



# 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.



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## The Shakedown

There's a gangster in the 'hood. He's rough, he's tough and he's gonna show the board who's boss. He's holding his monthly assessment hostage to extort action from the HOA. It could be something he wants fixed or some rule he wants changed but no change is going to come until he gets his way.

This kind of shakedown is fairly common in homeowner associations. It usually comes up when an owner's requests for maintenance have been ignored. Sometimes it's because of how the board is doing business: secret meetings, abuse of power, poor or unequal rule enforcement. So there is a demand for change which often includes an element of righteous indignation: "I'm not gonna TAKE it anymore!"

Sometimes the excuse for the shakedown is legitimate. Repeated maintenance requests *have* gone ignored. The roof has been leaking for weeks and damage is being done to their personal property. Or there's been a junk car with flat tires and a growing oil slick parked in front of their unit for months and yet still no action. So, one morning, Mr. Irritated wakes up and thinks "Hey! I pay my fair share. If I can't get service, I'm not paying any more!"

There are several courses of action that the board can take. Keep in mind that anyone that has withheld money has already had the last straw broken and is not likely to be very cooperative. There's going to be a certain level of resentment built up that must be overcome before communication can take place. So, rather than write a letter or email which can easily be misconstrued, a personal phone call or visit is the best first step. This will address the feeling of being ignored. Express concern and get to the bottom of the problem. This is a fact finding mission so get the facts: dates, places, he saids and she saids. Keep notes. Then ask what it will take to resolve the issue now. This is

where it gets tricky. The answer you get may or may not be reasonable.

If the request is entirely reasonable, assure that steps will be taken to move it forward. Give a time line for getting the task done and ask that you be called personally if it isn't. Ask that the assessment be brought up to date in the meantime so late fees aren't incurred. Offer to waive any that may have already been assessed if the balance is resolved within 48 hours. This will allow a graceful way out and demonstrate that you sympathize.

If the request is not reasonable, not the HOA's responsibility, not budgeted or planned, explain that to make sure that it's understood. Maybe it has not been properly explained before. If it has and the response is "I could care less. I'm still not paying until it happens." then conclude the conversation by saying you understand what's being requested but can't accommodate the request for such and such reasons. Add that the request can be formally appealed to the board but that withholding money could negatively affect the board's decision. Ask that the hold back be paid so late fees and collection costs aren't added to the balance.

Another scenario to consider. The hold back may be a cover up for a lost job or some other financial setback. That throws a different light on the issue and solution. Ask if there is something else, like a financial problem, that's driving it. You might be surprised how often it is and, when caught off guard with your question, an owner will 'fess up. If this is the case, focus on the truth of the matter. If there is a financial problem, maybe there is an accommodation the board can help.

Shaking down the HOA can be based in exasperation, a hidden agenda or personal finances. It's important to understand the underlying motivation so that reasoned action can be taken. Getting to the bottom of it will help you make nice. ☺

## Ask the HOA Expert

**Q** We are publishing an HOA directory containing the names, addresses and phone numbers of all residents. Are we required to contact each resident and ask their permission to publish their information?

**A** Inclusion in such a list should be voluntary and each resident should provide specific written authorization. The HOA should respect all desires for privacy.

**Q** Our HOA charges an Initiation Fee to all new owners. Is this appropriate?

**A** It depends. Sometimes there is a requirement in the governing documents for all new owners to make a "contribution to working capital". There may also be a practical reason for a Move In/Move Out Fee when there are actual related costs incurred by the HOA. This is particularly true in a secure building or gated community where access and elevators must be scheduled, reprogramming done to the entry access system and clean up after the movers. If the fee is justified, it should be commensurate with the actual cost, not a mechanism to make money. Gouging new owners is not good way to begin a relationship.

**Q** I live in a condominium with seven different unit sizes. There are five large units with two parking spaces each. All the other units are 50% smaller and have only one parking space each. We all pay the same monthly fees. Is this legal? Can this be changed?

**A** Usually, if there are significant differences in unit square footage and number of parking spaces, the fees are allocated based on a percentage proration. For example, if a unit had 2000 square feet plus 400 square feet of parking space out of a total 100,000 square feet, it would pay 2.4% of the total annual fees ( $2000 + 400 = 2400$  divided by

$100,000 = 2.4\%$ ). Similarly, a unit having 1000 square feet plus 200 square feet of parking would pay 1.2% of the total annual fees or half as much as the larger unit.

