



The Regenesi Report



Pacific NW

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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Safeguard the Board from Lawsuits

Serving on your homeowner association's board of directors can be a gratifying experience. As a board member, you make decisions that help keep the HOA beautiful and functional for the benefit of the entire community. On the other hand, the possibility of legal action being taken against the board is always present.

Understanding the most common types of allegations against boards, as well as how to safeguard against them, can minimize the risk of such lawsuits.

If a board is named in a suit, Directors & Officers Liability Insurance protects past, present, and future board members from financial consequences due to alleged wrongful acts, decisions, or omissions. In the event of a covered claim, the policy pays for the loss if the board loses the lawsuit. It also covers the HOA's legal defense costs. These costs to defend will fall to the board, regardless of whether an allegation against the board is determined to be true. Below are the most common incidents that give rise to Directors & Officers Liability Insurance claims.

1. Breach of fiduciary duty - An HOA's board of directors has a legal obligation to act in the best interests of the HOA. Boards may be sued for breach of fiduciary duty if someone alleges that this obligation was not upheld. Some common examples include failure to enforce the governing documents, enforcing governing documents inconsistently, or failure of due diligence prior to a financial decision.

2. Discrimination - Homeowner associations may be sued under the Fair Housing Act or the Americans with Disabilities Act if a decision made by the board is construed as a wrongful act or discrimination. Examples include failure to make reasonable accommodations for a disabled homeowner, as well as discriminatory acts based on age, race, or religion.

3. Violation of Covenants, Conditions, and

Restrictions (CC&Rs) - An HOA's CC&Rs detail rules that must be followed by unit owners, board members, and the HOA. If someone feels the board has violated part of the CC&Rs, they may sue. These violations may include misuse of funds, failure to maintain common elements, denial of unit owner architectural modification requests, or suits challenging an HOA fine assessed against a unit owner.

To help prevent lawsuits and claims against the board of directors, take preventative measures to avoid issues from arising in the first place.

4. Educate and train board members - Board members should understand and regularly review the governing documents and reserve study. They should understand what their fiduciary responsibilities entail.

5. Leverage professional guidance - Speak with the board's legal counsel, insurance agent, and other advisors and follow their advice.

6. Obtain comprehensive Directors & Officers Liability Insurance coverage - Ensure the HOA always carries a D&O policy that includes appropriate coverage provisions.

The first step board members can take to avoid lawsuits and claims is to understand the common issues that give rise to disputes within HOAs. With forethought and prevention, your HOA board will be prepared for the challenge.

By Vern Newcomb, ABI

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Ask the HOA Expert

Q Our Board is considering hiring a resident member to be a resident manager. The candidate is retired and needs extra income. Is this a good idea?

A It is generally a very bad idea to hire a member to act as manager. It has been tried many times and I have never seen it work well. There are a number of reasons:

1. They rarely have the experience and credentials to do the job.
2. The board may be doing this to avoid paying taxes and other required withholding. This exposes all members to significant penalties from state and federal authorities.
3. If the member does not pay taxes as required, again, the members have personal exposure.
4. There is an undeniable conflict of interest. How can a member/employee be impartial when getting maintenance work done?
5. A resident manager is basically on call 24/7 and compensation rarely reflects it. Eventually, the manager starts "adjusting" the work schedule to self compensate and less and less real work gets done.
6. Hiring someone because "he needs the money" should never drive a board's decision; getting quality work at a reasonable price should be the goal.
7. If things don't work out (often the case), the board will have to fire a neighbor who will likely be resentful and antagonistic.

The board should look outside the community for a professional that carries the proper credentials.

Q Our board is conservative and slow to change. One area where this is particularly true is with architectural and design requests. The committee the board appointed denies many applications simply because they don't conform to color, roof and siding standards that

have been in place for over twenty years. There is nothing particularly outrageous about the requests, they just reflect modern standards. Opinion?

A While maintaining standards is important, over time those standards should consider new, improved or contemporary materials, designs and colors. To stay stuck in the past causes home values to fall. The committee is not appointed to block change but to guide the process to a reasonable outcome. The board should appoint committee members with a balanced views. Committee decisions should always allow for appeal to the board who also should represent a balanced view.

