



# The Regenesi Report



National Edition

Innovative Homeowner Association Management Strategies

Priceless

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

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

**The Regenesi 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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## Old Ben Nailed It

One of the earliest advocates of preventive maintenance was Ben Franklin. He wisely wrote: "A little neglect may breed mischief...for want of a nail, the shoe was lost; for want of a shoe the horse was lost..." Old Ben nailed what happens when relatively small repairs are not done. Little things have major impact on homeowner association assets. For example, a small lack of flashing can lead to major dryrot, structural problems and major expense. KACHING!

Preventive maintenance is critical to managing an HOA's assets. When executed properly, it extends the useful life of buildings, grounds and equipment. Stretching out useful lives means stretching member contributions and reducing downtime from component failures. Preventive maintenance involves fixing something *before* it breaks. Here are five objectives for every preventive maintenance program:

1. To perform maintenance that keeps the property safe and functioning.
2. To promote the most effective and efficient use of resources.
3. To estimate the human resources needed for proper operation and maintenance.
4. To determine long range funding requirements and project scheduling.
5. To evaluate the effectiveness of the maintenance effort.

Preventive maintenance programs are common with elevators, HVAC and pool equipment, usually because there is a service contract. Other components, like paving, roofing, decks and paint require monitoring and planning.

Functional obsolescence is also a legitimate concern. Lack of parts, improvements in efficiency, computerization and changes in fire and building code can make equipment obsolete even though it's working just as designed. This is particularly applicable to elevators, boilers, pumps and HVAC. Buying new equipment is often a great investment in reduced operating costs. For example, by replacing all common area lighting with LED bulbs, the light level

will be significantly increased, the energy consumption reduced significantly and the useful life of each bulb extended by 10-15 times thereby saving an enormous amount of labor costs. Within 12-18 months, the cost will be recouped in energy savings and then, it's money in the bank.

So, what is the best way to address major preventive maintenance? Two words: Reserve Study. A Reserve Study identifies all the significant components that the HOA is responsible to maintain, assesses current condition, cost of repair/replacement and charts a 30 year maintenance plan to keep the components in their best condition.

The Reserve Study can provide for cyclical preventive maintenance so components achieve their optimal lives. For example, cracks, minor repairs and sealcoating are performed at least every five years on asphalt paving, major repairs will not be required for 20-30 years. If this relatively inexpensive preventive maintenance is not done, significant and costly major repairs will be required much sooner. Pay a little to save a lot.

A Reserve Study will also guide the board how to systematically accumulate funds *without special assessments*. A full funding plan will have all owners contribute a fair share relating to the benefits received. A fair contribution plan means no one will get a better deal than anyone else and the money will be there when needed. The Reserve Study is absolutely the best way to prepare for a future which will certainly come to pass.

Remember Old Ben's nail analogy. Little things have a way of causing great things to happen. But rather than *fail* in the little things, *plan* for them and hit this nail right on the head. ☀

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## Ask the HOA Expert

**Q** We have a board member who has missed the last three meetings, all of which were very important. One was to meet the HOA manager candidates, another was to select our new manager and the last was to approve our annual budget. He has come in late on numerous occasions and never reviews the agenda and related material ahead of time. He has two years left on his term. What can be done to get him off the board?

**A** The board president needs to have a heart to heart with him. When he ran for office, he agreed to serve the interests of the HOA members. He clearly is not fulfilling his obligation. Either he now is willing or he is not. If he is, great! He can do that by attending future meetings regularly and by making informed decisions. If he is not willing, he should voluntarily step down so the board can appoint someone that is. If he refuses to step down, there is little that can be done unless an appropriate number of owners (according to the governing documents) votes to remove him. But most slackers, when properly challenged, will step down voluntarily.

**Q** I have just read your article, "Refining HOA Reserves" and am particularly interested in understanding the statement: "If the reserve fund Percent Funded is below 100%, implement a funding strategy to increase that level to the 100% goal as soon as possible."

From my research, reserve study specialists often recommend that reserves be 100% funded but add that the law does not require they be 100% funded. Our management company acknowledges the 100% funding recommendation, but states that it is not necessary. My question is there a "Percent Funded" that is a widely accepted as the "should be" level?

**A** There are two compelling reasons why reserves should be fully funded each and every year: fairness and fiduciary duty. Consider the example of a 30 year

roof that costs \$300,000 to replace. Fully funding the roof reserve requires \$10,000 per year ( $\$300,000 \div 30$  Years). In other words, as 1/30th of the roof is used up, 1/30th of its replacement cost should be set aside in reserves. If less than 1/30th of the cost is reserved each year, the shortage will have to be made up by future owners.