However, in your case, this issue is moot. If the governing documents divide all fees equally, regardless of unit size or parking allotment, that's the way it is, fair or not. You agreed to it when you bought the unit. Changing it to a "fair" split likely takes 100% agreement of all owners and highly unlikely to happen.

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**Q** I serve on a board of directors with a president that does not like to share information with the rest of us. It seems to be a power thing and most of us are tired of it. What do you suggest we do?

**A** The president is authorized to make decisions between board meetings that are in keeping with the governing documents, established board policy and approved budget. If the issue falls outside these guidelines, they need to be presented to the whole board for review and decision. If the president continues to act independently, the board majority has the right to remove and replace her with another board member.

**Q** Who is responsible for maintaining chimney caps and chimneys? Some board members say that because only some units have fireplaces, those owners are responsible, not the entire HOA.

**A** If your HOA has exterior maintenance and repair responsibility, that includes chimney caps and chimney repairs even if only some have them. The HOA concept is based on sharing costs to save money. Trying to allocate every cost based on benefit just doesn't work. The benefit differential is usually considered in the assessment level that each owner pays. If it isn't, it's not going to change because it usually takes 100% of all owners to agree to change it. Better to focus on the big picture. All will profit in the end.

**Q** Is it possible to deny voting rights or other privileges to delinquent owners?

**A** If state statutes or your governing documents don't state otherwise, the HOA can withhold voting rights and access to amenities like pool, clubhouse and tennis court. But the process needs to be clearly described in a board approved collection policy that is uniformly applied to all delinquents.

**Q** When the limited common elements attached to each unit (like driveways and decks) vary significantly in size and replacement cost, how are they handled in reserves? Does each individual owner pay into reserves based on his own limited common area?

**A** "Limited" common element means that use is limited to a particular member as opposed to open for all member use. Decks and driveways are typically "limited" in this way. Unless the governing documents assign costs for limited common areas to the owner, reserves for them are funded the same

way as any other common area component.

**Q** The HOA's policy did not pay for the water heater when it broke causing damage to my garage and unit. Why do I have to pay for it?

**A** Insurance coverage pays for the "resulting damage" in an insurable loss. What that means is if the drywall, flooring, etc were damaged when the water heater broke, the insurance is in place to cover that damage. The insurance policy is not designed to pay for unit items that fail. It is important that owners understand what items they need to maintain and replace to avoid insurance losses. 🌱

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## Apples & Oranges

A question that occasionally comes up from the HOA membership is "Why are we paying more per month than XYZ HOA? They only charge \$\_\_\_/month."

While this seems like a reasonable question, this is what's called an "apples and oranges" issue. Comparing one HOA's monthly assessment to another's is meaningless without knowing what is actually being paid for. The person that poses this question to the board never seems to have the details, only the bottom line number. What do you say? It's reasonable to respond that the answer requires reviewing the other HOA's actual budget. Ask them to get a copy and the board will consider it during the annual budget process.

There is a variety of factors that can account for differences in assessment levels including:

1. **Age of Property.** The older it is, the more expensive it is to maintain.
2. **Number and Type of Amenities.** A pool alone can increase the annual budget 20%.
3. **Reserve Funding.** Proper reserving requires, based on an accurate and competent study, setting aside 20-40% of the monthly assessment.

There are some things the board should scrutinize during the annual budget process. Past year's expenses should be detailed in a way that trends can be determined. Things like painting, electrical, plumbing, roofing, siding, deck and fencing repairs should be assigned unique categories rather than lumping them into "Repairs-General". Then, if a particular kind of repair cost is significantly higher than expected, an informed decision can be made on how to handle it next year. For example, if broken pipes have significantly increased due to deterioration in similar locations, it's time to consider doing major plumbing repair rather than waiting for the next flood.

