



The Regenesis Report



National Edition

Innovative Homeowner Association Management Strategies

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Regenesis means making new beginnings using eternal principles in innovative ways.

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

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

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



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Staking a Claim

In garden or townhouse style condominiums, a curious phenomena can take place: Certain owners stake claim to the common area adjacent to their units. This takes on many forms. Some commandeer adjacent grounds for personal plantings, even running irrigation systems through it. Some expand their patio or deck into it. Some build storage sheds in it or place hot tubs there. Some brazenly fence off "their" yard.

Another form of claim staking involves expanding personal living quarters into attic or crawlspaces when the architecture permits. Unit owners have been known to mole into crawlspaces to build wine cellars, extra bedrooms and storage bunkers. It's not uncommon to find certain residents growing "exotic plants" in the attic, out of sight of drug enforcement. Have you ever seen a strange violet glow coming from attic vents after dark? Aha!

Condominium ownership is usually defined in the governing documents as "from the decorated surface of the unit in". Admittedly, condo living is not for everyone. Folks that are used to digging in the dirt and redesigning their home are not going to be comfortable with these boundaries. They crave what Hitler called "lebensraum", more living room. While these folks don't use guns and tanks when they expand, they often feel they have the right to take over whatever common area space adjoins their unit. And sometimes, the board agrees and approves them doing it.

The problem is, neither an owner or the board has the authority to reallocate common area unless 100% of the members agree to it by amending the governing documents. Another more practical consideration is that these modifications often impact the ability of the HOA to properly maintain the grounds and buildings. For example, improperly installed decks are a common source of dryrot to the buildings. Add on rooms in the attic or crawlspace cause additional intra-unit noise and fire hazard potential.

It is very important for the board to understand it's role as Defender of the Common Area. The common area belongs to all members and no one owner has the right to stake claim to it. Preventing claim staking requires constant vigilance by the board. Once one unit owner is allowed to stake claim, others will quickly follow suit thinking if it's okay for one, it's okay for all. Soon, there will be multiple violations and the board will have a heck of a time trying to undo it all. Be watchful and preempt these moves early.

If the horse is already out of the barn and there are already multiple violations, it's time to determine the scope of the problem and prioritize the violations according to flagrancy. Curb appeal issues directly impact market values so violations of this kind you would want to deal with more aggressively. Violations like fencing, decks or storage sheds, or added rooms are the next priority. More minor offenses like owner planting beds, lawn ornaments, furniture and whirlygigs are lower priority although less expensive to correct.

If there are multiple violations of a common sort, it's best to address them simultaneously to avoid the "What about so and so? They have one too" defense. The board should have a cohesive strategy for responding to every violation. It's important that individual board members do not negotiate with violators or give them the impression it's no big deal because this will undermine board authority. Besides, these violations are a big deal and appeals should be addressed only to the board as a whole by holding an appeal meeting with all the players present. That way, when the defense is presented and the board decision is made, everyone is informed.

Some owners may have a valid defense for their violation or have obtained written approval from a prior board (curses!!!). If so, the current board should try to negotiate a dismantling date, even if that date is when the owner sells the property. Whatever the outcome is, it should be formalized in a recordable document that is signed by filed against the unit title so future the owner and

the board president and buyers are informed of the deal.

Claim staking is as natural as the sun rising. It is bound to happen sooner or later in some form or another. It's up to the board to be aware and prepared to defend the common area from claim jumpers. 🗺️

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Ask the HOA Expert

Q Is it proper for the board to recommend a specific candidate or candidates for an election?

A It is perfectly acceptable for the board to appoint a Nominating Committee to solicit candidates that are in "good standing". (There may be a bylaw restricting members that are delinquent or that have unresolved rule violations from serving on or running for election.) But otherwise, since every member in good standing has the right to run for the board, the board should avoid steering the election.

