



# The Regenesi Report



National Edition

Innovative Homeowner Association Management Strategies

Priceless

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

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

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

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



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## Three Legged Stool

The Business Judgment Rule (BJR) is one of the most important things a homeowner association director should understand because it protects from personal liability while serving on the board. However, well-meaning directors can accidentally stray outside of its protections and leave themselves exposed to risk of personal liability.

**The Business Judgment Rule.** If operating under the BJR, a director is personally protected from liability. The BJR, a common legal protection in almost every state, states:

"A director shall perform the duties of a director ... in good faith, in a manner such director believes to be in the best interests of the corporation (homeowners association) and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."

**Good Faith.** Good faith is not simply good intentions or a pure heart. Good faith is also simply not being in bad faith. The people who ultimately decide whether something is in good or bad faith are judges and jurors. So what is important is not what *you* think, but what *they* think of the action and the evidence about it.

For example, could someone claim a board decision was based retaliation, like a member who criticizes, complains and abuses the board? The law requires that all members be treated consistently. So even abusive members are entitled to the same treatment as reasonable members.

Sometimes statements or emails issued by the board can be taken out of context with dangerous results. Make sure every statement made at board meetings is carefully worded. Avoid intemperate or sarcastic remarks and never include such in the minutes.

**In the Best Interests of the HOA.** Every action by a board should be in the homeowner association's best interests. But a judge or jury would decide if the board's motivation was correct by looking at board actions, statements and relevant facts.

**Avoid Conflicts of Interest.** Avoid preferential treatment in rule enforcement and renovation projects. If a director stands to benefit from a board decision, he should not attempt to sway or vote on the matter and make sure the minutes reflect that fact.

**Reasonable Inquiry.** The board must have appropriate qualified input before it makes a decision. A manager's input may be all that is required if the matter is simple. However, if the matter is serious, large or complex, more expertise may be needed (reasonable inquiry). Well-meaning directors sometimes violate this requirement by either providing their own expertise ("I think that wall is structurally sound") or by refusing to endorse the hiring of the an expert consultant ("Engineers are too expensive. Can't we just figure this out?").

A director should make decisions based on sufficient and qualified information appropriate to the decision. Sometimes, the board must spend money to get knowledgeable input.

The Business Judgment Rule is a three-legged stool. Lose one of the legs, and the result can be painful. Know the elements of the BJR and be protected as you do your best to help your HOA.

*Kelly G. Richardson - Richardson Harman Ober PC*

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## Ask the HOA Expert

**Q** My HOA charges for copies of documents? Our governing is silent on charging for copies.

**A** Many HOAs post governing documents and other need-to-know information on the HOA's website. This allows 24/7 self-help at no charge.

**Q** Our HOA does not have much of a pet policy because it was never needed. But recently, more owners have dogs and some have more than one. We do have a policy regarding cleaning up after pets in the common areas but nothing that specifically speaks to unit patios or decks which is becoming more of a problem. Also, we also have more dogs being left home alone and barking continually.

**A** Every HOA has a "nuisance" provision as part of the governing documents. Nuisances come in all shapes and sizes. In this case, barking dogs and failure to clean up them is a nuisance that affects the neighbors. But pets are so pervasive, every HOA should have a Pet Policy which defines the basic issues and consequences for violation. There is a sample Pet Policy available to Gold Subscribers of [www.Regensis.net](http://www.Regensis.net).

Once the Pet Policy has been adopted by the board, a formal letter should be sent immediately to violators outlining the breaches and details (what and when), the penalty (fines), action needed to correct (for example, must clean up, dogs cannot be allowed to bark endlessly, etc.), consequences for failure to correct (like fines, removal of dogs from property and procedure for appeal. Send it certified and post the door so you know for sure it has been received.

If the letter fails to gain compliance, initiate the consequences. If the consequences fail to inspire correction, have the HOA's attorney file an action with the court to get an injunction. Your rules procedure should allow passing through attorney and legal fees.

**Q** Our condominium is comprised of units which all share at least one common wall. Recently one of our owners proposed that they would like to acquire the unit on the other side of their common wall, put in a couple of doors and double their size. Our governing documents specifically prohibit penetrating the common wall. What are the issues that should be considered on such a proposal?