Large service contracts like landscaping, management, pool maintenance and janitorial should be reviewed each year. Even if you are totally satisfied with the service received and have no intention of changing provider, it will demonstrate to the membership that the board is practicing due diligence and good stewardship. Also, if a particular service provider is maneuvering for a contract increase, a competitive proposal will work to the HOA's advantage in negotiating or verifying that your current provider is entirely justified in the increase. NOTE: Never change major service providers without major cause. Working with an HOA and its members is not easy and the learning curve is very involved. The HOA is usually much better served

correcting deficiencies with the current management rather than starting with a new company that is bound to have its set of own shortcomings.

Some other points to examine:

- Management usually charges extra for preparing unit sale information for sellers, buyers and lenders. Is the HOA paying for it? If so, why? It has nothing to do with managing the HOA. This cost should be passed on to the seller.
- That pool or spa may be used by only a hand-full of residents and cost up to 20% of the annual budget. If an appropriate majority approve shutting it down, major money could be saved.
- Has exterior lighting been converted to LED bulbs which usually pay for themselves in a year?
- Is the board reviewing regular financial statements and approving all unbudgeted expenditures? Without regular oversight, it could be costing the HOA significant money.

Make sure you know what you are spending money for and why. Communicate clearly to the members how the budget was arrived at.

What the members really want is reassurance that care has been taken. So, rather than a fruitless defense of apples and oranges, follow a fruitful budget process that communicates financial stewardship. 🌱

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## Lawns & Sustainability

It seems that when it comes to sustainability, there is a temptation to simplify issues that are rarely simple. Complex subjects get reduced to sound bites that are repeated until



misinformation becomes unquestioned “fact”. The subject crops up a lot around homeowner associations where lawn areas can be vast and maintenance expensive.

Lawns are universally vilified in nearly every public forum promoting sustainability. Claims label lawns as toxic dumps for pesticides and chemical fertilizers that ultimately contaminate storm water and, eventually, our rivers are ubiquitous.

There are both good and not-so-good things about lawns when it comes to sustainability. In the “plus” column, lawns are actually the best part of the landscape for capturing and holding both water and fertilizer. Lawns are also great at thriving in conditions that are too wet for most plants, and their dense leaf surface is tops at reducing dust and providing a cooling effect against solar radiation. In addition, and surprisingly to most, *lawns often require little in the way of pesticides*. For instance, even when caring for clean, manicured lawns, it is good practice to use no more than ½ ounce of selective herbicide per 1,000 sq. ft. annually.

On the “minus” side, lawns do require more equipment use, more fertilizer and more water than do planted beds... much more. Lawns generally need twice the water of ornamental plantings, and three to four times the fertilizer. Small lawns exacerbate these problems since more “edge” area means more waste. In fact, you should consider the elimination of lawns of less than about twelve feet in width. Why? Fertilizer cannot be efficiently applied to smaller lawns, so when lawns are narrower than this, errant fertilizer pellets go where we don’t want them, contributing to storm water contamination.

While the power equipment use, water consumption and fertilizer needs of lawns might suggest the desirability of their replacement, this is a difficult step because there is no financial upside. Surprisingly, the labor needed

to *properly* care for mature landscape plantings actually exceeds that required for lawn maintenance. Further, when the extra cost of water and fertilizer for lawns is balanced against the need for regular bark mulch replacement in beds, higher costs remain with the bed areas. Replacing lawns with new plantings results in considerable installation costs, followed by on-going maintenance costs that remain the same or are even slightly higher.

Leaving mowed clippings in place on the lawn amounts to the regular infusion of nutrient-rich organic matter which feeds the beneficial organisms of a healthy biotic system.

Utilizing organic fertilizers and natural weed control materials represents environmental progress with a modest price penalty. Minimizing water use by employing weather-based “Smart Controllers” and retrofitting sprinklers with new, more efficient designs will make your lawns more sustainable while actually saving money. Employing such methods will go far in moving your lawns higher up the sustainability “plus column”.

By Randy McManus 🌱

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## **Moth to a Flame**

Moths give off “pheromones”, a peculiar scent that attracts mates from many miles away. Oh, that it were so easy to attract volunteers to the board. Just spritz some Eau de Volunteer in the air and *Nellie bar the door!* Okay, that won’t work on human so what does it really take to attract good volunteers?

