lien alone will. The HOA is usually entitled to reasonable attorney, collection and related fees as well which will increase the amount owed. This is also a great incentive to getting the fine paid early.

**3. County Court or District Court.** The HOA is always represented by an attorney since these courts have rules and procedures which only lawyers understand. Court litigation is expensive and should not be undertaken lightly. Make sure the expense and effort fits the crime. We've all read about the time, emotion and money squandered on "matters of principle". The board has the power to compromise when it's in the best and financial interest of the HOA.

**4. Self-Help.** In certain circumstances, the HOA can self-help by correcting the violation. Examples include hauling a junk vehicle, cleaning up an overgrown lot and removing a violating fence. Rather than ratcheting up legal and collection fees, it makes sense to take action and bill the offending member which, granted, may require legal action to collect. Even so, at least the offending issue is dealt with. If self-help is contemplated, make sure to keep copies of all correspondence that outlines that option if the member does not respond. Take photos of the offense for the record as well.

**5. Mediation.** Mediation can be very cost-effective and less confrontational way to cure a violation when a member has dug in their heels. Mediators are trained in the art of compromise. Many jurisdictions provide mediation services free or cheaply.

**6. Using the Police.** All municipalities have ordinances against nuisances, inoperable vehicles, disorderly conduct, disturbing the peace, etc. The HOA should always consider contacting the local authorities when handling certain violations as these agencies are better equipped and authorized to deal with

some matters. At the very least, the HOA should maintain a good rapport with local law enforcement and government offices and cooperate with them when these entities are brought in to investigate a resident's misconduct.

By William G. Gammon ☀

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### Pool School Rules

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. Enjoy! 🌴

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### **Paint a Montana Sunset**

Have you ever stood awestruck by a Montana sunset? Firey gold dissolves to a burnt orange chased by a sultry red sliding into fleeting blue and then a swarming purple dotted with a twinkle of impending starlight. It leaves even the hardest heart speechless.

Color is a wonderful and inspiring gift. Using paint to color your homeowner association can provide a profound and uplifting psychological boost to the residents. Artfully chosen, color can turn a dungeon into a delight and a stuck-in-the past look into a liberating trend setter. Here are some thoughts.

**Create Space.** Off whites and pale pastels can be used to create a larger-than-life effect on exterior facades. Because light colors don't assert themselves, they open spaces. This is why white ceilings create an expansive feeling.

**Outline for emphasis.** To accent architectural details, paint them with a color that contrasts the background and immediately draws the eye. Exterior features like railings and window peaks are good candidates for such emphasis.

**Hide Flaws.** Just as color can accent, it can also camouflage. To make unwanted architectural distractions disappear, simply paint them the same color as the walls. Misplaced doors vanish quickly when treated like an extension of the wall they interrupt. By painting them the same color, the eye doesn't have as compelling a reason to stop and dwell, so it searches for a contrasting element.

**No Rules.** There are no hard, fast rules for paint and color selection, just general guidelines. It's best to work

with a quality paint supplier with in-house design consultants who can maximize product and color capabilities. They are often willing to prepare color boards with alternate choices for the Board's or owners' consideration. at no extra charge. They can also recommend reliable painting contractors which work well with homeowner associations.

Paint color options are as numerous as the stars in a Montana night sky. Consider the rainbow of possibilities as you approach your next major painting project. 🌴

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### **Electing the Worthy**

Homeowner associations are designed to be representative democracies governed by a board of directors elected by the members. Electing directors to the board that can thoughtfully govern is extremely important. To accomplish this, elections must be carefully planned, not hatched at the last minute. Here are important components of a successful election process:

**Find Worthy Candidates.** When seeking nominations, a job description should be prepared so potential candidates know what is expected of them. Some refuse to run because they fear the unknown or an open-ended commitment. The director job and term of office can easily be summarized in a paragraph as can the descriptions of officer jobs (president, treasurer and secretary). Take the time to make sure all potential candidates understand and commit to fulfilling the job description by informing them of expectations in advance.

Candidates are identified a number of ways:

**1. By a Nominating Committee.** The board can appoint a Nominating Committee which can identify, interview and recommend certain individuals for election. While the Nominating Committee's

recommendations are worth of considering, any member in good standing is still entitled to run for office even if not recommended by the Committee.

**2. Nominated by Self or Others.** Any member may nominate themselves or be nominated by another member. It's best to do this as soon as the nomination process begins, far in advance of the annual meeting, so the name and credentials can be known to all members. Since it is common for some members not to attend the meeting and to provide a proxy to someone that does, if a candidate is not known in advance, those not attending the meeting will not have the ability to support that candidate.

**3. Nominated at the Annual Meeting.** Nominations are usually accepted from the floor at the annual meeting. Unfortunately, this option fails to inform members who have not attended the meeting, It is often difficult to get elected when nominated from the floor unless there are not enough candidates to fill vacancies.

**4. Write-in Candidate.** Writing someone's name on a ballot does not ensure that person is actually qualified for the job or interested in running unless the person was nominated from the floor.