Q We have always had the management company count the votes for the election of officers. To prevent any hint of conflict of interest, we are having the count audited by our accountant. How do other HOAs do it?

A Have several HOA members that are not running for office do the vote count. Retain the proxies, ballots and tally sheet until the next election. The accountant is overkill.

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Q I serve on the board and have been informed we should not communicate with each other directly via e-mail because it potentially constitutes a board meeting. Is this true?

A The issue of the board using email generally involves how it is being used. Communicating by email on routine HOA business and settled policy is not prohibited any more than picking up the phone or exchanging information in the parking lot. The board needs to communicate to direct normal business.

Such communications, however, may sometimes wander into topics that

should be discussed in open meetings. The board needs to be aware when that line has been crossed. This is particularly true of controversial issues like spending significant money outside the approved operating budget or reserve study. The members have the right to audit such discussions and it simply isn't possible outside a physical meeting.

That said, email is a terrific way to communicate meeting minutes, newsletters and other information to the members. Speed up communications, their frequency and reduce costs. Win-win-win.

Q At the last board meeting, some members requested the names of people who have not yet paid their HOA fees. The board announced the names of past due accounts. Is this correct protocol?

A No. Besides the humiliation and libel aspect, there may be extenuating circumstances like a death, disability or unemployment. Not all delinquencies are created equal. At the end of the day, HOAs are made up of neighbors and the board should be sensitive and careful whose names it smears. To be safe, discuss amounts owing but not the names of those that owe them.

Q Our collection policy states that if an owner is 30 days past due, the management company sends a pre-lien notice letter. Several board members think the board members should be notified when these letters are sent.

A When a collection process is implemented, the board should be kept apprised of the progress. It is easily and cheaply done by email to all board members. It is standard procedure for the management company to keep the client informed of significant events like this.

Q We are having a difficult time with our management company providing accurate, complete and timely financial statements. Month after month, the same problems. We've written them letters and met with them in person yet no improvement. We've had it and want to terminate the



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contract but fear they won't release us.

A Providing accurate and timely financial reports is an HOA management company's highest priority since money is an essential component of the HOA's operation. An occasional error is to be expected but ongoing errors is another matter. Either the management company is doing it correctly or not. Numbers don't lie (except at Enron).

Management contracts cut both ways. If one party is not living up to its end of the bargain, it has no right to continue. The board or HOA's attorney should advise the management company of the specific breaches that are the basis for termination. If the facts are true, there should be no argument.

Q Our board of directors recently passed the following resolutions. Be it resolved that:

- 1) Board members shall be on signature cards of all bank accounts.
- 2) Management company may not sign any checks without the approval of the board.
- 3) Management company shall produce true and accurate financial statements.
- 4) The HOA will not be responsible for any late fees incurred due to failure by management company to make timely payments.
- 5) Management company must develop a system to pay HOA bills on time and correctly.

A Clearly the board has many issues with the current management company which need to be resolved, and soon. Observations based on your numbered resolutions:

1. Both the President and Treasurer are usually signers on the HOA's bank accounts. This should be done as soon as possible. If the management company interferes, get a new management company.
2. The management company should be authorized to pay itself for normal

monthly charges authorized by the management agreement. Special billings should receive prior approval from the Board President. It should only be necessary to get the whole board to approve a payment when it's outside the approved budget.

3. The management company should normally produce a monthly income and expense statement and reconciled bank statements by no later than the 15th of the following month.

4. This is reasonable. The HOA should not pay for late fees caused by the management company.

5. Many HOA management companies pay bills twice a month to avoid unnecessarily delaying payment or incurring late fees. The HOA, of course, must have the money available to pay the bills.

Q Do board members have a legal responsibility to follow the reserve study recommendations?

A The board should be careful about deviating from reserve study recommendations. Most reserve studies recommend a funding plan that steers the HOA away from special assessments. If the board decides to fund reserves less, the risk of special assessment grows.