Here are a couple of suggestions:

**Develop a communication system.** A frequent complaint of members is not being kept informed. To draw out volunteers, it’s critical that they know

what’s going on. Also, some owners develop a suspicious nature about board motives when kept in the dark and resist being involved. Let ’em know what you’re up to early and often! Repeated pleas for help will have their effect. A newsletter and flyer distribution box (the kind used by real estate agents) is an inexpensive and convenient way to get the word out.

**Give credit where credit is due.** People love attention. Make sure that directors, committee members and homeowners are given formal recognition for their efforts by way of the meetings, the minutes and newsletters...every opportunity where there is an audience. Point out particular owners that show superior landscaping abilities. (They are obvious candidates for the Landscape Committee.) Award certificates of achievement at the annual homeowners meeting. Remember also that not all tasks have an end and some volunteers doing ongoing tasks tend to get overlooked.

**Provide social opportunities.** People tend to want to help those that they know personally. However, many are shy and don’t easily make friends. The association can promote several socials annually to facilitate the process. Consider a spring clean-up party, pool party or just plain potluck. It will help create a real “community”.

**Assign real jobs to do.** It’s been said, “A committee takes minutes and wastes hours.” There is nothing more frustrating than a job with no job description or substance. There is real work to do at each association. Directors and committee members should have clear “marching orders” detailing exactly what the objectives are, the time frame and the money available to help get the task done.

**Get organized.** Have meetings scheduled well in advance. Have a proper agenda, run the meeting in a businesslike way (save the wine until afterwards) and limit your meetings to two hours. Endless rambling meetings

are a real turnoff to successful people (the kind you want as volunteers). Your meetings should be decision oriented so things get done.

**Be an encourager.** It is incumbent on the board president to take the lead in promoting volunteers. The successful leader motivates by persuasion and not authority. Remember, "A servant does not lower himself but elevates others".

Since uncommon scents like pheromones don't work, use common sense by making the volunteer position too attractive to resist....like a moth to a flame.🔥

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### **Avoid Self Dealing**

When people are elected to positions of power, there is always the possibility that a conflict of interest or self dealing will develop. While there may be no specific intent, it's sometimes difficult to avoid them. But how they are handled is critical. They come in several shapes and forms such as:

**Imbalanced Reserve Repairs.** Due to poor reserve planning, the board is called on to make decisions based on inadequate money. If the board president approves painting his building instead of others, it would easily be perceived as self dealing, even if that building clearly needs it more than the others. So, while adequate reserve funding could have avoided this situation, the question remains on which building gets painted today. Avoid the perception of self dealing by having an outside "expert" make the call. Rather than be exposed to criticism, why not ask a local paint company design consultant to make the call? This same principle can be used for many other kinds of repairs.

**Voting.** Another technique for avoiding self dealing is to abstain from

voting when the outcome is self-benefitting. And make sure the secretary records in the meeting minutes that "(fill in blank) abstained due to a conflict of interest". That way, the written record will show no intent to sway the vote.

**Disclosure.** The idea behind disclosure is that any possible conflict is brought to the attention of the board upfront. If the board has no problem with it, it *may be* okay. But beware. Technically, if you advise the board to hire your brother in law, the landscape contractor, you've provided disclosure. However, to an outside observer, there would still be a lingering suspicion of nepotism (hiring family members) or money kickbacks. The board fiddles while everyone else burns. While disclosure may explain away a conflict, look at the situation with a critical eye. If the issue is significant or costly, it's best to shy away from it rather than have to justify it again and again.

**Deal Openly.** One of the best ways for the board to avoid self dealing is to hold open board meetings. Even if other members don't attend, minutes should be completed in a timely fashion and distributed to all. Regular newsletters (at least four per year) should advise of significant board business and upcoming events. Board business should be transparent...nothing to hide. If the board knows the owners are watching and aware, it's less likely to engage in self serving activity.

**Bash Board Scofflaws.** To have a director who is regularly violating the rules is unconscionable. And to allow this kind of conflict of interest to continue invites challenge from every community member accused of rule infraction. Due to their insider status, board member rule breakers should be held to higher standards than everyone else.

