



The Regenesi Report



National

Innovative Homeowner Association Management Strategies

Priceless

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

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

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

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



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Business Judgment Rule

A homeowner association board of directors can often rely on the Business Judgment Rule when faced with a homeowners' lawsuit over a particularly unpopular board decision. The Business Judgment Rule limits judicial scrutiny of actions of HOA boards when they act in good faith, exercise honest judgment, act with the best interests of the HOA and in an informed prudent manner.

The Business Judgment Rule serves to protect the types of decisions that boards must necessarily make in the course of fulfilling their duties. For example, in the case of *Levandusky v. One Fifth Avenue Apartment Corp.*, the highest New York court refused to overturn a board's refusal to permit internal architectural building modifications requested by an owner to relocate heating pipes. An HOA rule prohibited the proposed plan, and the board decided not to approve it. Before denying the proposed modification, however, the directors consulted a qualified engineer who confirmed that while the relocation was feasible but that change in the plumbing presented risks that should be avoided if possible. Although the board could have approved the modification, the court concluded that the board's decision fell within its discretionary power.

Another case from California, *Lamden v. La Jolla Shores Condominium Association*, addressed a board's decision to use spot treatment of termites rather than a global "tenting" approach that the member proposed. The court determined that deference to the board was appropriate where the board's exercise of discretion in selecting repair methodologies was "clearly" within the scope of its authority and the directors acted in good faith, upon reasonable investigation, and with regard to the best interest of the community.

The Colorado Court of Appeals has also held that the business judgment rule can be used to defend against a claim for failing to enforce

covenants. *Colorado Homes, Ltd. v. Loerch-Wilson*, the court noted that the substance of the business judgment rule requires a board to make decisions in good faith and to not be arbitrary.

What steps can a board take to comply with Business Judgment Rule parameters?

1. Comply with the governing documents.
2. Use resources like management, attorneys, engineers or other experts before making decisions.
3. Consider alternative courses of action. The board has discretion to make decisions when in the best interest of the HOA.
4. Avoid conflicts of interest.
5. Consider how board conduct will be viewed by objective observers.
6. Properly document decisions and the basis for those decisions. Put it in writing for the record.
7. Adhere to established process requirements. For example, if a response must be made to an architectural application within 30 days, that time deadline should be met.

The Business Judgment Rule has a long tradition of protecting volunteer directors who make informed decisions that someone may not agree with. The operative word is "informed". Do your research and get good advice before making judgments on controversial issues.

From Orten & Hindman

Ask the HOA Expert

Q Our Architectural Review Committee (ARC) conducts reviews of homeowner requests using email with no face-to-face meetings. What about the open meeting concept?

A Committees are not under the same constraints as the board to meet in open meetings accessible to members (unless the governing documents or state statute dictate otherwise). Email is okay for the ARC when the answer is “approved” but when there is a denial, the petitioner has the right of appeal in a face-to-face meeting with the ARC and, ultimately, with the board if necessary. The ARC should report and summarize its actions to the board at regularly scheduled meetings.

Q A board member is proposing that the HOA donate to a children's charity amounting to \$5 per year per member. Is this appropriate?

A Charities are a wonderful thing but it's not appropriate to donate money out of the HOA budget. A great alternative has been developed by McNary Estates Homeowners in Oregon. Each year, McNary hosts the Mother of All garage sales. Each garage sale host pays a small fee for advertising. Each visitor is required to bring a can of food for the local Food Bank. Result: McNary donates several *tons* of food each year, the event attracts volunteers from all over the city, the news media gives it high profile coverage, the members make money and the HOA members have an enduring source of pride. Another benefit is that McNary homes for sale get much more attention during the event. All do well by doing good.

Q We have been having board discussions at meetings about our HOA pool safety. We have a four foot tall fence with key locked gates. We have rules and consequences if they are not followed. Should the pool be supervised by a lifeguard or pool monitor?

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A Unless your HOA is wealthy enough to provide a life guard during pool hours, pool operations are typically “use at your own risk”. That said, the homeowner association is responsible to keep the fence, gates and locks in good condition.

When the pool season is over, a safety type pool cover should be installed. All safety covers must conform to the Standard Performance Specification set by the American Society for Testing and Materials (ASTM) be able to support a certain amount of weight, not permit gaps that a child or pet could squeeze through, and remove standing water. Loop Loc brand covers, for example, are built from extremely strong material and securely anchored to the pool deck. This design prevents children and pets from inadvertently falling in.