It is normal for a certain percentage of ownerships to turnover each year. So, the owner roster in Year 1 will likely be different in Year 5, Year 15 and Year 30. The farther in the future a repair event takes place, the more likely different owners in the future will be asked to pay for what prior owners failed to pay. Those future owners are simply not financially responsible for paying for roof reserves prior to their ownership.

Secondly, the board has a fiduciary duty to protect the interests of all owners, current and future. Underfunding reserves now is contrary to the interests of future owners. If the board transfers current owner obligations to future owners, it has failed its fiduciary duty.

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**Q** If the board is meeting and agrees to an action, but does not follow Roberts Rules of Order (making a motion, seconding,

and voting for the motion), is that action legal? In our particular case, the board discussed and all agreed to a rule change. The minutes also reflect that they all agreed to the action.

**A** If state statute or your governing documents require use of Robert's Rules, the board needs to use them in the board and member meetings. Otherwise, agreeing to something as you describe is okay. However, a simplified version of Robert's Rules is highly recommended to keep the meeting organized and to ensure a balanced and meaningful discussion with a purposeful outcome. Without it, meetings can easily become bull sessions with little accomplished.

**Q** We have a private clubhouse and pool open only to residents who are up-to-date on dues. We have an owner that lives elsewhere and rents out his unit. Can the owner rent our clubhouse for a party even though he doesn't live in here? Does the owner give up his amenity rights and privileges to his renter?

**A** When a unit is rented, HOA amenity use rights are transferred to the renter. However, the board could make an exception when it comes to renting the clubhouse since it generates revenue for the HOA.

**Q** Our manager is saying that no board member should contact the landscape company, ask questions, etc. I know that some boards assign certain members to a Landscape Committee which interacts with the landscape contractor.

**A** From a practical and operational standpoint, random directors should not be contacting and giving direction to vendors when you have hired a management company to do this. The vendors generally want to do their job right and it gets confusing when they receive contradictory or multiple instructions from different authorities. The board should either assign a director to that task, allow the manager

to handle it or assign a board member to communicate landscape issues to the manager for execution.

**Q** For 20 years, our HOA has never been faced with snow removal until last winter. As a result, we spent \$3600 that was not in the budget. The board informed the owners that a \$3600 Snow Removal item will be added to next year's budget. Many owners are up in arms over this. Is there a better way to handle it?

**A** If this is the first time in 20 years that snow removal has been necessary, it's unlikely it will be necessary next year. However, to be on the safe side, it is perfectly okay to establish a Snow Removal reserve. Set up a five year reserve fund based on the \$3600 recently spent and reserve \$720/year.

**Q** Can a non-board member go door to door asking neighbors to sign proxies for the Annual Meeting? The board has asked for all proxies to be returned to the Secretary.

**A** Proxies can be given by an owner to anyone, even someone that is not a member of the HOA. It is not uncommon for attorneys and relatives to be appointed. So, yes, an owner could go door to door and ask that each owner appoint him as their representative. If this person amasses many such proxies, his voting power may by itself control elections and other votes. That said, it is not illegal.

**Q** Should the members of an Architectural Restriction Committee (ARC) be board members to be protected from liability? Could an owner sue the ARC for denying a paint color request?

**A** HOA volunteers like committee members are usually protected by Directors and Officers liability insurance as long as they are following the committee charter (job description) approved by the board. Most committees are advisory only. This means that they

make recommendations to the board and the board makes the final decision. The ARC, however, can be empowered by the board to make architectural and design decisions and, thus, be a target of litigation.

Covering all HOA volunteers for liability purposes is very important. But not all Directors and Officers insurance policies are created equal. It is important to confirm with the insurance carrier exactly what the coverage includes. Ask and get written response to these questions:

- Does the policy cover claims against Directors, Officers and Committee Members?
- If not, what types of insurance coverage can be provided that adds that extra protection?
- Do the HOA's governing documents provide indemnity (HOA agrees to protect and defend) for Directors, Officers and Committee Members?
- Does the policy maintain coverage for a period beyond a volunteer's term of service?
- Does the policy extend coverage beyond the policy period if circumstances that might give rise to a claim are disclosed during the policy period?
- Is there a deductible per occurrence?
- Can the Board of Directors choose its own legal representative when defending a claim?
- Does the policy cover legal costs incurred through investigations that do not result in litigation?
- Is the limit of liability for a single loss, or for total losses during the policy period, set at an appropriate level considering the HOA's revenue?
- Does the policy have any exclusions?