Providing candidate bios and their statements usually provides the voters the information they need to make an informed decision. On the other hand, if your HOA has a large number of owners that don't participate in the annual meetings and elections, board members could solicit their proxies to obtain a legal voting block large enough to swing the vote. The board needs to be careful how it handles such things so it's not accused of rigging the election.

Q We have a pool area. Recently, the board enacted "no alcohol in the pool area" rule. This elated some and offended others. The issue soon became hotly contested.

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Eventually the board agreed to rescind, but did so by stating that it would continue to research the issue. What do you recommend?

A Common areas belong to *all* owners and the HOA has every right to control certain kinds of behavior, especially where there is risk involved. Allowing alcohol around a pool is asking for trouble. Who is going to monitor those that abuse it? Drunks are often loud, abusive and may decide to swim while inebriated. There is also the issue of broken glass which is a safety issue to one and all. The glass issue, of course, extends to other types of containers.

This is a good topic for discussion at a special or annual meeting. The board should get a good read on what the majority think. If there is no clear consensus, the board should monitor the alcohol use and, if abuse is frequent, revisit the ban based on historical evidence. There is no Constitutional right to drink in the common area.

Q Can individual unit owners prepay their fees in order to fix just their unit's roof or deck?

A Condo owners typically don't own roofs and decks unless they are detached units like houses.

In attached condominiums, the roofs belong to the HOA. As such, roof repairs and replacements should only be paid for by the HOA according to a prescribed schedule. While lack of funds may force doing only a portion of the roofs, like two of five buildings, replacing the roof over one condo makes little sense since the same unit owner is responsible for a share of the repairs of all unit roofs. So, no, the board should not agree to such an arrangement.

Q We divide our expenses equally, however, the master insurance policy premium is being allocated according to unit square footage which varies. Is that okay?

A Unless the governing documents specifically permit a special allocation of insurance

premiums, they should be allocated the same way as other expenses. Another common allocation error occurs where expenses are allocated according to a square footage formula and a special assessment is assessed equally. Regardless of the type of assessment, the same allocation formula should be used. The board has no authority to change how expenses are allocated. Changing this usually takes 100% vote of all members.

Q Our HOA sent out notices for our Annual Meeting by both regular mail and email. Our president prepared and sent the email notice and proxy without approval from the board. In the email notice, the president wrote that responding "Yes, a board member" was enough to assign their proxy to a board member. Is that allowed?

A Transacting HOA meeting business by email may or may not be allowed by your governing documents or state statutes. Even if it is, a proxy needs to be in writing and carry the member's signature to avoid fraud unless your HOA members have approved the kind of email proxy you describe. The board (or president) has no authority to make up new standards for how proxies are handled.

Q How does the board choreograph a meeting if not allowed to meet privately in advance? We have always scheduled work sessions every other month prior to the open board meetings. Some members are calling us on it. Some board members have said they will resign if they have to face a room full of homeowners every month especially if we have to allow them to talk as the law requires.

A The choreography of a meeting is called a "Meeting Agenda". The board is always allowed to formulate an agenda ahead of the meeting. The board is not permitted to discuss or make decisions concerning the agenda content outside the meeting venue. An agenda can be discussed and approved by email, phone, face to face or any other means. 🗺️

Smoke Free Forecast

“My home is my castle.” Maybe, maybe not, if you’re a resident in a homeowner association. After pushing through smoking bans in bars and restaurants, anti-smoking advocates have begun to set their sights on another target: HOAs.

These advocates have been predicting that it is only a matter of time before common wall HOAs bar smoking entirely, not just in common areas. In fact, a Colorado court upheld an amendment to the governing documents of a condominium prohibiting smoking anywhere within the boundaries of the condominium property, including the individual condominium units.

Two condominium owners had complained that smoke seeped into their units from a unit occupied by heavy smokers. When the homeowner association unsuccessfully tried caulking, installing foam insulation, and altering the return air ducts to prevent smoke from entering the other units, three of the four unit owners approved an amendment prohibiting smoking anywhere on the condominium property.