Prohibiting after dark swimming makes sense since it will likely disturb the neighbors and often attracts party goers that may be intoxicated. Minors 14 years old and younger and all guests should be accompanied by an adult resident.

Finally, ask your HOA insurance agent about other suggestions to reduce pool risk. They are usually prepared with a laundry list.

Q A board member recently hosted a barbeque although we have banned them due to fire safety considerations. He is flaunting the rules. What should we do?

A Speak to him in private and review the rule and reason for it. Usually that will do the trick. If he continues to violate the rule, it's appropriate to apply whatever penalty you have for such violations.

Another thought. Since barbeques are American as apple pie, if you have a suitable location in the common area, why not designate it for this purpose? The HOA could add the furniture, concrete pad and even the grill.

Q Our board has been enacting rules without consulting the members. Some are way off base or totally unnecessary. What can be done about this?

A A basic rule about HOA rules is that they should be few and necessary. Unfortunately, some boards feel when it comes to rules, the more the merrier.

Whenever there is evidence that a rule is needed, polling the members should be the very first step. There are few rules that are so urgent that allowing time for member review and comment couldn't allow a better perspective. The public relation aspect alone justifies the effort.

Some boards make rules to control a few offenders who will never be controlled. Scofflaws eat rules for breakfast so making new ones only feed the beast. Whatever rules that

are enacted need to have an ongoing and widespread need.

Q We have had a very hard time getting a quorum at our annual meetings. Regardless, elections are held and directors elected. It seems to me that the elections are illegal if there isn't a legal quorum.

A The reason that quorums are required is so that a few can't control the many without their consent. If the quorum concept is abandoned, the current board can crown itself emperor and wield the scepter of power with impunity.

Kidding aside (I was kidding!), gaining legal quorums is often difficult for annual meetings. That is why the concept of "proxy" is a necessary component of HOA annual meetings. A proxy is a person appointed by another person to act on their behalf. Virtually every HOA is allowed to use them for annual meetings so that quorum and voting majorities can be attained.

Proxy forms should be distributed along with the official meeting notice with instructions to complete and return them at least a week before the meeting. The proxy giver should have the option to appoint "a director of the board who is not running for election" if no one else is able to attend. The proxy can also be designated "for quorum purposes only".

A week before the meeting, the proxy returns should be tallied. If there are not enough to meet the quorum, more can be collected door to door until a quorum is achieved. That way, on annual meeting night, there will always be a legal meeting. All proxy givers that attend retrieve their proxy and vote as usual. Either way, the meeting stays legal. 🗳️

Trade HOA Stress for Success

Too often serving on a homeowner association (HOA) board feels like a I-got-stuck-with-it kind of position. But a few simple changes can turn HOA drudgery into an enjoyable and rewarding experience. The book **Trade HOA Stress for Success** explores proven methods to transform your board from crisis-driven, over-worked and isolated into a focused team with clear goals and direction. Learn to communicate the board's success to your members and create the kind of care-free living an HOA promises. Co-written by The HOA Expert Richard Thompson, Doug McLain and Erik Weeks, **Trade HOA Stress for Success** provides a shortcut to years of proven HOA management experience without the usual learn-from-experience mistakes.

Homeowner association management is unique because it involves neighbors managing neighbors. This relationship creates a dynamic not found in other forms of governance. To be successful at it requires a different approach than traditional property management.

What is so special about this book? It provides proven solutions in concise, layman terms to highly complex issues. It also reveals phenomena unique to HOAs, like:

- Meeting seating. Did you know that the seating arrangement at a board meeting has a profound impact on the meeting outcome? Learn how to make your meetings smashing success stories.
- How do you find a qualified manager? Most states do not require professional licensing for HOA managers. Some HOA managers seek out professional education and credentialing while others do not. This variable makes it critical for the board to identify those managers who are qualified to do the work (Hint: many are not). A sample Request for Proposal is available to help you with this process.
- Two reasons for hiring professional management: Rules and Collections.

While it's true that managers don't work for free, no neighbor should have to enforce rules or collections on another neighbor. Managers provide the buffer between neighbors and are good at defusing neighbor on neighbor hostility.

