



# The Regenes Report



**National Edition**

**Innovative Homeowner Association Management Strategies**

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

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

**The Regenes 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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## HOA Design Standards

HOA boards struggle with the issue of architectural standards and their enforcement. While virtually all boards are empowered to control the look and feel of the buildings and grounds, the governing documents are often silent as to what that look should be. Staying with the status quo is easy, but getting locked into a dated look erodes market value of the homes or units. Changing with the times helps sustain the highest market values.

The board's design oversight power must be exercised with prudence and restraint because the HOA is composed of different personalities which need personal expression. Standards the board enforces should have a degree of flexibility whenever possible.

Design restrictions should be based on maintaining structural integrity and curb appeal. So, if a member proposes an exterior change that does no harm to the structure, can't be seen from the street and the immediate neighbors don't mind, it should pass muster. Avoid the hardline approach because it defies logic and makes the board appear dictatorial. In this case, one size does not need to fit all.

For common architectural requests like storm/screen/security doors and privacy fences, standards should be approved that maintain high quality, attractive appearance and consistency. The standards should be of average cost so that the average member can afford them. Besides brand and model, a color standard is very important.

When the HOA controls exterior painting, color options should be reviewed every paint cycle since consumer tastes change. For this, use the free color consultant services offered by virtually every paint supplier. Not only can they provide a number of contemporary trim and body color options, they provide a free (a very good price) contractor quality inspection service if the HOA uses their paint to ensure proper application.

Roofing styles, quality and colors change as well. If your shingles are coming due for replacement, take advantage of product alternatives to increase fire safety, ease maintenance and reduce cost. For applications

like siding, fence and decks, there are a variety of synthetic or recycled material options that can reduce maintenance.

When it comes to establishing architectural standards, it's best to let the members choose by poll or vote. This is a great way of including them in the process. The results needn't be unanimous but there should be a clear majority that favor a particular standard.

For older HOAs trying to establish standards after the "horse is out of the barn", the first order of business is to compile information about existing changes and violations by address. Use a camera and notepad to make a record of each modification. Write a description of each item, its condition, its location and overall attractiveness on a scale from 1 (Hideous) to 5 (Stunning). That exercise will give the board the scope of changes and examples of what works and what doesn't. Sometimes, the best standards are right there just waiting to be recognized.

Defining architectural standards is an important task. Once done, the look, feel and value of the property will be significantly enhanced. The board should identify those things that members are most likely to want some customization on and figure out how they can have them without causing harm to home values. Remember:

HOA standards make sense  
Aside from the dollars and cents  
Awnings and fences  
Should not give offenses  
But have a judicious pretense ☹️

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## Ask the HOA Expert

**Q** Since volunteers are hard to find, we've been considering paying our directors. Is that okay?

**A** Most governing documents prohibit compensating directors. But even if yours are silent, it's best not to walk that road. There is a clear conflict of interest and it could lead to lifetime appointments.

**Q** Our board allows members to designate the manager as their proxy at Annual Meetings. While he's a good guy, this doesn't seem right to me.

**A** Having an employee or contractor as proxy would be a huge conflict of interest since he could easily vote in friends who write his checks. This is a bad idea from start to finish.

**Q** Our HOA is 20 years old and our landscaping is looking pretty tired. We have a Grounds Committee but it's not making much progress in beautifying the grounds. Thoughts?

**A** What you need is a master landscape plan provided by a landscape design professional that will take into account your irrigation system, trees, use of native species, maintenance costs, curb appeal and, of course, cost of installation. This plan can be competitively bid by landscape construction contractors since it will show all the details of plant and bush species and placement.

Landscaping is a big part of home value and this issue should not be neglected. Investing in landscape renewal will pay dividends in reduced maintenance costs, water bills, increased curb appeal and member pride. Pay a little and reap big rewards.

**Q** Our professional manager charges a 5% oversight fee for renovation and insurance repair projects that the homeowner association enters into. Is this common?

**A** The manager should not be expected to work for nothing. Extra work justifies extra pay. It's common for an HOA manager to charge an hourly rate for project oversight. However, it's important to have someone that is knowledgeable about the particular work being done.

Oversight of straight forward projects like painting could be done by the manager but complex structural or roof work, for example, demand a higher degree of expertise. If the project is lengthy and multifaceted, it makes sense to hire a construction manager to schedule the phases, coordinate material delivery, perform progress inspections, process change orders and approve payments. The cost is more than worth the expense to ensure competence, good work and timely completion.

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**Q** What should a homeowner association expect to pay for a professional management and what services does that include?

