



# 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@regenesi.net

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

**www.Regenesi.net**

**PH 503.481.7974**

## News That's Worthy

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 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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## Ask the HOA Expert

**Q** What is the definition of an “executive session”? Can a meeting begin as an executive session, and end as an open session, or vice versa?

**A** There may be a state statute that defines “executive session”. If so, you need to follow it. If there is not a statute, the board generally is permitted to hold an executive session to discuss litigation, employee or contractor issues, or collection matters involving specific individuals. The board should not abuse this by using it to discuss controversial topics normally discussed in regular board meetings. As a rule, executive sessions should be rare.

Executive sessions can be announced at a regular board meeting when a topic arises that warrants it. The board then goes into private chambers to discuss and vote on the matter and then returns to the public meeting. An executive session can also be scheduled in advance but should disclose the general nature of the meeting so the members understand why the meeting is not public.

**Q** What can the homeowner association do with bank owned properties that go delinquent or let their tenants break the rules?

**A** Bank owned properties can become common in HOAs when the real estate market is not moving homes quickly enough. Foreclosed homes can remain vacant for long periods, may have yards full of weeds, maintenance issues and HOA fees may go unpaid for months.

If your HOA is having such problems with bank owned properties, here are several good options for solving these problems:

- Treat the bank like any other owner – don’t wait for a resale to get paid.
- Use liens to ensure payment of assessments and correction of rule violations.
- Aggressively pursue foreclosure if the bank refuses to pay. Since there is no longer a mortgage against a bank-

owned property, any HOA lien will be in first position. This means it is extremely likely the HOA will be paid quickly after a foreclosure action begins. If the owner-bank does not pay in full and a foreclosure sale is completed, the HOA would end up owning the property free and clear!

**Q** Our HOA prohibits guests from using the pool unless accompanied by a resident. We have a resident who is challenging this rule because of an injury which prevents him from doing so.

**A** Having residents accompany their guests is a standard that should be upheld. If it’s not in place, what’s to stop a resident from inviting their friends over to swim any time they want? Hold the line on this one.

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**Q** We have an unmarried resident couple and only the woman is a legal owner. Does her partner qualify to run for the board or serve on a committee? And if they are legally married but he is not an owner, does that change things?

**A** In most HOAs, only owners are allowed to serve on the board. You need to read your

governing documents to see if that is the case in yours. On the other hand, committee members can be unmarried partners, renters and non-residents.

**Q** The board is thinking about circulating a survey to evaluate the manager company’s effectiveness. Any suggestions?

**A** Since the majority of owners are disconnected from the day to day HOA business and have little understanding of the manager’s scope of work, most would not have an informed basis for evaluating the manager’s effectiveness. An input form might be more effective. List the various tasks the HOA is responsible to perform in general categories like General Maintenance, Landscaping, Pool, Janitorial, Communications, Newsletters, Rules Enforcement, Financial Reporting etc. and ask for specific recommendations for improvement. If the suggestions are directly related to things the manager should be taking care of, the board has something concrete to discuss about job performance.

**Q** The Regeneses.net HOA Websites section includes "HOA Website Recommended Content & Layout". One of the criteria states "No password protection except for member information." Why would the HOA not want to password protect certain information like the Reserve Study or the financial statements?

**A** Concealing information that an informed buyer needs to know is a major weakness of the HOA system. There are few business matters that an HOA should conceal from potential buyers. The budget and reserve study are definitely high on the list of things to disclose. Protecting individual owner privacy is another matter and should be respected.

**Q** Can we publish the complete list of what each HOA employee makes or is this a breach of privacy?

**A** Disclosing this kind of information could create animosity between employees or prompt interference from members who feel someone is paid too much or too little. It is something the board should keep confidential. It is appropriate, however, to disclose the total amount of wages/salaries paid in the annual budget.

**Q** During a week of 100 degree weather recently, I asked permission from the board to install a window air conditioner. I was denied. I read the governing documents and rules and window A/C units are not mentioned.

My son has a rare disease and a compromised immunize system. His doctor has recommended carefully controlled temperatures. I need A/C to control excessive heat. Shouldn't I be able to get an exception due to health reasons? I don't want to have to pay his doctor to write a letter to the board.