- Kinder, gentler rules. While rules will be necessary as long as there are humans, there is a harmonizing rules philosophy that will promote compliance and reduce the number of rules in an HOA.
- Secret to recruiting volunteers. Since HOAs are run by volunteers, finding the brightest and best is easier than you think *if* you make the job attractive enough. Successful people want to be part of a successful board.
- Long range planning. It never ceases to amaze how many HOA boards define "long range planning" as "tomorrow". These boards, of course, are continually putting out fires instead of harvesting the fruits of good planning. Learn how to plan, schedule, fund and invest to maximize value for the members.
- Improve efficiency by trimming costs. Just because you've "always done it that way" doesn't mean you can't improve and cut costs at the same time. This is particularly true about communications.
- Proper accounting. Learn the value of accrual accounting, fraud (embezzlement) prevention and proper tax filing.

There are many more how-to secrets revealed in **Trade HOA Stress for Success**. If you serve on an HOA board or manage one, this book's for you. It's an easy read available in both hardcopy and Kindle editions at www.Amazon.com. 📖

Insurance Resolution

An insurance resolution is a document that clarifies the insurance requirements and guidelines for a homeowner association (HOA) when the governing documents are not clear. The resolution could outline coverage and deductible responsibilities along

with claim notification requirements and expense allocations. An insurance resolution doesn't always require a Board vote to implement the provisions. However, it is advised to have an attorney specializing in HOA law to draft the document and to make sure it does not contradict the governing documents. And have the HOA's insurance agent review the resolution for comments and suggestions..


Clarifying the policy deductible is a crucial part to the resolution. It should spell out who is responsible for the deductible. Within the deductible section, the resolution includes direction for claims involving one or more units, along with negligent and non-negligent situations. If the governing documents don't list responsible parties, the HOA is typically responsible for the deductible as a common expense. HOA insurance policies often use per unit deductibles to help offset the high dollar amount of claims. With no resolution in place, a per unit deductible could be problematic and create confusion concerning deductible responsibility.

Insurance coverages like flood and earthquake should be defined within the resolution, even if your HOA doesn't have the coverage. Coverage may be included at a later time and the HOA could avoid extra expense of revising the resolution. An earthquake deductible should be assessed to all owners and not specifically to damaged units. The insurance resolution can clearly define the deductibles of catastrophic coverage.

Not all claim expenses are covered in a claim. Some insurance companies do not pay claim expenses if a manager handles the claim since claims management is often outside a manager's duties. A manager's expense managing an insurance claim, however, will be covered if the duty is described in the manager's contract as an extra billable service.

Insurance Resolutions should be reviewed every 7-10 years or during major policy changes. If you do not have this document in place, reach out

to your insurance agent and attorney for help.

By American Benefits Insurance 

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Meeting Expectations

Scenario One. The meeting starts with a "homeowner forum". A member is recognized and complains about something that has nothing to do with the board's function. The board tries to answer but the answer isn't accepted. Other owners chime in. Then another homeowner, another question and another group discussion. Some get to let off steam and others are polarized.

Then the business session starts. Many board members open their packets for the first time even though they were distributed a week before the meeting. Since many aren't familiar with the material, questions ensue and time is wasted. The manager can answer some but not all of the questions. Three hours pass, little is accomplished and everyone goes home drained.

Scenario Two. The board has reviewed the meeting packet before the meeting. The meeting starts and guests are informed that the board will be dealing with the business portion of the meeting first followed by a "member comment period". A motion is made to approve the Consent Agenda (noncontroversial items like approval of minutes, informational reports, correspondence requiring no action, etc.) and receives a second. One board member has a concern on one item. The motion is amended to approve the rest of the Consent Agenda without comment. The vote is called and approved.

Moving on, there are three action items. A motion is made and seconded in turn for each item. A discussion takes place which usually lasts 5-15 minutes and a vote called. The total time to cover the business portion is typically one to two

hours.

The "member comment period" begins and each interested homeowner is given five minutes to bring matters of a policy nature to the board. This is not an opportunity for a "bull session". It's up to the chair to keep comments focused and relevant. If, for example, the comment involves a maintenance request, inform the member who should be called for that (Maintenance Committee, manager, etc.). If the member states "The board should do so and so" and so and so involves research, ask the member if he/she would like to present a researched proposal for the board's consideration. Just because a member has a bright idea doesn't mean the board needs to take ownership of it. This is a wonderful opportunity to get other members involved and to groom future board or committee members.