**A** The common wall restriction is intended to address fire safety and structural integrity. Breaching a fire wall could pose a threat to a neighboring unit. If both units are owned by the same person, the fire safety issue is moot. However, it is possible that at some time in the future, the owner might want to sell one unit off. At that time, requiring that the fire wall be restored is essential.

the board receives a request with supporting documentation and agrees it's acceptable, there should be an agreement drawn up by an attorney describing the alterations and the requirement that the unit owner accepts all responsibility to mitigate any damage it might cause and to effect all repairs relating to it now and in the future. That document should be made part of the unit's public record for the benefit of future owners and lenders. The unit owner should pay for all legal fees.

**Q** Is it possible to hire a management company to do just certain things for us and the board continues to do others? For example, we have a long time resident who is an accountant who has kept our financial records and would continue to do so. But someday, the board would like to turn all the work over to a management company.

**A** Elected boards were never intended to self manage the HOA and are seldom trained in property management. Unless your governing documents require a vote of the members to approve the budget, the board has the authority to approve hiring a management company. It is highly recommended that professional HOA management be hired to handle at least the financial aspect which is so critically important. Overseeing repairs and contractors also figure large as does rule enforcement. Management is charged with obtaining competitive pricing on services so can often pay for itself in that way alone. When the big picture is considered, you will be pleasantly surprised how cost effective professional management is.

**Q** I read your article, "Refining HOA Reserves" and am particularly interested in understanding the statement: "If the reserve fund Percent Funded is below 100%, implement a funding strategy to increase that level to the 100% goal as soon as possible." From my research, reserve study specialists often recommend that reserves be 100% funded but add that the law does not require they be 100% funded. Our management company acknowledges

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Whenever a common element is affected in this way, it makes sense to have a qualified architect or engineer produce plans and specifications that address structural considerations and fire safety issues. The plan should include appropriate building permits and a requirement that only licensed contractors may perform the work. If

the 100% funding recommendation, but states that it is not necessary. My question is there a "Percent Funded" that is widely accepted as the "should be" level?

**A** There are two compelling reasons why reserves should be 100% funded each and every year: fairness and fiduciary duty. Consider the example of a 30 year roof that costs \$300,000 to replace. Fully funding the roof reserve requires \$10,000 per year ( $\$300,000 \div 30$  Years). In other words, as 1/30th of the roof is used up, 1/30th of its replacement cost should be set aside in reserves. If less than 1/30th of the cost is reserved each year, the shortage will have to be made up by future owners.

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

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

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

**A** Both special meetings and emergency meetings can be called between normally scheduled board meetings. There is no requirement that the management company be present although it's generally desirable that the manager be there to advise the board.

All board meetings require minutes be taken as a record of decisions made. The biggest sticking point in this particular situation is that without a quorum, no legal business can be transacted.⚠

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### Reserve Study Updates

A reserve study provides a homeowner association with a 30 year schedule and funding plan for dealing with cyclical repairs, replacements and maintenance. It is one of the most indispensable weapons in a board's arsenal. While a reserve study's components and quantities may not change, the cost and useful life of each of those components often does. Costs for these future events is impacted by forces which no one can control the dynamics of the real estate market (hot or cold), the availability of qualified contractors and the price of oil in Iraq. These factors can swing from month to month.

Some states require that reserve studies be reviewed and revised each and every year. But regardless of the legal requirement to do it, practical reasons abound. Reserve studies are 30 year projections that are based in the most accurate information available at the time they are completed. But a reserve study's underlying assumptions are moving targets. For the reserve study to remain useful, changing information must be updated even when no reserve related repairs have been done during a given year. These key elements of every reserve study will change from year to year:

**Starting Balance in the Reserve Fund.** Each year, contributions are made to reserves. Interest is earned and added to the balance. While there is a projection made each year on what next year's Starting Balance may be, the exact balance at the start of the coming year will always be somewhat different.

Since the Starting Balance sets the stage for future contributions, it's critical that it be accurate.

**Reserve Fund Interest Yield.** Even if reserve funds are invested as they should be, the return on investment will vary from year to year. Interest earnings have a profound effect on the 30 year projection period of most reserve studies. Interest can amount to tens of thousands of dollars over that time. Interest earnings reduce owner contributions.