**A** The board should make a reasonable accommodation for this purpose. Ask your doctor to provide a letter explaining the need for it so the board has the ammunition it needs to make an exception to the rule.

**Q** Our current landscape committee chair has offered to take over the landscape contractor's job and save the HOA money. He has run his own business in the past but has never been in the landscaping business. Would it be prudent for us to enter into such a contract with a owner?

**A** It is bad business to hire an HOA member to do HOA work because there is a clear conflict of interest even if the member is competent to do the work. And if the member turns out to be incompetent, the board will end up firing him and likely create a long term enemy. Unless this person provides a service that is unavailable elsewhere, stick with outside professionals.

**Q** What approaches have you seen to boards take to inform their members about other members who are in arrears? Our board likes to post names and amounts in arrears as well as put the information in the minutes.

**A** Do not post delinquent member names! And get rid of that stock and pillary! The board should refer to a collection only by the amount owed, time past due and status of the collection process. Naming names is a sure way to alienate neighbors and trigger litigation for defamation of character. Besides, all collections are not created equal. Some may have a legitimate reason for not paying (disabled, unemployed), others don't pay because of a matter of principle: "I'm not paying until the board (fill in the blank) and some may simply be jerks.

To avoid favoritism, the board should institute and use a Collection Policy which is uniformly applied to all members, including themselves. Even better, that Collection Policy should be enforced by a hired professional manager since no board member should be put in the position of personally enforcing collections on other members. There is a sample in the Policy Samples section of [www.Regenesis.net](http://www.Regenesis.net) 🗺

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### Prognostication

A fortune teller asked me to gaze into her crystal ball. "I see wear and tear in your building's future. I see a new roof will be needed. I see cracking paint and asphalt in need of repair. I see (*gasp!*) a depleted reserve fund!"

It doesn't take a fortune teller to predict that common elements are going to wear out and it doesn't take a crystal ball to predict that HOAs are going to need money and a plan to fix them. So why do so many HOAs fail to properly

plan for these predictable events and expenses?

The truth is that too many HOA boards are busy putting out this year's financial fires and haven't the time to think about next year and beyond. Remember, "it's hard to drain the swamp when you're up to your behind in alligators". In other words, it's easy to lose track of long term goals when you get sidetracked by more immediate demands. Putting out fires is what HOAs do, right? The poorly run ones seem to do just that.

HOAs are no different than any other business. Those that are successful engage in long range planning. Those that fail to plan fend off disaster after disaster and board members come and go through a revolving door. No real magic here. To know where you are going, you have to have a destination in mind. In spite of bumper sticker wisdom, those that wander really *are* lost.

So back to the HOA scenario. When a homeowner association doesn't have the funds to handle a major repairs, they defer those repairs until the funds are available. Of course, money doesn't grow on trees and without a plan to collect more money, band-aiding and deferring become the default reality and slippery slope.

How do you steer your HOA back up to high and stable ground? The first step is to review your reserve study. "What's a reserve study?" you say. A reserve study identifies all common element components that have useful lives between 2 and 30 years like the roof, fences, decks, paint, paving, etc. The average condominium has 15-30 components. The average high rise condo can easily have 100. And HOAs that own golf courses and marinas can have many more. Regardless, a reserve study is customized to the HOA in question.

"But our condominium is small", you say (meaning, "why is a reserve study even necessary in our case?") It's basic math: The more people you have to share the cost, the less the cost per person. Smaller HOAs have a *greater*



need for reserve planning because the cost per person is greater.

After the component list is determined, a current repair or replacement cost must be determined for each as well as the remaining useful life. With this information and the current inflation factor, a funding plan can be made to instruct the board how much money to collect and set aside each year to meet future financial needs.

