



# 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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## Feng Shui HOA

Feng Shui (pronounced "fung shway") is the ancient Chinese art of placement. The goal of Feng Shui is to achieve harmony, comfort and balance, first in one's environment and then in one's life. Feng Shui translates literally to "wind-water", the two mediums where life exists.

Feng shui is used to create a living space in harmony with nature. Careful orientation of furniture can attract good karma or repel bad. While there is considerable skepticism about the validity of Feng Shui, the goals of harmony, comfort and balance are certainly those that to which every HOA should aspire. However, in the legalistic environment that haunt many HOAs, these goals may seem far away.

Many HOAs live under "The Rules". Whether spelled out in the governing documents or concocted by an well meaning board, The Rules are there to establish lines which should not be crossed. Those that espouse the need for The Rules often believe they are ironclad and black and white. When it comes time to smite a rule breaker, there is no mercy.

To some HOA residents, The Rules have little relevancy because they state the obvious: don't bug your neighbors or let your kids or pets run wild. Others ignore The Rules because they don't apply (I don't have a dog, jet ski, RV or like to play loud music). Others don't like rules in any form, so violating The Rules is a crusade. (You can't tell ME what to do!). Then there are those that go about living the way they do, violating The Rules as they go, because IT'S MY GOD GIVEN RIGHT AS AN AMERICAN TO ENJOY MY PROPERTY ANY WAY I WANT TO!

But after all is said and done, the vast majority of HOA residents just want to live in harmony. Most have learned basic give and take behavior when young and need little instruction as adult. Those that didn't learn then are slow to change if they change at all. Thus, the sticking point

really is what to do with scofflaws which represent a tiny percentage of the whole.

Feng Shui instructs how to harness the mystical powers of nature. One aspect of Feng Shui that drives skeptics to distraction is that the same end can be achieved by different means. The same furniture arranged in different patterns can produce the same harmonious results.

In the same fashion, little used techniques by HOA boards are mediation, accommodation and compromise. The world is not black and white and neither is an HOA. The board actually has the latitude to make deals when it makes sense to do so. An example of this would be a resident (one of those scofflaws) that parks a junk car in his driveway which is in direct violation of the HOA's rules.

The board could do battle with this character and spend endless emotional and HOA capital to win the battle. But win, lose or draw, the guy is still a jerk and likely to engage the board on another battlefield on another day. You just can't win with some people. So, the board can just choose not to play and spend its time dealing with those that are more receptive. The board doesn't need to win every battle. Concession can be the greater part of honor.

With a situation like this, it's in the HOA's best interest not to fight. As the saying goes "Never wrestle with a pig. You both get dirty and the pig likes it." Let the record state: "The board informed the resident of the rule violation repeatedly, mediation was rejected and the board decided that compromise was in the best interest of the HOA."

So take the Feng Shui approach. Rather than putting up rule barriers that attract challenge, craft "harmonious living philosophies" that attract compliance. Most want to live in peace, so craft an environment where harmony can thrive. Then, simply deal with the occasional tough case. Even Feng Shui homes occasionally have to take the trash out, just not every day. Go you and do likewise. ☀

## Ask the HOA Expert

**Q** Our board president recently resigned and four board members remain. Our vice-president became our "acting" president until a new director is appointed and new officers ratified. Our former president only voted to break a tie. Our vice-president says he can vote on all motions, rather than only to break a tie vote. Is he correct?

**A** All board members, regardless of office held, are entitled to cast a vote. So the president is entitled to cast a vote but often doesn't unless to break a tie. However, when it comes to controversial votes, it is in the president's best interest to cast a vote, particularly when he/she is opposed to the motion.

**Q** Do you recommend cleaning gutters twice a year? Some board members think it's a waste of money.

**A** It depends. If there is tree coverage, absolutely, at least twice a year and more often where there are regular clogs. If there is no or little tree coverage, once a year might suffice. However, even when there is no leaf debris, composite roofing sheds rock granules which wash into the gutters and create a sludge that impedes rainwater from draining. This sludge needs to be removed every year so the gutters are running to maximum efficiency.

**Q** For years, our board refused to put money away for projects like roofs, fences and painting. Well, now the roofs need replacing, the paint is peeling and fences are falling down. Home values have been compromised and special assessments to pay for the projects are routinely shot down by the membership.