**Q** Last weekend, one of the owners had a red metal roof installed over their front porch. They never submitted an

architectural change request and metal roofing is not permitted by our governing documents. What's the best way to handle a situation like this?

**A** It's easy for architectural and design requirements to get buried in the governing documents which few read or remember even if they have read them. Does the board regularly remind owners of design standards through a website, newsletters and postings? If so, the case can be made that this owner simply chose to ignore the requirements. If not, it's easy to understand why a homeowner would think "my home is my castle and I decide how I want it to look".

Architectural standards established by the developer are not cast in stone. In fact, many developments are locked in a color and materials code that was hoped to trigger sales and profits for the developer. But tastes change. As new colors and materials come into vogue, it makes sense for the board to establish different standards or allow deviations within reason.

In this particular case, the simplest approach is for the board to inform the owner of the governing documents standard and request replacement with the standard. The owner may comply without question. However, it is more likely that the owner will protest loudly that he didn't know and shouldn't be penalized. The "didn't know" defense is more or less valid depending on how aggressively the board has enforced standards in the past.

If the owner resists changing, the ultimate decision by the board is based on how aggressive the owner is determined to be to defend his position (like going to court over it). The HOA is rarely well served going to court since it is usually either a Win-Lose, Lose-Win or Lose-Lose outcome. The board should make a decision that is in the best interests of the HOA. That decision may be to allow the roof to stay. This decision won't satisfy everyone but may be the most practical one. Moreover, the board could press to remove inflexible standards from the governing documents. In the long term,



that would allow the HOA to change with the times when it makes sense to do so.

**Q** Can the board call a meeting outside of the regularly scheduled monthly meeting, hold the meeting without a quorum of board members, without the management company and without taking minutes?

**A** Both special meetings and emergency meetings can indeed be called between normally scheduled board meetings. There is no requirement that the management company be present although it's generally desirable that the manager be there to advise the board. All board meetings require minutes be taken as a record of decisions made. The biggest sticking point in this particular situation is that without a quorum, no legal business can be transacted. 🌿

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### Top 10 D&O Claims

If you serve on the board of a homeowner association, Directors and Officers coverage provides essential protection for HOA volunteers. But consider the ten leading reasons Directors & Officers insurance claims are filed:

1. Failure to adhere to bylaws.
2. Failure to properly provide notice of elections.
3. Failure to properly count votes and/or proxies.
4. Challenges regarding power granted to the board by the bylaws.
5. Improper removal of board members.
6. Decisions by a board resulting in physical damage to HOA property.

7. Challenges to assessments.

8. Approvals and disapprovals of member petitions (generally by architectural committee).

9. Breach of fiduciary duty.

10. Failure to maintain the common elements.

If you serve on an HOA board, you are charged with handling business in a business like way. Treat these Top 10 seriously and you'll fulfill the mandate.

*By Joel Meskin 🌿*

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### Pruning Plants Perfectly

Landscaping is your one property asset that can and should *improve* with age. However, diligent attention is required in order to make this happen. Skilled maintenance work, along with occasional and ongoing improvement work are essential inputs.

Skilled shrub pruning is one of the most important requirements of a sound maintenance program. Selective cutting sustains a natural form while removing twigs and branches that are getting too large or overcrowded. Careful pruning will actually allow plant size reductions with improved vigor in most cases.

Plant shearing (shaping, hedge trimming) by contrast, ignores plant growth habit with the net effect of destroying branch structure. "Carving" a sheared form into any shrub increases twig density at the surface, thereby shading out, and in many cases killing interior growth. The sheared shrubs still continue to get larger and "woodier" with each passing season, until ultimately the only realistic option remaining is to remove the monster and start over with something new.

Shrub pruning could have hugely different returns depending on the quality of care over time. On the one

hand, the opportunity exists for maturing shrubs that contribute more each year to the aesthetic appeal, enjoyment and value of your grounds. On the other hand, a situation can be created that leads to unnecessary corrective expenditures.

Similar quality of care issues impact every element of your landscape. Interview prospective service providers at length to learn more about quality care, as well as to determine the qualifications and the intentions of each bidding firm. 🌿

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### Coat of Many Colors

The Bible tells the story of Jacob's son Joseph who wore "a coat of many colors" which attracted much attention. In matters of fashion and paint, color matters. In homeowner associations, it matters even more since the impact of the color palette is so much larger. And it's not just the colors you choose but how they are applied. Trim accents can make or break the overall effect. Practically speaking, paint color is fundamental to curb appeal. Curb appeal translates directly into increased market value. Lack of curb appeal translates into...well, you know. So what's the proper color code for your community?