**A** The cost of professional management is based on the size and complexity of the property and the scope of work. For example, a 100 unit condominium association with pool and clubhouse is

more labor intensive than one without pool and clubhouse. A 100 unit condominium is usually more labor intensive than a 30 unit complex. For common wall communities, average fees range from \$15 to \$30 per door per month. To solicit quotes from companies that specialize in HOA management, you need to develop a Request for Proposal (RFP) which outlines what level of service you want. A form for this purpose is available to Gold Subscribers of [www.Regenesis.net](http://www.Regenesis.net) in the Manager Issues section.

**Q** Our property manager told the board that no more than two can meet at a given time. If three of us get together, we have to post the meeting because we have a quorum.

**A** If the board is deciding HOA business outside a formal board meeting (in the parking lot, by email, etc.) it qualifies as a board meeting and should be noticed to the homeowners. Emergency meetings sometimes need to be called but lack of planning does qualify as an emergency. Hold meetings in a visitor friendly location to encourage participation. Open meetings and frequent communication promote trust. 🗳️

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## Fear Change?

There is an expression, "If you ever truly want to understand something, just try to change it." When a new board takes charge pumped full of ideas and enthusiasm, it's often met with resistance. Do these sound familiar?

- Pay higher fees? Are you nuts? We should *lower* them!
- Take down my 40 foot flagpole? I'm entitled to Free Speech!
- What do you mean "change the paint color"? If it was good enough in 1985, it's good enough today!
- Tow my wrecked '68 Ford Pinto out of the Fire Lane will you? I'm calling

my lawyer!  
• I ain't payin' my dues until I get my bush trimmed!

Really makes you thankful you stepped forward for the job, doesn't it? Your good ideas are criticized, downsized and capsized. You discover that "Rules are fine but they don't apply to me!" People you thought were clear thinking and supportive turn out to be muddled and self serving. Welcome to Club Dread.

At the core of the backlash is a fundamental human resistance to change even when the change is for the better. Lives are made of pieces and principles woven into a fabric familiar to the user. Changing any part of the weave disturbs the whole cloth. As a board seeking better results for the HOA, understanding the "we fear change" mentality helps get goals accomplished. Here's how.

**Slow Down.** A board with an urgent agenda runs roughshod over member opinion. It's extremely important when proposing change to allow the members to ponder and speak. When given the chance, most won't take advantage of it. But not given the chance brings out the rebel in some. So, take your time and poll the members when something new is proposed. There are few issues that must be decided immediately.

**Gain Trust.** When proposing changes, trust trumps facts. In other words, too many studies and facts actually complicate the process by raising questions. A statement like "The board has thoroughly investigated this issue and consulted with knowledgeable experts. The findings indicate there is a strong need to make this change to properly care for our assets" actually reassures most members.

**Negotiate.** As an elected director, you are, in essence, a politician. Successful politicians understand the value of give and take while hardliners go down with the ship. Negotiation and compromise is a great trust gainer because it shows respect for others. Often giving in to little things accomplishes the bigger vision thing.

**Sell the Sizzle.** Every worthy change has what salesmen call "sizzle". Like

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trust, sizzle can be sized for consumption. For example, "While the board is asking for a special assessment of \$10,000 each toward this renovation project, real estate agents advise that the units will increase \$25,000 in value. So this is a *great* investment and will substantially increase the livability and pride of ownership. Let's not forget that this same work for a single family homeowner would cost *three times as much*. We're getting a heckuva deal here!"

**Calm the Waters.** Having a long range vision is critical to lasting change. Put your firefighter suits away and map out a plan that includes a reserve study, funding to pay for reserve projects plus an annual schedule. Having a plan speaks volumes to members who have entrusted the board with their single largest asset. A real plan says, "This ship is on course and the board has a firm hand on the wheel."

**Lighten Up.** While the board will sometimes deal with serious issues, keeping things in perspective will help see it through. Remember, few of these issues are life or death and the world won't stop turning if you fail. Keeping a sense of humor will actually encourage cooperation from nay sayers who realize they are taking things too seriously. Keep smiling.

Selling change to an HOA stuck in a rut is a good thing but it takes a thoughtful approach. Deal with it thoughtfully and you will accomplish lasting change. As the note on the restaurant tip jar says, "Fear change? Leave it here." 🍷

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## Who Pays for Windows?

Unless your condominium association is a front for the NSA (National

Security Agency), it has exterior windows. A window is a hole in the wall and everything that fills that hole. In an ideal world, windows function, live long and useful lives, let in light and other good things, keep out bad things, are maintained, repaired, and replaced to professional standards by the association. The owner who benefits from them pays the costs of consumption by adequately funding reserves.