**A** The concept of planning for future projects is called a "reserve study". It is a tried and proven way of dealing with these predictable expenses and events. Moreover, a fairly funded reserve study shares these costs with all members along the, usually, 30 year time line rather than nailing the unfortunate ones at special assessment time. Special assessments are the product of poor or no planning since virtually all reserve events can be anticipated many years in advance.

The board has a fiduciary duty to run business in a reasonable way. It also has a duty to protect the interests of current and future

of the property and home values.

The board usually has the authority to set the budget and reserves at a level to take care of HOA business without approval from the members. If your board is required to get member approval, it could easily roadblock getting things done. But often, the board simply doesn't raise the issue because naysayers won't like it and the board doesn't want to get yelled at. However, naysayers are usually few and far between because most want to protect the value of their property and know it costs money to do it.

Take this message to the board: "You have fiduciary duty to reasonably protect and maintain common assets. Reserve planning and funding is an accepted and fair way to do it. Well?"

**Q** According to our governing documents "If a home owner desires to decorate the exterior in a color and finish other than that supplied by the builder at the time of construction, then the consent of 50% of the members of the association and all holders of first mortgages shall also be required prior to such change being effected."

We had an owner who wanted to paint their home a different color and the board told him to put together a written request and color samples for a member and lender vote as required. Instead, he wrote a petition and went door to door to gather signatures. One of the signatures belonged to the *board president*. Almost half of the members never saw the petition. He has started painting.

**A** I hope your board president has been removed from office for allowing and encouraging this violation to take place. HOA decisions should

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members. Any board that fails to plan for foreseeable events and expenses has failed in its duty.

Most governing documents obligate the board to budget for known (or knowable) expenses. Failure to plan for reserve events is usually indicative of a systemic problem like the operating budget being underfunded and poor maintenance. The results are plain to see: erosion

never be made by door to door petitions although petitions can certainly be used as the basis for holding a meeting. But the final decision should be made at a meeting where all owners are allowed to discuss the pros and cons and then make an informed decision.

By the wording of your governing documents, approval of 100% of the mortgagees is required in addition to 50% of the members. No mortgagee approval was obtained so that killed the request. But realistically, getting any of the mortgagees to respond to such a request is impossible since there is no mechanism for such decision making.

The person that wrote this provision into the governing documents was ignorant about how the homeowner association system is designed to work and may have tied the members' hands forever from making a paint color change.

However, the board should require the offending member to repaint according to the standard. He was told what the procedure was and circumvented it. If the board allows the offense to stand, it will be difficult to enforce any standard at all.

**Q** What is the correct procedure to select officer positions? Historically, my board meets immediately following the annual meeting, someone nominates a director to the position of president, someone else "seconds" the motion, followed by a show of hands to determine if a majority vote exists. How do we get a second or third nominee considered in this procedure? We always wind-up with the old president serving another one-year term.

**A** It's up to the directors to select the officers so the scenario you describe is normal. If you want things to change, someone (you?) needs to campaign with the stated goal of becoming president. That strategy needs to include getting other directors to support that goal *before* the selection meeting. 🗳️

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### **Standardize Appearance**

One of the important proactive policies a homeowner association board can enact involves acceptable appearance standards. These are particularly important in condos and other common wall communities where uniform appearance underscores market value.

Many current residents formerly lived in detached housing where they were free to express themselves with flowers, pink flamingos and lawn jockeys. Some folks feel the further need for personalized fences, trellises, decks, light fixtures, security doors, security bars, awnings and other structural modifications. The ways owners are driven to "customize" the common area are limitless. The board can never be prepared for some of the more creative ways. However, it helps to establish an appearance philosophy with guidelines. Here's a sample:

**Community Appearance Philosophy:** The HOA has responsibility to maintain the grounds and building exteriors. To accomplish that objective, guidelines have been established to standardize appearance to sustain home resale values plus maintenance efficiency and cost effectiveness. In the spirit of cooperation, we encourage all residents to follow these guidelines:

- Only Acme Brand Model 123 storm doors with bronze finish are

permitted.