**Complement Permanent Colors.** Use a color range that complements the permanent colors such as the roof and brickwork. If you plan on changing the color of the roofing in the near future, be sure to consider this in selecting paint colors or keep the roof color neutral.

**Assess in Natural Light.** Study paint color samples in natural light. Buy quarts of several body and trim color combinations and paint test areas which receive full sun. View these colors at different times of the day and from different angles. Keep in mind that

colors will appear lighter when painted over a large surface.

**Poll The Members.** To promote participation and harmony, let your members decide which combination they like best. If your property is large enough to permit several combinations, allow the owners of each building to decide which combination they want for theirs. They're paying for it. Let them decide.

**Color Dynamics.** Consider the effects of light and dark colors in relationship to the size and position of the buildings. Lighter colors make a building seem larger while darker colors make it smaller. A darker color is often a good choice for buildings built in close proximity to one another and vice versa.

**Tie in Landscaping.** Use the colors of flowers, trees and shrubs as inspiration for a pleasing, complimentary color scheme.

**Use Lighting Accents.** Besides increasing safety, creative lighting provides a delightful after dark variation to your colors. Consider spot lighting around building entrances and focal points.

**Ask the Experts.** Paint companies offer color design counsel for no charge in hopes of selling paint. A design consultant will give you the latest contemporary colors and combinations to modernize your community look. Don't get caught in a time warp by staying with the same-old same-old. Keep your colors fresh. Buyers pay more.

A carefully selected color pallet is the key to maintaining high market values and attractive appearance. Like Joseph, this is a coat of colors your buildings will wear with pride. 🌟

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## The Best & Least

"That government is best which governs least." Thomas Paine was one of the Founding Fathers of the United States and dubbed "Father of the American Revolution" by historians. He was born in 1737 and lived a remarkable life that spanned the American Revolution, the French Revolution, and life in France under Napoleon's rule. His communication skills were legendary and he influenced many Americans to take up the cause that became the American Revolution. So important were his writings, we still talk about him today.

HOA volunteers would do well to heed the words of Thomas Paine. In too many homeowner associations, the cry for revolution can be heard. Has your HOA ever faced a mass board turnover or resignation? Does your board govern too much? Volunteers are the lifeblood of a homeowner association. They serve on the board and committees. But as volunteers, they are not necessarily skilled in politics or communications which can lead to big problems.

Thomas Paine wrote "Government, even in its best state, is but a necessary evil; in its worst state, an intolerable one." In his day, Paine had the power of the printing press on his side. None of today's communication marvels were available to him. Can you imagine how many friends he would have on his Facebook page or how many Twitter fans would be following him? Humor aside, it is fair to say that most volunteers can communicate far better with the members today than Thomas Paine could back in his day. Is your HOA a better place because of your board's communications and leadership?

Lack of transparency is a common complaint from disgruntled members. A homeowner association board that sheds as much light as possible on its governance is more likely to thrive than one that operates in secrecy. The lack of effective communications has made the very people that elected them see their leaders as an intolerable evil. The irony is that in most cases, those who are governing are doing their level best to serve the members.

Thomas Paine wrote "the harder the conflict, the more glorious the triumph". While governing a homeowner association may not be as great a challenge as the American Revolution, combining communication skills with well executed governance will ensure success. 🌟

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## Politiques

Democracy must be something more than two wolves and a sheep voting on what to have for dinner. *James Bovard*

Giving money and power to government is like giving whiskey and car keys to teenage boys. *P.J. O'Rourke*

I don't make jokes. I just watch the government and report the facts. *Will Rogers*

If you think health care is expensive now, wait until you see what it costs when it's free. *P.J. O'Rourke*

The inherent vice of capitalism is the unequal sharing of the blessings. The inherent blessing of socialism is the equal sharing of misery. *Winston Churchill*

The only difference between a tax man and a taxidermist is that the taxidermist leaves the skin. *Mark Twain*

The ultimate result of shielding men from the effects of folly is to fill the world with fools. *Herbert Spencer*

There is no distinctly native American criminal class save Congress. *Mark Twain*

What this country needs are more unemployed politicians. *Edward Langley*

When buying and selling are controlled by legislation, the first things to be bought and sold are legislators. *P.J. O'Rourke* 🌟