In some states statutes, exterior windows lie outside the definition of unit boundaries. Exterior windows are thus part of the common elements. Because they are part of the common elements a homeowner association has a right to replace those that are either defective or at the end of their useful life.

Statutory defaults may be modified by your declaration. If your declaration permits individual owners to control the repair and replacement of exterior windows, consult with an attorney about changing your declaration.

There are many good reasons why a homeowner association should maintain control over window repair and replacement. The association is more likely to abide by code requirements that ensure the installation of energy efficient windows and proper installation. When owners are allowed to replace their own windows, some owners will skimp and use contractors who fail to use quality materials and skilled workers. Poor quality work can lead to moisture in the building with predictably bad results. When the vast majority of windows need replacement toward the end of their useful life, it is almost certainly more cost effective for the association to obtain one bid than for individual owners to obtain their own bids. If one owner fails to pay for work performed, the stiffed contractor could lien all of the units.

Replacing broken glass, flashing, caulking or window stripping can cause serious damage if not performed by a skilled professional. Owner maintenance responsibilities should be limited to inspecting, cleaning and finishing interior framing. Limiting owner maintenance responsibilities

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reduces the risk that an unskilled owner will cause damage to other units, property and the integrity of the building.

What your declaration says about maintenance, repair, replacement, unit boundaries, common expense liability allocation, viable construction defect claims and insurance should be taken into consideration when determining how much each owner pays. But determining how much each owner pays for window repair and replacement doesn't need to be complicated. In almost every case an association can avoid a donnybrook over who pays for what by adopting the following:

### **Windows Code of Conduct**

1. The Association controls all aspects of repair and replacement of exterior windows.

2. Owners must ask for permission from the Association before repairing or replacing windows, before installing new windows, skylights, solar tubes, air holes, or periscopes, or before painting or finishing window exteriors.

3. Only the Association may penetrate a unit's perimeter walls, floor, or ceiling.

4. The Association pays for installation, repair, and replacement of windows and recovers those costs from some or all of the owners.

a. If window installation, repair, or replacement is an individual unit owner expense, the Association assesses the cost to the benefitted owner or owners in a fair and equitable manner.

b. If window installation, repair, or replacement is a common expense, then the Association assesses all owners for the cost in accordance with the declaration's common expense liability schedule.

5. Windows maintenance means inspection, cleaning, and interior finishing. Each owner at least annually inspects the windows for fogging, water damage on the window wall, air leaks or missing caulking or other damage and reports any possible

damage immediately to the Association.

6. If a window is installed incorrectly, the Association asks the installer to cure the installation at the installer's expense.

7. If a window is damaged as a result of an event covered by insurance, the Association files an insurance claim when doing so is reasonable.

8. The Association hires a suitably qualified professional such as an architect, reserve specialist or building envelope consultant to estimate remaining useful life (windows don't last forever) and an appropriate reserve funding model.

9. The Association follows correct budgeting procedures. The Association controls all aspects of repair and replacement of exterior windows (yes, this is included twice).

Who pays for windows? All owners will eventually. But in a world where some answers remain in the dark, perhaps this article and a broken window will let in some light. "But, soft! What light through yonder window breaks?" Romeo and Juliet, Act II, Scene 2, Line 1.

*By Brian P. McLean of Leahy McLean Fjelstad.* ☼

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### **Eye for Compromise**

One of the vexing issues a new board has to contend with is lax enforcement of owner additions and modifications by former boards. Lack of enforcement often results in non-compliant decks, fences, sheds and other creature comforts. The violators sometimes claim they got verbal approval from the developer or some long gone board president. Others claim they didn't know approval was necessary. But for whatever reason, there are now a boatload of violations that need to be

reconciled. How should the current board deal with them?

The length of time a violation has been in place affects the course of action. If it's been no more than a year or two, the board's case is stronger. The new board had to displace the old lax board to correct the problem. If the violation has been in place much longer, the owner can make a stronger case that a series of boards consented by silence. But action is still called for or the current board is accomplice to mismanagement.

**Send Violation Notices.** To begin the enforcement process, violation notices should be sent to every violator with a demand for removal of the offending modification. Some may comply willingly and narrow the list. However, some won't comply so the board must decide how strongly it feels about the violations. In this regard, choose battles wisely. Legal battles are exhausting financially and emotionally.