The smokers sued, claiming that the HOA had acted capriciously, that it lacked the authority to prohibit legal activities within residential units and that it had not proven that secondhand smoke, rather than simply the smell of smoke, was actually seeping in the other units. They also claimed that the smoking ban violated the owner’s right to smoke within the confines of his private unit.

The trial judge rejected all of the smokers’ arguments, ruling that:

1. The homeowner association’s efforts to mitigate the smoke before it enacted the amendment demonstrated that it had not acted “capriciously”;
2. The HOA properly based its authority to ban smoking on the governing documents’ anti-nuisance provision, which allows prohibiting any practice that interferes with the peaceful possession and proper use of the property by its resident; and

2. Secondhand smoke qualifies as a nuisance and that whether there was actual smoke or simply a smoke smell is irrelevant.

As for the unit owners’ right to smoke in their own unit, the court offered that smoking is not a right protected by the Constitution. Furthermore, governmental jurisdictions have adopted laws designed to protect citizens from the well documented health effects of secondhand smoke in indoor areas.

It should be noted that the significance of the court decision is somewhat limited by the facts in this matter since the condominium was small and the building was older and, therefore, more susceptible to smoke seepage. Also, the unit owners had been complaining about the secondhand smoke for several years, and the homeowner association had undertaken extensive and unsuccessful efforts to address the problem before enacting the smoking ban.

However, given the growing number of people living in HOAs and the increasing willingness of nonsmokers to assert their right not to breathe secondhand smoke, there will almost certainly be more smoking disputes among members in the future. In fact, management companies and health activists recognize that there is a growing voluntary movement by HOAs to ban smoking which they predict will result in tens of thousands of units becoming smoke-free within years to come.

Will this decision and judicial reasoning open the door for other HOAs to enact similar smoking bans? The Colorado judge noted that there is plenty of medical evidence proving that secondhand smoke poses a health risk for nonsmokers, which is underscored by the adoption of laws in many states banning or restricting smoking in public places. In this lawsuit, the judge saw that the balance between the rights of smokers to indulge in smoking within the confines of their private homes and the rights of nonsmokers not to be harmed by secondhand smoke had

tipped the scales of justice in the favor of the rights of nonsmokers.

Not only will future cases continue to challenge HOA smoking bans, but HOAs that refuse to ban or restrict smoking may also face lawsuits by members who allege that they have been harmed by secondhand smoke and claim that the HOA has liability for the damages they have suffered.

The balancing act won’t be easy, but in the interest of resolving divisive conflicts and preserving a sense of community among residents, it will be essential. Board members should watch all of these comprehensive governmental smoking ban initiatives to see how far they go in requiring smoke-free condominium units.

By Attorney Daniel H. Craven of Gulf Shores, AL. 🏠

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Storm Ready Roofing

While every element of storm preparation is important, the roof system is probably the most critical and most often overlooked. Consider that despite rain, hail, ultraviolet rays, foot traffic and building expansion and contraction, the roof system must continue to keep water from entering the building.

During a storm, the roof is a transfer point of wind energy and part of the first line of defense against immediate and future damage. How a roof is built is as important as what it's made of. A roof system should incorporate the following considerations: access, deck, slope, weight, traffic, local weather conditions, wind zone, codes, insurance and budget constraints. Proper maintenance and retrofitting of braces or hurricane straps can help ensure that damage will be minimal when tough weather hits.

Every homeowners association should treat the roof as a depreciating asset and every step should be taken to manage this asset to ensure the benefit of its entire service life. Here are some things you can do to help you prepare for the worst:

Create a historical file which includes:

- As-built roof specifications;
- As-built roof plan that shows the location of all penetrations and roof-top equipment;
- Manufacturer specifications and product data information on the roof components;
- Material and labor warranties.
- Contractor information and phone numbers.

Conduct Periodic Inspections. Roof systems should be inspected at least twice a year by a qualified roof consultant or contractor who has a good understanding of the basic components of the roof system. Spring and fall are good times to do this. Additional inspections should be ordered after severe hail and wind storms or after any installation of new mechanical equipment. If you haven't already assessed your property's vulnerability to wind loading, now is the time to do it.