If a special assessment is called for due to underfunding, a case could be made that the board did not fulfill its fiduciary duty and be held personally liable. And just as importantly, past owners who have sold will not have paid their fair share. Unless there is a compelling reason to deviate, the board should follow the recommendations. ⚠️

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It's Not About You

Homeowner association managers exist to serve the needs of their clients. That

being the case, how does service become leadership and how do actions bring about a positive result to those served?

Author Rick Warren in *The Purpose-Driven Life*, starts with a simple, yet profound statement: "It's not about you." In the 1960s, Robert Greenleaf wrestled with similar issues. He observed the great institutions of our country – businesses, governments, universities and churches – and noticed a disconnect between service and those being served.

The culmination of his soul searching was an essay entitled *The Servant as Leader*. "The servant-leader is servant first... It begins with the natural feeling that one wants to serve, to serve first," explained Greenleaf. "Then conscious choice brings one to aspire to lead."

He offered the following test to determine whether leaders are operating as servants first: Do those served grow as persons? Do they, while being served, become healthier, wiser, freer, more autonomous, and more likely themselves to become servants?

What does all of this have to do with the HOA industry? EVERYTHING!

Servant Leadership addresses two key issues that exist in homeowner associations - motive and intent. Motive often has its first thought toward "me", self-interest and expediency while intent, if misguided benevolence, may actually harm those served. How each of us approaches motive and intent are colored by genetics, upbringing, life experience, cultural and gender differences. So, what can we do? In a world where "what's in it for me?" rules, it's unlikely that the resulting actions will effect positive change for those served.

Insanity has been defined as doing the same thing again and again expecting a different result. Different outcomes require different approaches. The simple statement "to lead, serve first" points HOA managers in the proper direction.

When positive behavioral change is undertaken, it affects everyone around us, helping focus on true servant

leadership. The true test of this change is whether our service results in the betterment of those being served.

The HOA management industry's ability to serve can only be manifested through participating board members, vendors and others – who are willing to check egos and personal agendas at the door and say, "What can I do to make this a more serving institution?" This requires enormous courage, vulnerability, discipline and sacrifice. Remember: "It's not about you". 🗑️

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Frequency of Recency

One of the more common mental biases that affects people is known as "recency". Recency is the tendency to consider the most recent information as more important when making a decision instead of weighing all information equally. This kind of thinking can be pervasive in the homeowner association environment. In the heat of discussion, the most recent hot topic can loom large and perspective lost. Recency causes skewed decision making driven by passion. How does this phenomena manifest itself?

Consider the enactment of a rule designed to control the scofflaws. An example is the guy that has five vehicles and only one parking place. After repeated notices to thin out his car collection, the board decides to take radical action, enact a no-nonsense tow on sight rule and smite the offender. This approach, however, also applies all including the occasional offenders and guests. The towing policy is not necessarily a bad one but needs to be approached with reason.

When it comes to rule making, rules need to be widely applicable. They should never be enacted to control the few. The few, frankly, could care less. When a narrow rule is enacted, the

many that generally live in harmony with their neighbors are netted with the few that don't. This is a bad mix and bound to create ill will or inconsistent enforcement of the rule.

Consider collections when they involve a habitual trouble maker. The board may react with "last straw" will and enact an iron clad collection policy punctuated by a foreclosure option. The manifestation of "recency" thinking again affects all members, including those that have a legitimate excuse for their delinquency (job loss, disability, etc.). Bottom line: The board needs to be careful in its "one size fits all" rules and policies.

Consider reacting to a member's bullying at a board meeting. One of the great advantages of a meeting agenda composed in advance is that the board is given the opportunity to reflect on upcoming discussions, even if they're controversial. If member concerns are required to be on the agenda to get board action, impromptu tirades can be deflected to a future board meeting. In truth, tirade passion usually dwindles over time and the board rarely needs to deal with these issues at all. Use the meeting agenda to avoid shoot-from-the-lip decisions.