**Agree to Compromise.** The idea of a compromise is to permit the violation to continue while the current owner owns the property. Once the property is sold, the offending modification must be removed at owner expense. Further, the current owner must provide for all maintenance and is responsible for any damage it might do to HOA maintained structures (like a deck that leads to dryrot in the siding). It is fairly easy to get an owner to agree to this compromise since it allows the modification to remain, it averts a potential lawsuit and it demonstrates to the other members that the board took reasonable action without going to court.

**Written Agreement.** Have violators pay to have an attorney formalize the agreement in recordable form which identifies the modification, the legal description of the subject property and the conditions of the compromise. Then date, sign, notarize and have the local title company file it on the public record. This puts all prospective purchasers on notice of the requirement should the owner "forget" to comply with the agreement. Then even if there is a sale, the board can require the new owner to comply with the condition of the recorded document.

### Owner Maintenance Responsibility.

In the case of owner modifications, all repairs and maintenance should be the owner's responsibility. This too should be described in a recorded document for the benefit of future owners. For ease of tracking, the board should compile a list of such modifications by type, date of installation and location. Ancient history in an HOA is two years ago. This list will prove invaluable over time and keep the board from spending money for something that it shouldn't.

### Damage to HOA Components.

Repairs of damage caused to HOA components by owner installations should be charged back to the owner. For instance, it's not uncommon for improperly installed deck and privacy fences to cause dryrot or structural problems to the building.

### Establish Reasonable Standards.

Even if the board approves owner modifications, it is *extremely* important that they be professionally and properly installed for aesthetics and compatibility with the existing construction. To this end, the board may set reasonable standards such as requiring the owners to:

1. Use only licensed, bonded and insured contractors for the work.
2. Submit detailed plans in advance, say 30 days, so the board can consider the issue adequately.
3. Show evidence of proper permits required for the work
4. Pay for architect or engineer plan review if the modification is complex or affects structural integrity

The board should approach owner modification violations and requests in a businesslike way still keeping an eye to compromise. Life is not black and white and neither is life in an HOA. Keep an eye for compromise. 🐼

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### Is Anyone There?

Franklin Roosevelt got tired of smiling and saying the usual things at White House receptions. One evening, as each person came up to him with an extended hand, he flashed a big smile and said, "I murdered my grandmother this morning." People would respond with comments like "How lovely!" or "Just continue with your great work!" One foreign diplomat responded, "I'm sure she had it coming to her." Nobody really focused on his words.

Most of us have people we care about. However, we fail to demonstrate our care by listening to them. Instead, we exchange brief remarks and then do our own thing. The result: hurt feelings, painful conflicts, and broken relationships.

As "Mature Living" notes, "Talking to yourself isn't always a sign of old age. It may be the only way to be sure someone is listening."

Sir Isaac Newton reflected back on his life and said, "I seem to have been only like a boy playing on the seashore, now and then finding a prettier shell than ordinary, whilst the great ocean of truth lay all undiscovered before me." There is a great ocean of truth out there for each of us. Are you listening? Make an real effort and your relationships with others will improve significantly.

By Rich McLawhorn 🐼

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### Three Questions

The day finally arrived: Forrest Gump dies and goes to Heaven. He is met by St. Peter who says, "Well, Forrest,

we've certainly have heard a lot about you. Part of the check-in procedure includes a short test to determine where you fit best. There are three questions:

1. What two days of the week begin with the letter "T"?
2. How many seconds are there in a year? and,
3. What is God's first name?"

Forrest mulls it over and replies: "Well, the first one is easy. The two days would be Today and Tomorrow." Peter's eyes open wide, he smiles and says, "Forrest, that's not the answer I was looking for but you do have a point, so I'll give you credit for it."

Forrest beams and says, "And the answer to the second question is twelve". Astounded, Peter says, "Twelve? How in heaven's name could you come up with twelve seconds in a year?" Forrest says "Shucks, there's gotta be twelve: January 2nd, February 2nd, March 2nd..." "Hold it," interrupts Peter. "Again, that wasn't quite what I had in mind, but I'll give you credit for that one too."

"So", says Peter. "Can you tell me God's first name"? "Sure" says Forrest. "It's Andy." "Andy?" exclaims the exasperated Peter. "How did you come up with the name Andy?" "Heck, that was the easiest one of all," Forrest replied. "I learned it at Sunday School from a song: "Andy walks with me, Andy talks with me, Andy tells me I'm his own..."

Peter slowly cast his eyes heavenward, opened the Pearly Gates and boomed: "Run, Forrest...RUN!".

"I tell you the truth, unless you become like little children, you will never enter the kingdom of heaven." Jesus 🐼

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