Use a Checklist. Roofs rarely fail all at once. Attention should be paid to each of the components. All good inspections should be performed with a checklist, which prompts consideration of areas of concern. The checklist should allow you to rate the condition of the different components of the roof system. Every roof is different and

special conditions always come into consideration, but the following things should be addressed:

- ✓ Exterior and interior walls for cracks and moisture stains.
- ✓ Roof condition for debris, drainage surface deterioration, splits, blistering, punctures, etc.
- ✓ Make sure that there are no ponding on the roof.
- ✓ Remove debris that could cause a blockage of the drainage system or puncture the roof surface.
- ✓ Look for obvious signs of blistering and splitting of the membrane which indicates that the roof is separating from the structure.
- ✓ Flashing is protective sheet metal used where direction changes on a roof. If pulled loose, it can indicate that the roof material is separating from itself and may allow water and insects to infiltrate your roof.
- ✓ Caulking separation between counter-flashing and walls indicates wear and can allow water and insects into the roof system.
- ✓ Coping cap is the piece of metal that sits on top of the parapet wall which stands above a flat roof system. It can become separated and allow water intrusion.
- ✓ Wall cracks.
- ✓ Gravel stop splits and securement. Gravel stop is the material that holds gravel in place and the securement is where the gravel stop overlaps and is held down.
- ✓ Monitor foot traffic and debris left by contractors.
- ✓ Cracks or splits in expansion joints. Look for a rubber bumper that allows expansion and contraction, that's the expansion joint.
- ✓ Pitch-pan shrinkages. A pitch pan is the metal box (usually square or circular) that surrounds any roof penetration. The sealant in the pan can shrink over time and needs to be maintained periodically.
- ✓ Wind hazards and weaknesses. Gabled roofs and high roofs are particularly vulnerable and should be braced.

Use preventive maintenance. This is the action taken as a result of the inspection process. It is very important that you select a contractor who

specializes in this area. Preventive maintenance is a specialty of the roofing trade and very different from conventional roof installation contracting. Hire only a roof technician properly trained in roof system diagnosis and corrective procedures.

Providing the contractor with all historical information including the specific roof system, warranties, inspection reports, and a list of previous problems and corrective action(s) taken will help ensure that the corrective process is performed properly. Warranties can be voided by manufacturers if dissimilar materials are used to correct a problem or the wrong action is taken which only compounds the problem.

While most roofs will be in decent condition, almost all will require minor repairs and some will require significant repairs. If your roof is leaking, serious damage has already been done. Your roof insulation, if exposed to a leak will lose most of its effectiveness and your decking system could become questionable if exposed over a significant period of time. Water penetrating the roof can lead to significant mold problems, so it is critical that you take every measure to avoid a problem before it starts.

If it's been a while since the last roof inspection, anticipate a significant charge to bring your roof up to a manageable level. Once you've established a routine inspection and maintenance pattern, expect costs to range from \$0.01 to \$0.10 per square foot per inspection. Considering the cost to re-roof a building can run from \$5 to \$20 per square foot, extending the service life of your current roof through proper maintenance is worthwhile.

The best strategy is an established relationship with a qualified roofer. The National Roofing Contractors Association provides a wide range of information and services to help homeowners and building owners make informed decisions about replacing and maintaining their roof systems, including how to hire a professional roofer. You can find out more by visiting www.NRCA.net.

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Barking Lots

The Pacific Northwest is blessed with an abundant supply of bark mulch, a byproduct of the timber industry, for use in landscaped beds. Blessed because, while mulch cover is highly prized for planting beds, few areas of the country have access to such a desirable material for this purpose.

Those that do not have access to bark mulch make do with materials such as chopped pine needles (called "pine straw") or the large, irregular chunks of shredded hardwood bark. Those that can get bark mulch have several high-quality options from the bark of Fir and Hemlock trees, ground to various uniform sizes. The particle size in what is commonly called "medium grind".