- Only Acme Brand Model 567 patio roofs with bronze finish are permitted on upper decks.
- Common area landscape is to be altered, supplemented and maintained only by the landscape contractor.
- Light fixtures and address numbers are standardized by brand, color and type and must remain so.
- Only barbeques and suitable outdoor furniture are permitted on decks.
- To avoid the "prison look", window security bars are not permitted.
- Restrict window signage displayed to "For Sale" or "For Rent"
- For safety reasons, no plant pots should be set on upper deck rails
- All unit structural modifications must be approved by the board.

Most of the conflicts boards experience are largely avoidable by establishing clear, reasonable policies and communicating them regularly to the owners. Consider enacting appearance standards for your community. 🗳️

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### **Park Avenue**

With car ownership and land costs on the rise and street width and parking on the decline, where the two meet, battles erupt. Parking committees post 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 parking policy. In considering such a policy, the board should first review the governing documents for guidelines. One issue to consider is common area parking (not to be confused with city street parking). As a rule, all residents have a right to use undesignated common area parking. Assigning parking spaces to a particular owner would be illegal since it is common area. However, controlling the type of vehicles that are allowed to park in the common area is



within the board's authority.

To preserve parking availability, it's important to prohibit parking of stored, wrecked, inoperable and commercial vehicles. Restrictions can also apply to trailers, RVs, large trucks, boats and jet skis. As long as these vehicles can be garaged without displacing resident vehicles to common area parking, they can be permitted.

Restricting certain kind of commercial vehicles can get dicey if they are the primary mode of transportation for a resident, like a utility van or small truck. Exceptions might have to be made especially if your HOA is populated with blue collar workers.

Adequate guest parking is something that should be provided for in various strategic locations. They should be clearly marked so nearby residents don't commandeer them for their own. Of course, frequent guests should be instructed to park in the designated area or in the resident's driveway if available.

Fire Lanes are no car zones. You can aggressively tow without warning since violators obstruct emergency vehicles. Simply make sure the curbs are brightly painted and lettered with NO PARKING - TOW WITHOUT WARNING. Then, all that's needed is a phone call to the local towing service.

Steer clear of parking permits if at all possible. Tracking permits are labor intensive, expensive and bound to clash with guest and rental cars. Rather than saddling the HOA with a cumbersome administrative system, let affected residents inform the board or manager when there is a parking abuse. Most of the time, there are only a few scofflaws that need to be dealt with. A tow or two generally solves the problem.

Parking is not a battle easily won. It's more like a fighting guerilla warfare with snipers popping up here and there. Stand your ground and be prepared for the long haul.

For a sample Parking Policy see [www.Regensis.net](http://www.Regensis.net) Policy Samples. 🗺️

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### Know an ARC?

The Bible tells the story of Noah and his ark, a vessel that carried his family and a pair of all animals to safety when God caused a great flood to cover the earth. One of the most influential committees often found within a homeowner association is the ARC (Architectural Review Committee). This committee's mandate is to oversee modifications to member units/homes that are consistent with approved policy and to preserve or enhance property values.

The ARC is an administrative function. For it to function properly, the board should enact clearly written guidelines for the committee to follow rather than let it make it up as it goes. If the design guidelines are not present or complete, the first order of business is to enact a policy with as many specifics as possible so that the committee merely has to compare an ARC request to the policy. If the policy is complete, it will save both the ARC and members an enormous amount of time in sorting out what's what. A well written Architectural Design Policy leaves little to chance and committee discretion.

The Architectural Design Policy should be easily accessible to all members, ideally, on the HOA's website. Regular reminders of the policy should be noted in newsletters with something like "The HOA has appearance and design standards which **must** be approved by the Architectural Review Committee. Direct all approval requests to (fill in the blank)".

It is common for governing documents to reference architectural design or restrictions but the criteria is usually far from complete or can get outdated. The board has the authority to expand the criteria as long as it's in line with the governing documents. If not in line,

the governing documents must be amended. It's always a good policy to circulate any new design policy with the members for review.

There may be design changes that are needed in order due to the passage of time. For example, cedar shake roofs may have been dictated as the original standard. However, cedar shake roofs are very expensive, difficult and costly to maintain, have a short useful life and a much higher fire risk. Alternatives like asphalt composition roofing that mimic the shake look make sense, reduce cost and maintenance plus increase fire safety. There are other design changes that may make sense like this one.