Conflicts of interest and potential self dealing always raise suspicion. But no matter how hard you try, one will appear. Ask yourself if something a

board member is doing could be misconstrued by outsiders. If so, avoid them at all cost. Trust is fragile so treat it like fine crystal.🔮

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### **CYA: Cover Your Assets**

From time to time, a story is run about a homeowner association that had thousands of dollars embezzled by a trusted manager or board member. More times than not, the story is never told. Because of the embarrassment to the board caused by these events there is a natural tendency to sweep it under the carpet. But let's face it, when thousands or millions of dollars are dangled as bait, someone, sometime is likely to take a bite. It happens and it could happen to *your* HOA. But there are things you can do to avoid such calamity. Use the CYA formula: Cover Your Assets.

#### **If Managed by a Property Manager:**

- Maintain control of your funds by keeping both operating and reserve accounts in the name of the homeowner association.
- Limit the size of the check the management company can sign keeping in mind regular expenses like utilities and service contracts. In other words, don't limit the manager to \$500 if the monthly water bill averages \$1500. Set a limit that allows the manager to deal with the routine or specifically authorized by the board. Anything above that amount should require the signature of the board president or treasurer or other officers included on the bank signature card. It's best to have the president sign whenever possible.
- Writing checks or transferring funds from the reserve account should be restricted to authorized board

members since the need to access reserves is infrequent.

- Make sure your manager has a fidelity bond in an adequate amount insuring the HOA against loss. The recommended formula is the amount held in reserves plus two months regular assessments.
- Send duplicate bank statements to the board president. It's a deterrent to a would be embezzler to know someone is watching.

#### **If Managed by Board or Employees:**

- Purchase Fidelity/Employee Dishonesty Insurance in an adequate amount that includes wrongful acts of officers and managers, like your current reserves plus three months worth of assessments (dues, fees).
- Restrict check signing authority to the president and treasurer.
- Require the checking account be balanced within a week of receipt of statement.
- Send a duplicate bank statement to the president.

#### **In General:**

Have a CPA perform a full audit at least every three years, annually if the budget is large or when state law requires.

When it comes to handling HOA funds, a CYA policy is absolutely essential. Setting boundaries is healthy for all money handlers, reminds them that others are watching and builds trust among the members. Remember to cover *your* assets and you won't have to cover your...well, you know.

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## **Time Bandit**

There is a bank that makes a large deposit to your account each morning. But you must use it or lose it every day. At the end of the day, whatever you fail to use vanishes. What is this elusive asset? Its name is *time*. Every day, it credits you with 86,400 seconds. Every night it writes off, as lost, whatever you have failed to use to good purpose.

It allows no overdrafts. There are no refunds. There is no line of credit. You must live on today's deposits to get the most from health, happiness and success! The clock is ticking. Make the most of it.

Treasure every moment that you have! And treasure it more because you shared it with someone special. Time waits for no one. Yesterday is history. Tomorrow is a mystery.

True friends are rare. They encourage you to succeed. They lend an ear, share a word of praise and open their hearts. Be a friend and share these thoughts on time. ☼

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## **Montana Cowboys**

An 80 year old Montana cowboy went to the doctor for a check-up. The doctor was amazed at what good shape the old guy was in and asked, "How do

you stay in such great physical condition?"

"In my spare time I like to hunt and fish" he says. "I'm up well before daylight riding herd and mending fences. In the evening, I have a beer, a shot of whiskey and all is well."

"Well" says the doctor, "I'm sure that helps, but there's got to be more to it. How old was your father when he died?"

"Who said my father's dead?"

The doctor is amazed. "You mean you're 80 years old and your father's still alive? How old is he?"

"He's 100 years old," says the old cowboy. "In fact, he worked and hunted with me this morning, and had a little beer and that's why he's still alive. He fishes too!"

"Well," the doctor says, "that's great, but I'm sure there's more to it than that. How about your father's father? How old was he when he died?"

"Who said my Grandpa's dead?"

Stunned, the doctor asks, "You mean your grandfather's still alive?"

"He's 118 years old," says the Montanan.

The doctor returns, "So, I guess he went hunting with you this morning too?"

"No, Grandpa couldn't go this morning because he's getting married today."

"Getting Married? Why would a 118 year-old guy want to get married?"

"Who said he wanted to...?" ☼

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