**Inflation Rate.** Inflation varies depending on how the Federal Reserve Board feels, OPEC oil price rigging and the effects of global climate change. Like Interest Yield, compounding inflation has a dramatic impact on future costs. Inflation is how future costs are predicted so using the most recent inflation factor available is critical to those predictions.

**Known Cost Changes.** Each component's predicted cost should be examined. For example, if the current price of roofing goes up 15%, so should the replacement cost of the roof in the reserve study.

**Site Inspection Updates.** A key component of keeping a reserve study accurate is periodic site inspections. Site inspections allow the reserve study provider to visually inspect the components for condition to ensure that they are aging as predicted. For example, does that 30 year roof, now 10 years old still have 20 years of useful life left? Site inspection updates are recommended every three years.

So, if your homeowner association has a reserve study (and it certainly should), you need to review and revise it every year.⚠

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## Mining Committees

Committees are an untapped gold mine available to the board. Besides benefitting the board by spreading the work around, committees are an excellent training ground for future board members. Members that are reluctant to step up to a board position often feel right at home on a committee with limited or focused responsibilities.

Committees come in all shapes, sizes and functions and may be temporary or long term, as the need dictates. They are only limited by the board's imagination. A committee can assume a variety of roles, such as:

**Research & Development.** Complex tasks can be assigned to a special committee which can research the task and advise various courses of action to the board. This includes large renovation projects, proposed amendments to the governing documents and local zoning or crime issues.

**Task Execution.** Committees like Rules Enforcement and Architectural Restriction can hand out citations and review appeals.

**Oversight.** Committees like Landscape/Grounds and Pool oversee the contractor's performance and help maintain a high quality of service.

**Cost Control.** The Maintenance Committee can prescreen requests to ensure they are indeed the HOA's responsibility and, if so, prioritize and group them for better cost efficiency. The Budget Committee studies past costs to better anticipate future expenses.

**Socialization.** An often overlooked function is planning social events to help neighbors meet neighbors. The events don't necessarily need to be party oriented. The Annual Meeting can become the Social Event of the Year with food and beverages. Spring Planting Parties don't have to be all work. Reward the volunteers with catered food, beverages and T-shirts. The Social Committee can help build real community and lasting friendships.

**Security.** Turn that nosey member into the Neighborhood Watch Chair who can monitor suspicious activity or recommend better security techniques.

To facilitate committees, the board should provide the proper resources. Some need funding but most just need clear marching orders. The board should never abrogate its final authority over HOA matters to a committee. Committee power should usually be limited to an advisory role. If a committee is allowed greater authority, like rules enforcement, there should always be the right of appeal to the board.

**Plan of Action.** Part of a good plan of action includes reporting to the board at scheduled meetings. That report should include recommendations for board approval. These reports provide a good way for the board to assess the ongoing need or effectiveness of a committee. If little is being done, it might be time to retire a committee or find a new chair.

**Committee Meetings.** Some committees need to meet regularly and some as needed. It all has to do with the goals laid out by the board. The board should select the committee chair carefully as someone who has the time for the job and inclination for leadership.

**Include Renters.** Here's a novel idea: Allow renters to join committees. Many want to be good neighbors and to serve. At least ask. You might be surprised at the response and it might encourage owners to step up.

**Praise and Recognition.** Recognizing effort and superior performance is #1 on every Job Satisfaction Survey. It works the same way in an HOA. It is the currency of care in HOAs which brings a huge return. Thank you notes, newsletter accolades, plaques and Certificates of Merit go a long way.

Mining your committee options will produce a wealth of riches for the community. Committees lead to better information, greater harmony, new friendships, enhanced trust, involved members and less work for the board.

It's all good. This is the Mother Lode. Grab your picks and shovels and start digging!🔍

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## Slow D-O-W-N!

Here he comes again! That kid's gonna kill someone if he doesn't slow down! Traffic speed is something many homeowner associations grapple with. Since HOA streets tend to be narrower and traffic more compact, normal city street speed is often way too fast. Some HOAs have resorted to traffic committees who lay speeding tickets on offenders. But this clearly only works on residents. Guests and those just passing through merrily shred the tickets.

Other HOAs install axle jolting speed bumps that infuriate everyone, guilty and innocent alike, and create a real safety hazard for bicycles and motorcycle riders.