If your meetings run something like Scenario Two, great. If your meetings sound like Scenario One, you need to make changes. There are five elements for an effective and efficient meeting:

1. Come Prepared. Each board member needs to come to the meeting prepared. Without preparation, time is wasted and the likelihood for uninformed decisions is high. To that end, board packets need to have an agenda and all supporting material.

2. Chair Takes Charge. The chair needs to keep the agenda moving and eliminate unfocused discussion. For example, when a motion is debated, the chair should alternate between pro and con discussion. When there is no more "pro" or no more "con", time to take a vote.

3. Make Real Decisions. The board needs to make decisions, not simply discuss things. So, all agenda action items need to come with a recommendation like "Approve Roofing Contract" instead of "Discuss Roofing Contract".

4. Make Informed Decisions. Avoid making decisions on a new motion that is not either an emergency or a no-brainer. Any motion that takes thought

or research should be tabled to a future meeting to allow time for that to take place.

5. Have a Meeting Process. The meeting should use an orderly process like a simplified version of Robert's Rules of Order. A process for introducing an agenda item with a motion and a second makes sure at least two board members are in agreement on the decision to be reached. If the motion does not get a second, move on.

By establishing expectations that produce effective meetings, several things will happen. Business will get done and it will be easier to recruit volunteers who want to be part of a successful team. This is good news for all. 🌱

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Start to Stop

Consider your circumstances. Start small. Have you taken full advantage of the opportunities offered to you? Are you working hard on your career, or even your job, or are you letting bitterness and resentment hold you back and drag you down? Have you made peace with your brother? Are you treating your spouse and your children with dignity and respect? Do you have habits that are destroying your health and well-being? Are you truly shouldering your responsibilities? Have you said what you need to say to your friends and family members? Are there things that you could do, that you know you could do, that would make things around you better?

Have you cleaned up your life?

If the answer is no, here's something to try: *Start to stop doing what you know to be wrong.* Start stopping today. Don't waste time questioning how you know that what you're doing is wrong if you're certain that it is. Inopportune

questioning can confuse, without enlightening, as well as deflecting you from action. You can know that something is wrong or right without knowing why. Your entire Being can tell you something that you can neither explain nor articulate. Every person is too complex to know themselves completely, and we all contain wisdom that we cannot explain.

By Jordan B. Peterson 🌱

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13 Senior Rules

1 Talk to yourself. There are times you need expert advice.

2 "In Style" are the clothes that still fit.

3 You don't need anger management. You need people to stop p**sing you off.

4 Your people skills are just fine. It's your tolerance for idiots that needs work.

5 The biggest lie you tell yourself is, "I don't need to write that down. I'll remember it."

6 "On time" is when you get there.

7 Even duct tape can't fix stupid - but it sure does muffle the sound.

8 It would be wonderful if you could put ourselves in the dryer for ten minutes, then come out wrinkle-free and three sizes smaller.

9 Lately, you've noticed people your age are much older than you.

10 Growing old should have taken longer.

11 Aging has slowed you down, but it hasn't shut you up.

12 You still haven't learned to act your age, and hope you never will.

13 "One for the road" means using the bathroom before you leave the house. 🌱

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The Brass Rat

A tourist wanders into an antique shop and picking through the items, he discovers a life-sized brass rat. The sculpture is so unique that he asks the shop owner the cost. "\$12 for the rat, sir," says the shop owner, "and a \$1000 for the story behind it." "You can keep the story," he replies, "but I'll take the rat."

The deal done, the tourist leaves the store with the brass rat. As he crosses the street, two rats emerge from a sewer drain and fall in step behind him. Nervously, he walks faster, but every time he passes a sewer drain, more rats come out and follow him. Two blocks later, at least a hundred rats are at his heels.

He soon breaks into a run as multitudes of rats swarm from sewers, basements, vacant lots, and abandoned cars. Rats by the thousands are at his heels! He sees a bridge and runs for it with the rats in hot pursuit! Leaping onto a light post, he hurls the brass rat into the river and watches in horror as the seething tide of rats surges into the water below.

Shaken, he makes his way back to the antique shop. "Ah, so you've come back for the rest of the story," says the owner. "No," says the tourist, "I was wondering if you have any brass lawyers!" 🌱