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National

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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Keeping the Faith

America is engaged in a war of cultures. Almost daily there seems to be some crisis somewhere relating to religious expression. The tone of these cases is that religious expression is undesirable in the public forum and needs to be squelched. Expressions of faith are no different than any other form of free speech. If it is not allowable, then what's next to be censored, the Pledge of Allegiance? (Oops, too late!)

Homeowner associations have a unique opportunity to reverse or moderate these attacks on America's traditional values and liberties. As private organizations, they have the right and flexibility to decide how issues of faith expressions are dealt with and avoid the nonsense of political correctness.

While HOAs can't enact rules and regulations that contradict the Bill of Rights, they do have some latitude on how these rights are played out. Free speech can be restricted on private property. One example that comes to mind is limiting personal signs in the common area. HOAs can control or restrict signs in the common area if that's what the members want.

When it comes to religion, homeowner associations are not faith free zones. As private organizations, the members are free to do whatever is legal in their own homes and whatever the board feels appropriate in the common area. There are several faith related issues that seem to cause confusion and consternation in HOAs: holding religious services in the clubhouse and hanging Christmas ornaments in the common area. How are they best handled?

Religious Services in the Clubhouse. HOA clubhouses are generally made available for the private use by members and residents. If a resident wants to host a poker party, a quilting club or High Mass, they are all legal activities in every state of the country and, as such, the HOA should not have a policy restricting the activity.

There are some limiting factors which may be included:

- ▶ **Restricting Outside Groups.** The HOA may have a restriction that limits use to residents and their guests and preclude outside groups from using the facility if no resident is involved.
- ▶ **Limiting Access to Schedule.** There may be limitations placed on a resident who wants to monopolize the clubhouse schedule for a set time each week indefinitely.
- ▶ **Charging a Fee.** The HOA can invoke a reasonable fee for private use since use creates wear and tear on the facilities.
- ▶ **Restricting Private Use.** The HOA is not obligated to allow private use of the clubhouse but since most clubhouses are rarely used, unless there is a compelling reason to restrict use, there generally should be a provision for member use.

Christmas Ornaments. Another controversial topic that comes up is whether the HOA should allow Christmas ornaments to be displayed. There seems to be an impression by some that all ornaments should be forbidden. It's really up to the members or the board acting on behalf of the members to decide what should impact the general common area. If decorating the common area is something most of the residents feel appropriate, form a committee of interested residents to place decorations that express Christmas, winter, Santa Claus or whatever.

As a matter of policy, the board can take several approaches:

1. Invite all faiths to help decorate the common area along tasteful guidelines.
2. Limit common area decorations to lights.
3. Prohibit all decorations to avoid

controversy.

Demonstrations of religious expression may be just the opportunity a resident curmudgeon needs to beat the drum of discontent. There may even be threat of lawsuits. The last thing the HOA needs is a brouhaha during holidays which are supposed to represent "peace on earth and good will to men". By the same token, the board should not get railroaded by Grinches regardless of the season. In the final analysis, peaceful religious expression builds stronger community and these activities can be used to harmonize the community. Keep the faith! 🕯️

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Ask the HOA Expert

Q Our governing documents restrict unit occupancy to three people. There is a unit that has four. What should we do?

A If you have a limit of three, the units must be quite small. If you have two bedroom units, four would be reasonable but, honestly, this kind of regulation is overly intrusive. It's not the **number** of people that dictate problems, but the **lifestyle**. One obnoxious resident can create more problems than dozens of considerate ones. Rules should focus on behavior, not numbers (weight or size, in the case of dogs).

Occupancy rules are very difficult to enforce unless the owners willingly comply. It is a constant game of cat and mouse with the violator claiming extra occupants are just temporary guests. And to really enforce it, the HOA must be willing to go to court where the judge would likely view the rule as too onerous (read "you lose"). Unless there is a clear problem being caused by the extra occupants, this is a rule that is for all intents and purposes unenforceable or effectively so. Either amend the bylaws to remove it or send periodic reminders in the newsletter

asking for voluntary compliance. Don't make this a high priority enforcement issue. You can't win.

Q When are resolutions required and should they be included in the owner handbook?

A Resolutions are used by the board to define complicated issues like collections, architectural design, parking and pets. Handbooks should always contain the full text of all rules and resolutions. These should also be posted on an HOA website for the benefit of prospective purchasers, real estate agents and others that have an interest.