**Candidate Qualifications.** Candidates should present their qualifications and platforms to the members in writing. This can be done door to door, by email, by letter, in the HOA newsletter, by the HOA website and at the annual meeting where the candidates can also answer questions posed by owners. Since some members may not be able to attend the meeting, circulating candidate qualifications before the meeting is very important.

It is definitely in the HOA's best interest to identify candidates who have experience that will benefit the HOA such as:

- Having an organized president is essential. Seek those that are comfortable in that role.
- Having a treasurer who regularly works with financial matters like a bookkeeper or CPA.

- Having a secretary who understands or can learn the art of minutes taking.
- Having directors that are available and committed to attend all board meetings. This requirement cannot be understated. If board meetings fail to achieve a quorum or directors, official business cannot be done.

**Conducting an Election.** This is a relatively straight forward process. Remind the voters that all candidates are running for *director* positions, not offices (president, treasurer or secretary). Officer positions are decided by the board itself and subject to board majority vote. While certain candidates may be running for election and hoping for a certain office, it doesn't always turn out that way if there are two or more directors vying for the same office.

If the HOA has many voting members, elections should be conducted early in the meeting so the results can be tabulated and announced during the meeting. Election inspectors should be appointed to count the ballots and certify that the results are accurate. Inspectors should have no interest in the election outcome. Winners should be announced during the Annual Meeting with terms to start immediately following the meeting.

**Voting in Person or by Proxy.** Ideally, each member should attend the annual meeting in person to cast a ballot. However, for a variety of reasons, some may choose to assign their voting rights to a "proxy". A proxy is the written authorization that allows one person to appoint another (the proxy holder) to vote on his behalf. A proxy holder can usually be any one of legal age and is not required to be an HOA member. So proxies can be given to relatives, friends, attorneys and others.

State law and the HOA's governing documents may specify whether proxy voting may be used and may address the type of proxy (general or directed) and content of the proxy. A general proxy allows the proxy holder to make the decision on behalf of the proxy giver while a directed proxy requires the proxy holder to carry out the proxy giver's specific directions. For a sample proxy, go to [www.Regensis.net](http://www.Regensis.net)

Good board members act to protect the interests of all members. Handle the candidate selection process carefully by seeking out the best candidates available. When it comes to board elections, rather than expect a train wreck, elect the worthy! 🗳️

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### Enhancing a Relationship

When it comes to expressing feelings, many long-term relationships fall into patterns of complacency and predictability. You may be able to enhance your relationship by doing these things:

Go for a walk together. This gets you away from distractions and opens the door for conversation.

Show your appreciation. Express thanks for something your partner does well, especially if you haven't said it lately.

Listen attentively. Be open to hearing your partner's thoughts and feelings. Truly consider what your partner says rather than debate or immediately try to make your own point.

Just say it: "I love you". But don't stop there. Come up with specific reasons. If this is too difficult to do in person, pen a thoughtful letter.

Do something your partner likes but you usually wouldn't do. Be open to enjoying it. Don't tease, gripe or mock your partner's interest.

Become curious. Ask what your partner thinks, wants and feels. Listen for things that might surprise you, and let your partner know that you enjoyed hearing about it.

Try something new together. Explore an activity that neither of you has done before. Learn a new game or take a fitness class together..

*Dr. Daniel Roberts Mayo Clinic Health Letter* 🗳️

## Three Questions

The day finally arrived: Forrest Gump dies and goes to Heaven. He is met by St. Peter who says, "Well, Forrest, we've certainly have heard a lot about you. Part of the check-in procedure includes a short test to determine where you fit best. There are three questions:

1. What two days of the week begin with the letter "T"?
2. How many seconds are there in a year? and,
3. What is God's first name?"

Forrest mulls it over and replies: "Well, the first one is easy. The two days would be Today and Tomorrow." Peter's eyes open wide, he smiles and says, "Forrest, that's not the answer I was looking for but you do have a point, so I'll give you credit for it."

Forrest beams and says, "And the answer to the second question is twelve". Astounded, Peter says, "Twelve? How in heaven's name could you come up with twelve seconds in a year?" Forrest says "Shucks, there's gotta be twelve: January 2nd, February 2nd, March 2nd..." "Hold it," interrupts Peter. "Again, that wasn't quite what I had in mind, but I'll give you credit for that one too."

"So", says Peter. "Can you tell me God's first name"? "Sure" says Forrest. "It's Andy." "Andy?" exclaims the exasperated Peter. "How did you come up with the name Andy?" "Heck, that was the easiest one of all," Forrest replied. "I learned it at Sunday School from a song: "Andy walks with me, Andy talks with me, Andy tells me I'm his own"

Peter slowly cast his eyes heavenward, opened the Pearly Gates and boomed: "Run, Forrest...RUN!".

"I tell you the truth, unless you become like little children, you will never enter the kingdom of heaven." Jesus 🗳️

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