Fir or Hemlock bark allows two significant things to happen: First, it allows for easy grooming and removal of fallen debris, unlike larger, coarser materials. Second, this particle size "knits" together effectively over the summer season, making it a more stable medium for withstanding the ravages of winter weather.

Some worry that bark mulch carries potential pest problems, such as carpenter ants. However, industry representatives are unanimous that it is unlikely insect eggs could survive the high temperatures generated within the stored stockpiles of this organic material.

While some HOAs resist paying for routine bark mulch applications, doing without it is much more expensive for several reasons:

1. A good two-inch surface mulch covering does wonders to hold moisture in the soil during dry summers. Maintaining this cover is the single

most effective way to ensure plant health while reducing water use.

2. Bark mulch adds great curb appeal to a property. Real estate agents often suggest it for marketing a property.

3. Bark mulch discourages the spread of moss and the germination of weed seeds.

4. Organic mulches moderate soil temperatures and protect it from compaction.

Fir bark, which costs a bit less than Hemlock, constitutes the majority of the product purchased. If the potential for barefoot exposure exists, Hemlock is the better choice for its splinter-free qualities. Either material can be specified in either a "bright" or reddish color, or as a darker brown, more natural color.

While other organic covers such as "garden compost" (recycled yard debris) offer some benefits over bark, they also break down faster, hence requiring more rapid replacement.

Inorganic covers such as rock, cinders or rubber do not offer the benefits of organic materials such as cooling soil temperatures and contributing organic matter to the soil through weathering.

By Willamette Landscape Services 

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Car Wars

It's a war out there...Car ownership and land costs on the rise...street width and parking space on the decline. Where the two meet isn't pretty and battles erupt: parking committees posting dayglo orange violation stickers on vehicles, roving tow trucks with instructions to hook and tow on sight and neighbors duking it out over parking spaces.

In an effort to resolve the problems, the board often enacts a reserved parking system. If your board has invoked such a plan, is it in compliance with the governing documents? In condominiums, each owner owns an undivided interest in the common area parking spaces. In a homeowners association, every owner has an easement to use the common area parking. So, all residents have the right to use any parking space, provided the space is vacant. By assigning parking spaces to a particular owner, the board may be illegally precluding residents from freely using available parking. Read the governing documents carefully. The board must have specific power to enact reserved parking in the common area.

Assuming that your HOA's governing documents do give the board the authority to assign parking spaces, before embarking upon a reserved parking scheme, there are a number of issues still to consider:

1. How many parking spaces will be assigned to each unit or lot? After these spaces are assigned, are there enough spaces left to designate as "Visitor Parking"?

2. Are the parking spaces situated so that each owner will have a reserved parking space close to the front door? What happens if there is only one space in front of two units or no spaces in front of a particular unit at all?

3. Do owners have the right to trade reserved spaces?

4. What type of registration system will be implemented for tracking violators? And who will do the monitoring?

5. What is the policy for handicapped parking spaces?

6. How will the reserved parking system be enforced? Fining? Towing? Make sure your towing policy is in compliance with local ordinances.

Car Wars. This is not a battle easily won. Americans believe that parking is found among the Bill of Rights. Before getting too radical with a parking policy, consider the practicality of monitoring it and the conflicts that could arise from enforcement. It may be more painful than leaving things as they are. 🚧

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Trees in Good Standing

The reason for an HOA tree policy is to preserve the streetscape and prevent clear-cutting. The board can get requests from time to time asking permission to cut trees. Sometimes cutting is approved but if it's a large tree and there is no disease or damage, usually not. However, the board needs to treat each removal request based on its merits. Here are several good reasons for removal:

1. There is a fire hazard. Trees should generally be located at least 30 feet from the building, especially if they are flammable like pine trees. This is especially true in areas that are prone to wild fires due to drought and windy conditions. Keeping trees 30 feet away helps create a defensible fire zone.