Q What should a homeowner do about a property manager that refuses to respond to phone calls or e-mails? The manager told the board she wasn't responding because people "ask too many questions".

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Reserve Planning
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A Let's assume that the property manager is otherwise doing her job correctly. Homeowner inquiries can take an enormous amount of time to respond to, especially if they take research. If the question relates to maintenance that is the HOA's responsibility, the manager should respond. But certain owners can engage the property manager in fishing expeditions related to board actions or projects. They badger the manager for details of contracts and meetings and demand copies of records. While it's an owner's right to review certain information, demanding the manager's time to compile the information is not.

The property manager's basic scope of work is typically limited to "ordinary and routine" HOA business. When a member, whether board or general, makes repeated and special requests, it exceeds the intended scope of work that

the manager is being paid for. The manager can respond to this several ways:

1. Start charging for the extra work, or
2. Stop responding to requests that are excessive or non-routine business.

The board should either defend the manager against owners that believe the manager is being paid to do anything and everything or be prepared for extra charges. To do otherwise is unrealistic and ultimately will fracture the board/manager relationship.

To control costs, there must be reasonable limits to homeowner requests. The manager usually knows when an owner has reached that point and should expect the board to intervene or support the manager's judgment.

Q We have number and weight limits for pets at our HOA. Can we also require that pets be spayed, neutered, have ID and required shots?

A These requirements would be going too far. Even a weight limit is too far. The issue should be based on demeanor, not size or reproductive capability.

Q We are considering a bylaw amendment that requires all board candidates to be residents of the HOA. Can we do that?

A Restricting candidacy based on occupancy is inappropriate because it assumes that resident directors make better directors than non-resident. This, of course, ain't necessarily so. Non-resident directors can be thoughtful, talented and valuable additions to the board. Candidates should be evaluated based on their talents not residency. That said, non-resident directors are still required to attend board meetings in person.

Q At our annual meeting, the board advised that the monthly fee was increasing by \$30. Some argued that some services could be discontinued and that they

would rather pay a special assessment to do a renovation project next year. What's the answer?

A The board is required to establish a budget adequate enough to pay the bills, current and future. The governing documents also stipulate that expenses be divided according to a prescribed formula. Special assessments almost always reallocate expenses to future owners that don't owe them because they weren't in ownership when the expenses were incurred. Changing the allocation of expenses takes a 100% approval vote of all members. That will never happen because who is willing to pay more than they already do? In addition, some of those called on to pay a special assessment (future owners) won't have been given the chance to vote at all.

If a member vote is required to increase the annual budget (usually not the case) and the owners vote to put off paying some expenses to the future, the matter is out of the board's hands. But the consequences will come back to haunt the entire HOA if some future owners refuse to pay the special assessment. The debt is simply not theirs to pay.

Put another way, special assessments are the consequence of not reserving adequately in the past. The roof wears out over years as does the paint and other long life components the HOA maintains. If all owners over those years aren't paying their fair share, special assessments result. Special assessments are an illegal reallocation of expenses. A fully funded reserve plan divides up those long range expenses fairly and eliminates the need for special assessments. For more on Reserve Planning, see Regenesis.net.

I suggest you invest in a professional landscape designer who can develop a comprehensive plan that will consider bush, plant and tree removals and additions. Modern designs combine larger planting beds, less grass and hardscape (like boulders, water features) so maintenance and water costs can be reduced. The art of xeriscaping selects low water need plants to reduce the need of irrigation.

Hiring an arborist to do corrective pruning and selected removal of trees may satisfy the view needs.🌳

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Can't I Disagree?

Homeowner association boards sometime discuss issues that are contentious and divisive. Disagreement is to be expected when serving as a director of the board. But the way disagreement is viewed and handled can greatly affect the board's effectiveness and cohesion.

Voting "no" is not disloyal. Directors are expected to think independently and are free to vote against a particular motion. Majority votes are just as binding as unanimous votes. While there are some votes upon which the board should seek unanimity because of the importance of the decision, trying to attain unanimity on all motions creates the impression that disagreement is bad and discourages directors from voting their personal views.

The motion went against my views, now what? After arguing a position and the majority of the board votes against you, what is the next step? Even though you may think the board has made a mistake, your responsibility as a director is to support and carry out the board's decision. The board is a team and decides as a team.

Think of it as a canoe being paddled by the board. Before launching off across the lake, the paddlers should decide which landmark they will paddle towards. If one paddler prefers a different landmark, should he simply paddle off in that direction? If he does, it will create a lot of problems for the other paddlers and probably capsize the canoe. The Lesson: support the team or get ready to swim.