While there is no state or federal requirement, the reserve study should be performed by a professional since evaluating condition of components and establishing useful lives and current pricing takes special training that few boards have. The professionals carrying the highest credential in the industry, the PRA (Professional Reserve Analyst), belong to the Association of Professional Reserve Analysts. A list of members and contact information can be found at [www.apra-usa.com](http://www.apra-usa.com)

Rather than trying to prognosticate the future, get a proper reserve study done and follow the funding and schedule recommendations. Leave the guessing to Lady Luck. 🍀

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### Rule Enforcement Guide

One of the functions of a homeowner association (HOA) is to enforce certain rules, regulations 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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### Change is Inevitable

There is an old saying that goes "change is inevitable except from a vending machine". But when it comes to renovation projects, homeowner associations should be wary of "change orders". Change orders are a sneaky way for unscrupulous contractors to jack up the price of a project they've won with a low bid. But change orders are sometimes necessary since it's impossible to identify all of the underlying conditions in a building or predict every potential problem before a project begins. Therefore, the key questions are: What are legitimate change orders and how much should be allotted for them?

Many HOA projects run over budget because the firm hired to prepare the scope of work, the budget projection and the construction documents for bidding don't spend enough time doing investigative site work during the

discovery phase. This leads to problems and to money spent addressing overlooked conditions that should have been spotted.

**Don't Duplicate Work.** On a typical project, the engineer or architect should conduct a hands-on examination of the proposed work to determine underlying conditions. This is necessary to verify the condition of the building and the extent of repairs needed. Of course, even the best design work is dependent on properly administering the quality of construction.

**Set Aside a Contingency.** Every project should include an additional contingency of 20% of the total bid for unforeseen circumstances that will need change orders. The contingency should take into account items that cannot be detected during the initial site inspection. Older, neglected buildings or buildings inadequately repaired previously are more likely to have hidden problems that go undetected.

Unexpected problems aside, a contingency also gives the board the option to add items or features during the course of construction. Working with a cost cushion enables the board to choose, for example, a better quality but more expensive waterproofing material than originally specified. The contingency allowance *is not* intended to cover major changes to the scope of work that should have been accounted for during the design phase.

**Two Requirements.** To control excessive change orders, your agreement with the contractor should state that:

1. The price of a base-bid item will be renegotiated when its quantity increases by more than 10 percent above what was specified in the original bid document.

2. All change orders are to be put in writing and signed by the board or manager before the additional work is undertaken. Orally approving change orders will only lead to arguments later about who agreed to what.

To avoid unnecessary cost overruns, make sure to prepare a well investigated and comprehensive scope of work and never pay for any changes not approved in writing. That way, more of the "change" remains in the HOA's pocket.

*By Stephen Varone and Peter Varsalona - Rand Engineering & Architecture* 🏠

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## Asphalt Paving 101

Asphalt paving is a common road and parking lot surface in homeowner associations. While cheaper to install than concrete, it must be regularly maintained to achieve its longest useful life. Asphalt has two major weaknesses that limit its useful life:

**1. Poor resistance to UV radiation (sunlight).** Asphalt pavement is a combination of rock, sand and liquid asphalt that binds everything together. UV radiation breaks down the asphalt glue so that it no longer hold the rocks and sand together, gradually eroding the top surface. The most obvious sign is the gradual change in color from black to gray. Next, the asphalt begins to look rough and piles of sand appear in the low areas of the parking lot. In the later stages, the bigger rocks fall out. Because the asphalt is oxidizing under the UV radiation, it loses its flexibility. Flexibility is extremely important because asphalt can take great loads and bounce back to its original condition. As asphalt loses flexibility it becomes brittle, cracks and breaks.

**2. Poor resistance to petroleum products.** Petroleum products like oil and gas cause damage since asphalt is a petroleum based product. Gasoline and oils will dissolve the asphalt, soften the structure and cause major damage to asphalt.

Based on the poor resistance to UV radiation and chemicals, it is logical to conclude that some sort of coating should be used to protect the asphalt from the harmful elements. Asphalt can be effectively protected by using a seal coating which acts as a barrier between the harmful elements and the asphalt. A coal tar emulsion sealer is highly resistant to water, gas and oil, salt, chemicals and UV radiation.

Before seal coating, the asphalt must be cleaned to be free of all dirt, vegetation, and other foreign debris using blowers, sweepers, brooms, and sometimes high pressure washers. Once the pavement is cleaned, existing oil spots should be primed so that the sealer will adhere. Normally two coats of sealer are applied by squeegee or spray. Once the seal coating is completed, it is very important to keep traffic from the sealed surface for 24 hours. Traffic before 24 hours will cause premature wear and increased tire marking. During this 24 cure period the striping can be accomplished so that after the 24 hours, your parking lot is completely ready for traffic.