Another reason for design change is to achieve contemporary styling. Paint color, in particular, can make a tremendous difference in curb appeal. While that chocolate brown looked groovy in the 70s, it really drags buyer appeal down now. It is very important not to lock the HOA into a color palette that is detrimental to resale value. Color palettes should be reviewed at least every five years to make sure it is keeping pace with buyer taste.

Fences have also undergone improvement in both material and design. That privacy wall sided to match the building should be replaced with a contemporary design that achieves privacy with cheaper and easier to maintain materials.

One of the most significant design values is landscaping. Developers often install landscaping that looks great during the sale phase but over years overgrows and becomes unsuitable to a mature landscape look. There are new plant and bush species available that improve appearance while reducing maintenance and water requirements. The design requirements should give specific guidance for practical, aesthetic and integrated results, rather than each homeowner installing a hodge podge of plantings. In common wall communities like condominiums, resident plantings should be restricted to patios, decks and balconies. Allowing common area planting makes it very difficult for the

landscape contractor to maintain a consistent look and entices some residents to commandeer an ever expanding amount of common ground.

While the ARC has a fair amount of power to review and approve requests, the board has the ultimate responsibility for decisions. There should always be an appeal process that provides for board review. Appeal can be simplified if the board also acts as the ARC since the issues are pretty much already understood by all parties. The appellant is simply being given one more chance to convince the board of why that lime green paint really will dress up the neighborhood.

One important ARC philosophy is to promote good design rather than block creativity. Pay close attention to this one. The attitude of the ARC should never be: "NO...now what was your question?". Responses should be considerate and helpful. Remember, members often are members emotionally invested and passionate about their ARC requests. It's extremely important to guide the process carefully and not alienate a neighbor. Compromise if possible. If the request is just too far off base, an expression of empathy softens the blow. Or, if the request has some merit in the overall design policy, suggest trying to get it approved at the next Annual Meeting as a new option. That leaves the door open to a "maybe" if a majority of the members agree.

Keeping the HOA design policy afloat takes skill and attention. Be flexible and recognize that tastes do change. The wise ARC keeps a finger on the pulse of design. 🌱

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## **Paradigm Shift**

Homeowner associations across the nation have discovered the advantages of planning ahead for major repairs by following a well executed Reserve

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Study. A Reserve Study identifies the building and grounds components that the HOA is responsible to repair and replace that have useful lives of, typically, up to 30 years. These cyclical repair costs are often enormous and not included in the annual Operating Budget. So, if funding is not accumulated in advance over a period of years, you guessed it, Special Assessment Time!

A properly funded Reserve Study is fair to all members along the 30 year time line. By dividing up the costs into 360 monthly fees (the case with condominiums and other common wall communities), each member pays only the part of the 360 months applicable to their time in ownership. If all members are paying monthly, no member will get stuck paying for someone that didn't. A special assessment means some just got nailed because those that bought and sold skated on paying their share of the costs.

But your HOA is different, right? Even if these costs have been handled by special assessments in the past, your board won't continue this clearly unfair method...right? Sadly, many boards keep trudging the same path because "that's the way it's always been done". Progressive states have realized that special assessment funding is irresponsible and have enacted reserve funding requirements for their HOAs. In those states that haven't, it's incumbent on the board to plan for these events without being told to. It is simply the right thing to do and to do otherwise is irresponsible.

Adopting a fair and adequate reserve funding philosophy is what the business gurus call a "paradigm shift". There is often resistance from some HOA members who view reserve funding as an added cost. These folks like to live on the edge and often have more month left over than money. While individuals have the right to live on the edge withfor personal finances, this does not work in a homeowner association where the finances are inextricably linked. Responsible reserve funding recognizes this reality and charts a course where all

participants pay their share.

While a Reserve Study charts the course, it doesn't establish the policy. A funding plan without a policy is like a ship without a rudder. It may sail straight for a while but then change course because a new captain is at the helm. A Reserve Study & Funding Policy holds future boards to the original course. It identifies what will be included in the Reserve Study, how it be funded and restrains a future board from deciding not to follow it. Since boards do change, having a clear policy is critical. Adopting one will help stop the boom and bust cycle of one board putting money away and the next one spending it.