Make a record. If you think the issue at hand is very important, demand a roll

call vote and get your vote recorded in the minutes. That will allow you to document your position. Further, you may consider sending a confidential memorandum to the board and management, reiterating your concerns and the reasons for your opposition to the majority position.

The board is making a big mistake. Don't I have a duty to take this to the members and seek a reversal of the decision? In short, no, your duty is quite the opposite. Don't confuse your personal views with your fiduciary duty. Your fiduciary duty is not to force the other directors to see it your way.

What if I cannot agree to support the board's decision? If you cannot agree to help paddle the canoe, then get out of the boat. Sabotaging or trying to overturn the board's decision would be a violation of your duties as a director. If the board is so wrong-headed that you cannot abide by its decision, then resign and leave the board. If you are no longer a director, you are no longer bound by the duty to support the decision and then can say what you wish.

Don't I have free speech? Yes, as a private citizen you do have freedom of speech. But as a director of the board, you must preserve confidences and not publicly criticize the board's decisions.

Fiduciary duty is not what you think it is but what the law says it is. One of the most basic fiduciary duties is the duty of loyalty. When the board enacts rules or policies through a vote, a director working to undo that action is disloyal to the board. Many well-meaning people claim it is their duty to fight against wrong. As an individual, that is your right, but not if you are director of the HOA board.

By Kelly G. Richardson, Esq.🌳

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Doctor Oz

Deferring maintenance in a homeowner association has negative and lasting effects. While postponing maintenance may seem to be a money-saving technique, the consequences are usually a much higher cost over time.

Painting is one of the largest elements of routine common area maintenance for many HOAs. Poorly maintained paint will fail prematurely. Touchup should be done annually. Wood trim should be painted every 3-4 years. The complete painting of buildings should be done every 6-8 years.

Drainage. Rain and sprinkler run-off can create problems for the lawn, landscaping and underground building areas. The landscape contractor can often provide for drainage corrections that will mitigate these areas.

Salt Air Corrosion. Salt air found at coastal locations can rapidly deteriorate and short-circuit light fixtures, elevator electronics, fire sprinkler system plumbing, electrical boxes and door hardware. These should be checked every year.

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

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

Roofs need to be part of a Spring and Fall maintenance plan. They need to be inspected, repaired and cleaned by a qualified roofing maintenance contractor.

Roof gutters and downspouts should be cleaned at least twice a year, more often in "hotspots" where leaf debris is prevalent. Failure to do this causes backups and overflow that damages paint, siding and landscaping.

Playground equipment should be inspected and maintained to ensure

child safety.

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

Reserve Study. This is a 30 year plan to manage and fund (usually) large projects. A Reserve Study will help the board to schedule, budget and properly maintain the common elements. It is highly recommended that the study be done and updated by experienced professionals like PRA (Professional Reserve Analysts) members of the Association of Professional Analysts. See www.apra-usa.com for a directory PRA members.

Use these hints to help craft your own Preventive Maintenance Plan. Deferring maintenance is a sucker bet that will come back to bite. Follow Doctor Oz's advice and use an "Oz (Ounce) of Prevention". 🦋

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Pet-ifying the HOA

The three greatest issues in a homeowner association are Pets, Parking and People. Pets are particularly irksome because to non-pet owners they're animals but to the owners they're family. These opposing views are a setup for conflict. Some boards have tried to dodge the problem altogether by banning pets of all kinds. But pet ownership is considered such a basic right that bans inevitably create willful violations. Then there are the exceptions which every HOA must make for "service" pets. While this used to mean seeing eye dogs, there is now a whole range of acceptable "services" that qualify a pet including (get ready) companionship.

Since they are such an integral part of human existence, the HOA should find a reasonable middle ground policy. Such a policy is not likely to satisfy the extremists but will work in most cases. Here are some basic provisions to work into your policy:

- Only dogs, cats, birds or other traditional household pets are permitted.
- No animal shall be kept or bred for commercial purposes.
- Pets may not exceed ____ pounds when fully grown.
- Total number of pets per residence is limited to ____.
- All pets shall be registered and inoculated as required by local law.
- No pets are permitted to run at large.
- All pets must be under the owner's physical control when in the common area.
- Pet damage is the responsibility of the owner. Damage to common area will be repaired by the HOA and repair costs billed to the resident (or the unit owner if the pet owner is a renter).
- Owners must pick up and dispose of all pet litter immediately.
- Any pet that disturbs the neighbors, is allowed to run freely, is aggressive or destructive to HOA property is subject to permanent removal from the property. In such case, the pet owner (or the unit owner if the pet owner is a renter) will be given notice to remove the pet from the property within ____ days. If the pet is not removed by the deadline, a fine of \$ ____ per day will be chargeable to unit owner's account and subject to normal collection procedures established by the association.