Posting SLOW DOWN signs has some positive effect. Still others post Burma Shave style signs (On Our Streets...Please Drive Slow...And Let Our...Little Shavers Grow). But, the speeders continue to speed.

Some municipalities have hit upon an effective way of slowing traffic down without the bone jarring effects of traditional speed bumps and the labor intensity of traffic patrols. Cities like Portland Oregon have enacted "traffic calming zones" which use several passive, yet effective techniques. One is the Traffic Circle (aka "roundabout" in England). Essentially, a circular concrete island is constructed in the intersection which forces traffic to slow to get around it. The island can include an attractive planting area although strategically placed boulders help ensure that the SUVs don't roll over it.

Another calming device is a special speed bump that looks like it's on steroids. Instead of a one foot blip, the

speed hump spans the width of the street and extends from 14 to 22 feet deep. The 14 foot variety moderates traffic to 25 MPH while the 22 footer moderates speed to 30 MPH. These monstrous bumps are usually placed in a series several hundred feet apart to ensure that traffic remains moderated through the neighborhood.

One important consideration to calming traffic is emergency vehicle access. Fire response and ambulances need to get where they're going quickly and seconds of delay can literally make the difference between life and death. Whatever traffic calming solution your HOA may be considering should be cleared by authorities.

Another extremely important consideration is the impact of traffic calming devices on your residents. Many devices have the effect of locking residents in. In effect, by trying to slow down a few speeders, a gauntlet must be run by every resident that wants to come and go. Before any of these speed control techniques are implemented, be sure to discuss them with the residents and make sure you have majority approval. Otherwise, you are likely to create a firestorm.

Vroom...vroom....screeeeech! Speed and vehicles seem to go together. If your HOA is experiencing ongoing speeding and traffic safety problems, maybe it's time to consider some of these alternatives.🚗

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### **The Price They Paid**

Have you ever wondered what happened to the 56 men who signed the Declaration of Independence? What fates befell them for daring to put their names to that document?

Five signers were captured by the British as prisoners of war.

Twelve had their homes ransacked and burned.

One lost his son serving in the Revolutionary Army.

Nine died during the Revolutionary War.

Twenty-four were lawyers and jurists. Eleven were merchants, nine were farmers and large plantation owners; men of means, well educated. But they signed the Declaration of Independence knowing full well that the penalty would be death if they were captured.

Carter Braxton of Virginia, a wealthy planter and trader, saw his ships destroyed by the British Navy.

Thomas McKean was a delegate and later President of the Continental Congress, President of Delaware, Chief Justice of Pennsylvania and Governor of Pennsylvania. He was hounded by the British and forced to move his family numerous times.

Vandals or soldiers looted the properties of Ellery, Hall, Clymer, Walton, Gwinnett, Heyward, Rutledge, and Middleton.

At the battle of Yorktown Virginia, Thomas Nelson, Jr. discovered that the British General Cornwallis had taken over his home as his headquarters. Nelson urged General George Washington to open fire.

Francis Lewis had his home and properties destroyed. The enemy jailed his wife and she died within a few months.

Lewis Morris saw his Westchester County, New York, home appropriated, looted and burned by the British when they occupied New York.

Philip Livingston lost several properties to the British occupation of New York and sold off others to support the war effort. He did not recover them because he died suddenly in 1778, before the end of the war.

The signers of the Declaration of Independence took huge risks to put

their names on a document that repudiated their government. They had every reason to believe that they might be hanged for having done so. There were many men and women, some famous but most not, who risked and sacrificed much (including their lives) to support the revolutionary cause.

Their efforts gave future Americans a free and independent America. Some take these liberties for granted. They shouldn't.🚗

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### **Setting a Prisoner Free**

Forgiveness is a decision to let go of resentment and thoughts of revenge. The act that hurt you may remain a part of your life, but forgiveness can lessen its grip on you and help you focus on positive parts of your life. Forgiveness can even lead to feelings of understanding, empathy and compassion for the one who hurt you.