Another great asphalt preventive maintenance is crack sealing which should be done in conjunction with seal coating. If cracks are left unattended, water is able to penetrate to the base to destroy its strength and load bearing capabilities. It is evidenced by "alligator" cracking, sunken areas and potholes. Cracks at least 1/8" or wider should be treated with a hot poured crack sealant which remains effective for 3-7 years.

Seal coating and crack sealing can double or triple the useful life of the asphalt at a fraction of cost of an overlay. Seal coating also gives great curb appeal and the impression of good overall maintenance. There is much to gain by caring for paving. Engage in no fault asphalt maintenance practices. 🏠

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## Tenants from Heaven

The phrase "absentee landlord" in a homeowner association context conjures up images of the "tenant from hell" and a landlord owner who could care less. However, generally speaking, both the landlord and tenant want the highest and best returns on their investments. What benefits the homeowner association will also benefit them.

The board can take some steps that will help assure a more successful tenancy. For one, it is reasonable to want tenants and landlords to comply with the rules. Of course, the tenant has to know what they are in order to do that. Remind the landlord that the tenant is bound by the same rules as owners and require that the HOA rules are part of every Rental Agreement. It's up to the landlord to comply and failure to do so can be a fineable violation *against the landlord*. Include renters with other residents who receive information about the rules.

Landlords should be required to provide the board with:

- ☞ Name of the tenant and contact information.
- ☞ Vehicle information (make, model, plate number).
- ☞ Copy of the Rental Agreement that references the HOA rules as a condition of the agreement. (This is very important because it places the burden on the landlord to advise the tenant of rules and shows that the tenant received that information.

While the HOA cannot require it, common sense and good management practice indicate that landlords should also:

- ☞ Perform credit checks on prospective tenants.
- ☞ Check several previous landlord references (HINT: The most recent landlord may have a vested interest in getting this tenant out.)

☞ Have read and understand the state's landlord-tenant laws, and

☞ Identify all occupants in the lease by name to avoid "musical" tenants.

While the landlord is the key to properly framing a tenant's role within the HOA, it's also important that the board, manager and owners refrain from treating tenants like second-class citizens. When treated with respect and like owner members of the community, they usually act the part by taking care of the property and respecting the neighbors. Treat renters like owners and reap tenants from heaven. 🌱

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## Matins

Somewhere out at the edges,  
the night is turning and  
the waves of darkness  
begin to brighten the shore of dawn.

The heavy dark  
falls back to earth  
And the freed air  
goes wild with light,  
The heart fills with fresh, bright breath  
and  
thoughts stir to give birth to colour.

I arise today  
In the name of Silence  
Womb of the Word,  
In the name of Stillness,  
Home of Belonging,  
In the name of the Solitude  
Of the Soul and the Earth.

I arise today  
Blessed by all things,  
Wings of breath,  
Delight of eyes,  
Wonder of whisper,  
Intimacy of touch,  
Eternity of soul,  
Urgency of thought,  
Miracle of health,  
Embrace of God.

May I live this day  
Compassionate of heart,  
Gentle in word,  
Gracious in awareness,  
Courageous in thought,  
Generous in love.

By John O'Donohue 🌱

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## Wise Crackers

- ☺ I have kleptomania. When it gets bad, I take something for it.
- ☺ Sometimes too much to drink isn't enough.
- ☺ My short-term memory is not as sharp as it used to be. Also, my short-term memory's not as sharp as it used to be.
- ☺ Don't worry! In just two days from now, tomorrow will be yesterday.
- ☺ A bartender is just a pharmacist with a limited inventory.
- ☺ The following statement is true:  
The previous statement is false.
- ☺ I may be schizophrenic but at least I have each other.
- ☺ I am a nobody. Nobody is perfect. Therefore, I am perfect.
- ☺ When you work here, you can name your own salary. Mine is called "Fred".
- ☺ Money isn't everything but it sure keeps the kids in touch.
- ☺ I am having an out-of-money experience.
- ☺ Corduroy pillows are making headlines! 🌱