Consider reaction to rumors. This is the most insidious recency of all because it is accomplished by stealth. If the accuser is confronted, they simply deny they said it or claim what was said was distorted or exaggerated. Trying to defend against rumors is like trying to catch the wind. It's at its worst when the rumor mill is churned by a board member who is privy to board discussions and philosophy. While the best approach is to try to ignore such undermining, it's also good to confront directly and demand change.

When recent events stir the body politic, it's usually time to put the matter on the slow track. Time heals all wounds and moderates hysteria of the moment. If the discussion takes on a personal aspect (like, "You worthless SOB!!!"), it's time to adjourn to another time and place so that reason, and not recency, prevails. There are

few issues in an HOA that require immediate board action. When the effects of recency begin to taint board thinking, shake them off and sloooooow doooooown. 🗑️

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Plain Speaking

Good communication relies on common understanding of terms. English is particularly irksome because the same word or phrase can have radically different meanings. The type of communication practiced can form the basis of clear understanding and agreement or chaos and conflict. One of an HOA Board's greatest challenges is to communicate to the members effectively. Let's look at various methods of HOA communication:

Email. In terms of speed, efficiency and cost, email can be a great boon to the Board if used properly. Email allows instantaneous and free transfer of information. But email discussions require a high degree of skill. There are significant differences between a face to face and email exchange. Facial expressions and tone of voice can make all the difference to meaning. Small misunderstandings can be instantly corrected as the conversation progresses. With email, the words are static and subject to the interpretation or bias of the receiver. A casual comment from a sender can be easily be interpreted as inflammatory by the recipient.

Choice of words in emails, therefore, is extremely important. Proofreading and careful consideration of content is mandatory to avoid unintended results. Knowing the recipients personally helps a lot because the sender understands the personality issues better.

The Forwarding feature of emails can reveal information to unintended eyes. Since the dynamics of group communications is so complicated, it's usually best to stick to the facts, rather

than opinions, especially about hot potatoes that can precipitate a war of words.

Newsletters. All HOAs should produce regular newsletters to keep members abreast of financial issues, important rules and design standards, current contact information and breaking news. While graphics and pictures are nice,

they can be overdone and should be limited. Content is king. For most HOAs, a one or two page newsletter will do but larger communities can produce 10-20 page extravaganzas with paid advertising to offset production costs. With proper planning and distribution, it can actually be a money maker. For more on this topic, see Regenesiis.net "Newsletter Basics".

Telephone. While email has some limitation, virtually everyone has a phone. An old standard, the phone now has enhanced features that facilitate improved communications. Voice Mail and Message Notification allow freedom to roam. Some HOAs have attempted Phone Trees for communicating to members. This system is like a chain letter that relies on downstream participants to push the message along. Broken links are common. Technology now provides a wonderful alternative with NotifyQuick.com which allows a recorded voice message to be communicated to thousands simultaneously.

Website. Providing need-to-know information to members and potential buyers is an extremely important HOA function. The internet is on 24/7 and provides a platform for HOA information archives. HOAs can provide this information cheaply and quickly through a website to assist their sellers' resale disclosure obligation. With the many affordable and user friendly HOA website services available today, there is little excuse for even the smallest HOA not to take advantage of this tremendous communication tool. For more on website development and recommended content and layout, see Regenesiis.net "HOA Websites".

Face to Face. Meetings are the prescribed mechanism for members to communicate HOA business. The Board should have at least four scheduled meetings a year, all open to members. Scheduling them far in advance allows all involved to plan their calendars accordingly and for the Board to systematically deal with business rather than react on the fly.

At those meetings, members have the right to express opinions and inquire about HOA matters. An Open Forum preceding each meeting provides the means for expression. It demonstrates that the members matter and that the Board has nothing to hide. Even though some members can rant at Open Forums, that's preferable to them trash talking over the garden fence. Let them vent, most will feel heard and not engage in backbiting.