2. Trees create leaf debris that clogs gutters and downspouts. Certain kinds of trees create year round leaf debris that substantially increases gutter cleaning and blockages. Removing such trees in close proximity to structures makes good sense.

3. Trees that overshadow and inhibit the landscaping. Developers often plant many trees because they are small and more of them makes a better marketing impact. But when many small trees grow large, they can turn the common area into a dark and foreboding place where flowers, bushes and plants won't grow. Thinning out selected trees is often recommended for the health of the landscaping *and* trees. Ornamental trees need room to flourish.

4. Leaning Trees. Under windy and wet conditions, leaning trees are more likely to fall. It usually best to remove them before they do.

5. Trees that are diseased. Certain species are subject to infestation that will eventually kill them. It's best to remove them early to slow the spread of the blight.

When confronted with a specific request that goes against the grain (tree pun), it's prudent to get a licensed arborist to review the trees in question. If the arborist believes they are a danger or should be removed, remove them. Otherwise, no. The board is not responsible for Acts of God, only for handling business in a prudent manner. Use experts to your advantage. 🚧

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History of Rhetoric

Since Homer in the 8th century BC, wisdom (sophos) was prized. The Sophists were originally itinerant poets and teachers who spread learning and culture wherever they found those

ready to pay. Being, or at least appearing, wise, the Sophists advised on governance.

Over time, the Sophists focused more on eloquent speech and rhetoric. A rhetorical question is one which requires no answer, implying the wisdom contained within it. This brought them up against thinkers like Socrates, who did not charge fees and Plato, who portrayed them as using fallacious reasoning concealed in decorated language to deceive and gain power and money. Aristotle helped separate out philosophy as a separate school, leaving sophism as largely about the techniques of rhetoric.

Cicero developed the **Five Canons of Rhetoric** which was influential for centuries:

1. Invention: Finding ways to persuade.
2. Arrangement: Putting together the structure of a coherent argument.
3. Style: Presenting the argument to stir the emotions.
4. Memory: Speaking without having to prepare or memorize a speech.
5. Delivery: Making effective use of voice, gesture, etc.

From the Greek "rhetor", someone who addressed juries or leaders who address global audiences, rhetoric is a indeed a powerful tool. It became a mainstay of priests, lawyers, politicians, writers and others wanting to persuade.

Eloquent persuasion became a mainstay of the civilized intellectual as well as the courtier's preferred mode of speech. From the Romans to the Middle Ages, rhetoric was taught as a liberal art alongside logic and grammar.

Sophism now means the use of deceptive argument, pulling on emotional strings rather than using rational logic, appearing smart rather than being smart. Rhetoric now implies the use of fancy language to persuade. When politicians and others use it as a cloaking mechanism for unpopular or vacuous speech, then others will throw stones not only at the person but also the method.

From www.ChangingMinds.org 

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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 mesmerizing. What execution!

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 turning 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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Winning Golf Strategies

Chapter 1: How to properly line up your 4th putt.

Chapter 2: How to hit a Nike from the rough when you hit a Titleist from the tee.

Chapter 3: How to avoid the water when you lie 8 in a sand trap.

Chapter 4: How to get more distance from a shank and hook.

Chapter 5: When to give the ranger the finger.

Chapter 6: Using your shadow on the green to confuse your opponent.

Chapter 7: When to implement handicap management.

Chapter 8: Excuses for drinking beer before 9 a.m.

Chapter 9: How to use a 4" x 4" post to relieve yourself undetected.

Chapter 10: How to rationalize a 6 hour round.

Chapter 11: How to find the ball that everyone else saw go in the water.

Chapter 12: Why your wife doesn't care that you birdied the 5th hole.

Chapter 13: How to let a foursome play through your twosome.

Chapter 14: How to relax when you are hitting three off the tee.

Chapter 15: When to suggest major swing corrections to your opponent.

Chapter 16: God and the meaning of the birdie-to-bogey putt.

Chapter 17: When to re-grip your ball retriever. 

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