Procedure for Filing Complaints: If a pet is being offensive, offended party should first discuss the issue with the pet owner and request correction. If the condition persists, submit a written request for relief to the board explaining the offense, time and place. As with any rule, the board needs to provide for give and take. For example, since animals do wander, some of the pet complaints could originate from pets of neighboring properties. If the issue involves a resident animal, be sensitive but firm.

Criticizing a pet is like criticizing someone's kid. It must be done tactfully. Try not to be too "dog-matic" or you may run "a fowl" with "cat-astrophic" results. 🐾

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Yield, Safety & Liquidity

In recent years, reserve planning has become a reality for many older homeowner associations. The boom and bust mentality of deferred maintenance and special assessments has finally been replaced with long range planning and regular funding. Funding means accumulation of thousands of dollars and for some, millions.

With the reserve fund growth comes the need for better reserve fund management. With properly applied investment principles, even a modest sized condominium can generate several hundred thousand dollars in interest earnings over a 30 year projection period. This means that the members will need to contribute that much less out of their pockets. Good news indeed.

The board of directors has a fiduciary responsibility to make sure reserve funds are invested properly and safely. The board should not invest in anything that a prudent person would consider risky *unless* there is a broad consensus among the members that doing so is okay (better get that in writing). The investment strategy should also ensure that funds are available when needed.

To refine and define the HOA's reserve obligations, a written Reserves Funding & Investment Policy is extremely important (for a sample, see www.Regenesi.s.net Reserve Planning section). That policy holds both current and future boards to a standard

of accountability and helps prevent the board from using reserves like a private piggy bank.

A good Reserve Study puts the funding issue in proper perspective. While, say, \$50,000 may seem to be a lot of money to an individual, it's a pittance to an HOA when it comes to paying for major repairs and replacements like roofing, painting, siding and paving. Most reserve studies call for the accumulation of hundreds of thousands of dollars. Even though the fund size seems large, it is rarely greater than what is necessary to cover real costs. To stay accurate, the study must be updated annually to ensure that the HOA is on track and being adequately funded.

When the Reserve Study is funded properly, more money will result but with that money comes the responsibility to invest it wisely. A Reserve Funding & Investment Policy will provide the philosophy but it's up to the Board to see that the philosophy is implemented. The larger the fund, the greater the need for investment expertise. While your friendly banker will have some convenient options, that convenience may be very costly since it can come with a below market rate of return.

A trained investment consultant can be hired to manage the reserve funds and maximize yields through safe and insured investments. If your reserve funds are substantial, this is a wise and profitable move. The added investment return will more than pay for the cost of the consultant.

Investment yield is directly related to the size of fund being invested. The more you have, the greater the yield. However, some banks don't willingly offer their customers the best rates. As a matter of fact, your bank may not be the best place to invest reserves. For the best rates, you need to go shopping. Next stop, the internet. Bankrate.com is one of several online sources for local investment alternatives. You can search by state and city to locate higher CD rates right in your locale.

Fiduciary responsibility requires that directors handle reserves responsibility. When it comes to investing there are three considerations: safety, liquidity and yield.

Safety can be broken down into two categories: safety of income and safety of principal. Safety of income measures the likelihood that anticipated income from an investment will continue to be paid in the amount expected and at the time expected. Safety of principal refers to whether the principal value of the investment available at the outset will be available at maturity. Both categories of safety can vary in degree with specific investments.

Liquidity refers to investments that can be converted quickly into cash. Homeowner associations need a certain amount of liquid funds because major repairs can happen unexpectedly. However, with a proper Reserve Study, most repair events can be accurately predicted years in advance. If the repair schedule indicates 95% of reserves won't be needed for three years, those funds can be obligated for at least two years with little fear of being caught short.

Yield is simply the return received on the investment. Generally, the longer the maturity period, the higher the yield. So, a three year CD yields more than a one year CD. Also, the safer the investment, the lower the yield.