Forgiveness doesn't mean that you deny the other person's responsibility for hurting you, and it doesn't minimize or justify the wrong. You can forgive the person without excusing the act. Forgiveness brings a kind of peace that helps you go on with life. Letting go of grudges and bitterness makes way for compassion, kindness and peace. Forgiveness can lead to:

1. Healthier relationships
2. Greater spiritual and psychological well-being
3. Less stress and hostility
4. Lower blood pressure
5. Fewer symptoms of depression, anxiety and chronic pain
6. Lower risk of alcohol and substance abuse

When you're hurt by someone you love and trust, you may become angry, sad or confused. If you dwell on hurtful events or situations, grudges filled with resentment, vengeance and hostility may take root. If you allow negative

feelings to crowd out positive feelings, you may find yourself swallowed up by your own bitterness or sense of injustice.

If you're unforgiving, you may pay the price repeatedly by bringing anger and bitterness into every relationship and new experience. Your life may become so wrapped up in the wrong that you can't enjoy the present. You may become depressed or anxious. You may feel that your life lacks meaning or purpose, or that you're at odds with your spiritual beliefs. You may lose valuable and enriching connectedness with others.

Forgiveness is a commitment to a process of change. A way to begin is by recognizing the value of forgiveness and its importance in your life at a given time. Then reflect on the facts of the situation, how you've reacted, and how this combination has affected your life, health and well-being. When you're ready, actively choose to forgive the person who's offended you. Move away from your role as victim and release the control and power the offending person and situation have had in your life. As you let go of grudges, you'll no longer define your life by how you've been hurt.

Forgiveness can be challenging. It may be particularly hard to forgive someone who doesn't admit wrong. You may want to talk with a person you've found to be wise and compassionate. You may also want to reflect on times you've hurt others and on those who've forgiven you. Forgiveness has the potential to increase your integrity, peace and overall well-being.

If the hurtful event involved someone whose relationship you otherwise value, forgiveness may lead to reconciliation. This isn't always the case, however. Reconciliation may be impossible if the offender has died or is unwilling to communicate with you. In other cases, reconciliation may not be appropriate, especially if you were attacked or assaulted. But even in those cases, forgiveness is still possible — even if reconciliation isn't.

If you haven't reached a state of

forgiveness, being near the person who hurt you may be tense and stressful. You have a choice whether or not to attend specific functions and gatherings. Respect yourself and do what seems best. If you choose to attend, don't be surprised by a certain amount of awkwardness and perhaps even more intense feelings. Do your best to keep an open heart and mind. You may find that the gathering helps you to move forward with forgiveness.

Getting another person to change his or her actions, behavior or words isn't the point of forgiveness. Think of forgiveness more about how it can change your life — by bringing you more peace, happiness, and emotional and spiritual healing. Forgiveness takes away the power the other person continues to wield in your life.

What if you're the one who needs forgiveness? Consider admitting the wrong you've done to those you've harmed, speaking of your sincere regret, and specifically asking for forgiveness without making excuses. Remember, however, you can't force someone to forgive you. Others need to move to forgiveness in their own time. Simply acknowledge your faults and admit your mistakes. Then commit to treating others with compassion, empathy and respect.

"To forgive is to set a prisoner free and discover that the prisoner was you." Lewis Smedes

*By Katherine Piderman, Ph.D., Staff Chaplain - Mayo Clinic*

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### Not So Dumb

A blonde and a lawyer are seated next to each other waiting for a flight from LA to New York. The lawyer asks if she would like to play a fun game. The blonde just wants to take a nap, so she politely declines and turns to catch a few winks. The lawyer persists and

explains that the game is easy. He says, "I ask you a question, and if you don't know the answer, you pay me \$5 and vice versa."

Again, she declines and tries to get some sleep. The lawyer, now agitated, says, "Okay, if you don't know the answer you pay me \$5, and if I don't know the answer, I'll pay you \$500." This catches the blonde's attention and, figuring there will be no end to the torment unless she plays, agrees to the game.

The lawyer asks the first question, "What's the distance from the earth to the moon?" The blonde doesn't say a word, reaches in her purse, pulls out a \$5 bill and hands it to the lawyer. "Okay," says the lawyer, "your turn."

She asks the lawyer, "What goes up a hill with three legs and comes down with four legs?" The lawyer, puzzled, Googles the internet and no answer. He sends email to his friends, all to no avail. He wakes the blonde and hands her \$500.

The blonde says "Thank you" and turns back to get some sleep. The lawyer, more than a little miffed, wakes the blonde and asks, "Well, what's the answer?" Without a word, the blonde reaches in her purse, hands the lawyer \$5 and goes back to sleep. 🐱

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