If your homeowner association has not had a professional Reserve Study performed, do yourself a favor and do it. Having large numbers of units/homes is not the determining factor whether to do it or not. Actually, the smaller the HOA, the more critical a Reserve Study is because the cost per member goes up. So, get it done and adopt a Reserve Study & Funding Policy so this paradigm shift shifts into high gear. 🌱

## **Sunshine Meetings**

There is a principle that no HOA board should lose sight of: Members have a right to be kept informed of board actions. To that end, board actions should be formalized at meetings open to the members where issues are cussed and discussed. At those meetings, votes are taken, majority rules and issues are dealt with.

However, some boards don't seem comfortable with the principle of open meetings. Objections range from "No one shows up anyway" to "They interrupt the process" to "It's none of their business!". Regardless of the objection, the fact remains that the board was elected by the members in a democratic process. The board wasn't given a Emperor's Scepter to wield as it sees fit. So, board meetings being open to members is not optional. There are, however, a few meetings which may be closed to members under very special circumstances. These meetings are called "work sessions" and

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“executive sessions”.

Work sessions are intended for information gathering and general discussion *but not decision making*. Formal decisions concerning information gathered at work sessions should only be made at open board meetings and documented in the minutes for all members to see. This is especially true about rules and budget issues. While the outcome may be a foregone conclusion based on work session discussions, the board should never move forward on the basis of work session discussions alone. Work sessions should address a specific topic, not a broad spectrum of issues and be few in number. They are never a substitute for board meetings.

Executive sessions are meetings reserved for highly sensitive issues that should not be aired in public. These include discussions of litigation, collections on members, employee disciplinary matters and contract negotiations. Like the work session, an executive session should have a very focused agenda and be infrequent. Decisions can be made in executive sessions but should be referenced in the minutes of a formal board meeting.

These two exceptions notwithstanding, remaining meetings of the board should all be wide open. Another good reason to keep them open is so potential board members can be coaxed to sit in on meetings to see what it's all about. Taking the mystery out of the job will encourage more volunteers.

If your board has been operating in the dark, raise the blinds, open the door and let the sun shine in. It's a healthy move to help keep the directors accountable to the folks that elected them. Shine on! 🌞

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## The Cracked Pot

An elderly woman had two large water pots, each hung on the end of a pole, which she carried across her neck. One of the pots had a crack in it while the other pot was perfect and always delivered a full portion of water. At the end of the long walk from the stream to the house, the cracked pot arrived only half full.

For years, this went on daily with the woman bringing home only one and a half pots of water. The perfect pot was proud of its accomplishments. The poor cracked pot was ashamed of its own imperfection and miserable that it could only do half of what it had been made to do.

After what the cracked pot viewed to be bitter failure, it spoke to the woman: “I am ashamed of myself because this crack in my side causes water to leak out all the way to your house.”

The old woman smiled, “Did you notice that there are flowers on your side of the path, but not on the other pot's side? I have always known about your flaw so I planted flower seeds on your side of the path, and every day while we walk back, you water them. Because of this, I have been able to pick these beautiful flowers to decorate the table. Without you being just the way you are, there would not be this beauty to grace the house.”

Like the cracked pot, we all have flaws. But it's the cracks and flaws that make our lives together so very interesting and rewarding. 🌞

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## Elementary Watson

Sherlock Holmes and Dr. Watson went on a camping trip. After a good meal and a bottle of wine, they lay down for the night and went to sleep.

Some hours later, Holmes awoke and nudged his faithful friend. "Watson, look up at the sky and tell me what you see."

Watson replied, "I see millions and millions of stars."

"What does that tell you?" Holmes asked.

Watson pondered for a minute. "Astronomically, it tells me that there are millions of galaxies and potentially billions of planets. Astrologically, I observe that Saturn is in Leo. Horologically, I deduce that the time is approximately a quarter past three. Theologically, I can see that God is all powerful and that we are small and insignificant. Meteorologically, I suspect that we will have a beautiful day tomorrow. "What does it tell you?"

Holmes was silent for a minute, then spoke. "My dear Watson, somebody has stolen our tent!" 🌞

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