A well planned reserves investment policy factors safety, liquidity and yield into the mix. These are the basics of good stewardship. When the reserves are funded according to a 100% funding philosophy coupled with these basics, the HOA will find a firm financial foundation for the future. 🐾

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Telemarketer Defense

"Hello? Can I speak to Mr., Mrs. or Miss Smith?"

You hate them don't you? There you are enjoying the latest WWF Super Slam Fest and the phone rings with some idiot trying to sell you swamp land in the Ozarks. Aarrghhhh!

But don't despair...self help is on the way. Use these techniques to turn the tables on these intruders.

Three Little Words. Say "Hold On, Please.", put down your phone and walk off. Telemarketers have a quota to fill and strict time guidelines for getting it done. Putting them on hold will throw a virtual monkey wrench into their boiler room operation. When you finally hear the phone's "beep-beep-beep" tone, you know your mission has been accomplished. These three little words will help eliminate telephone soliciting.

Fire Back. Do you ever get those annoying phone calls with no one on the other end? This is a telemarketing technique where a computer makes calls and records the time of day when a person answers the phone. This is done to determine the best time of day for a "real" person to call and get someone at home. If you receive one of these calls, immediately start hitting your phone's # button 6 or 7 times as quickly as possible. This causes the computer to record a "bad" phone number and it kicks your number out of the system.

Offer to Call Back. Comedian Jerry Seinfeld has a classic telemarketer defense. When a call is received, simply respond, "Could you give me your home phone number and a good time to call back?". The response will be something like "We don't take calls at home". Seinfeld's response is "Now you know how I feel" (and hang up).

Tell a telemarketer a thing or two. Tell 'em to go to "Hello, how are you today?" An offensive defense makes sense.☛

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Chainsaws & Bowling Balls

Juggling is a fascinating act to watch. Three, four, five balls and more hurling upwards and cascading downward in an endless loop. The performer seamlessly switches from juggling upfront to behind the back then under the leg. It's entrancing. What execution! What fun!

Enter "Slash", the Fear Factor Juggler. One by one he fires up three chainsaws and nonchalantly begins flipping them into the air one after another. Every toss is fraught with potential disaster. Just as he seems to get his rhythm, he introduces one bowling ball and then another into the mix. Before long there is a cacophony of sight and sound with the juggler contorting in bizarre ways to avoid calamity. What a rush!

Life can be like that sometimes. While intuitively we know that living under stress is unhealthy, it is so pervasive that it seems to be the norm. When that stress is self induced, it's even more deadly because, like adrenalin, the frenzy craves more frenzy. It's as addicting as heroin. Addicts to frenzy collapse into bed late only to be jolted awake by the alarm clock to begin the frenetic dance again.

But, it's not supposed to be that way. God invented time so everything wouldn't happen at once. Time allows pacing and scheduling. It allows prioritizing by importance instead of urgency. And most humans have been granted a fair amount of time to allocate these priorities so all will get done.

We have the luxury of turning down the noise, putting down the toys and shutting down "The Boys" when they want to party. The mere fact that these things are within our power is telling.

While we all can't be rich, beautiful and powerful, we can be the masters of our personal serenity.

So, lay down the chainsaws in your life. Put the bowling balls back in the rack. We live in a world offering incredible opportunity. Step away from the madness slowly, turn and break for that spatial serenity. The choice really is yours.☛

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Equationations

- ≠ 2000 lbs. of Chinese soup = won ton
- ≠ 16.5 feet in the Twilight Zone = 1 Rod Serling
- ≠ Half of a large intestine = 1 semicolon
- ≠ 1,000,000 aches = 1 megahurtz
- ≠ Basic unit of laryngitis = 1 hoarsepower
- ≠ Shortest distance between two jokes = A straight line
- ≠ 1 million-million microphones = 1 megaphone
- ≠ 1 million bicycles = 2 megacycles
- ≠ 365.25 days = 1 unicycle
- ≠ 2000 mockingbirds = 2 kilomockingbirds
- ≠ 10 cards = 1 decacards
- ≠ 1 kilogram of falling figs = 1 Fig Newton
- ≠ 1000 milliliters of wet socks = 1 literhosen
- ≠ 1 millionth of a fish = 1 microfiche
- ≠ 1 trillion pins = 1 terrapin
- ≠ 10 rations = 1 decoration
- ≠ 100 rations = 1 C-ration
- ≠ 2 monograms = 1 diagram ☛

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