The more the words, the less the meaning. Whatever communication methods that are used, speak plainly, frequently and adequately. It makes the Board's job much easier when the members are clued into the issues. 🗨️

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Peacemaker Blessing

Homeowner associations can be hotbeds of discontent, turmoil and conflict at times. Out in the big world, combatants can often successfully just avoid each other rather than deal with the problems. But within the HOA, avoidance is much more difficult and being in conflict with a neighbor can make living there very stressful. Unresolved conflicts in HOAs often prompt one or both to move to avoid further unpleasantry.

The Bible teaches that conflict comes from the desires that battle in the human heart: "What causes fights and quarrels among you? Don't they come from your desires that battle within you? You want something but don't get it. You kill and covet, but you cannot

have what you want. You quarrel and fight. You do not have, because you do not ask God. When you ask, you do not receive, because you ask with wrong motives, that you may spend what you get on your pleasures." *James 4:1-3*

Conflict caused by concealing the truth, bending others to your will, or seeking revenge is clearly counter productive. But conflict can also be fueled by good intentions in a desire to be understood, loved, respected, or vindicated.

Conflict can arouse different kinds of responses. One response is to run, hide or deny the problem exists. Another response is to attack either verbally, physically or legally. Neither of these responses diminishes the conflict and usually has quite the opposite effect. The only real long term solutions to conflict are peacemaking responses like:

1. Overlook the Conflict. Just because we get slapped doesn't mean we have to get even. An eye for an eye and a tooth for a tooth leaves only the blind and toothless. "A man's wisdom gives him patience; it is to his glory to overlook an offense." *Proverbs 19:11* "Bear with each other and forgive whatever grievances you may have against one another." *Colossians 3:13*

2. Reconciliation. Making amends is not only the right thing to do, it relieves us of anxiety and hostility. "Therefore, if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there in front of the altar. First go and be reconciled to your brother; then come and offer your gift." *Matthew 5:23-24*

3. Mediation. Pride is a high mountain to climb. Sometimes, a little help from a friend is needed to build a bridge of reconciliation. "If your brother sins against you, go and show him his fault, just between the two of you. If he listens to you, you have won your brother over. But if he will not listen, take one or two others along, so that every matter may be established by the testimony of two or three witnesses." *Matthew 18:15-17*

4. Accountability. Rather than stand

idly by while a neighbor engages in self destructive or harmful behavior, intercede in a caring way. "Brothers, if someone is caught in a sin, you who are spiritual should restore him gently." *Galatians 6: 1*

Peacemakers do not avoid conflict but confront it directly with the goal of reconciliation. Reconciliation is not always easy to achieve because the human heart can be hard. But blessed are the peacemakers who point the way. ☸

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Amplification Principle

Amplification is making something appear more significant (or insignificant) than it really is. In persuasive situations, we seek to direct the attention of the other person towards points that support our argument and away from points that reduce our argument. We thus both amplify the supporting points and attenuate (the reverse of amplifying) other points. Just as you can turn the volume of music up and down, you can amplify or attenuate individual points to suit your purpose.

Amplifying may include:

- Pointing out elements that play to the other person's needs, values and goals and otherwise focusing their attention.
- Showing evidence of how other people have benefitted.
- Contrasting the benefits of a proposition with alternative actions.
- Frequently repeating the message.
- Providing confirming experiences.

Attenuating may include:

- Distracting the person away from these elements.
- Decreasing the person's investment in alternatives.
- Reframing the situation to exclude alternatives.
- Closing off concerns.
- Hurting the person when they see

alternatives so you can then rescue them with your proposition.

- Framing yourself as an authority so you can criticize and trivialize non-supporting elements.

Forced Choice. A way of biasing options when offering or discussing a choice is to both amplify the choice you want the other person to make and to attenuate the choices that you do not want them to make.

A Managed Truth. Amplification and attenuation need not include deliberate lying, but they do manipulate the truth, hence the famous phrase about a politician being "Economical with the truth".

To use this persuasion principle effectively, first identify those things that support your argument and also those things that detract from it. Then find ways to amplify the good points and attenuate the bad points. Aim to keep them both truthful and subtle. As with all persuasion methods, if the other person feels you are being less than honest, they will not trust you or your arguments.

For more persuasion principles, see www.ChangingMinds.org ☸

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Seasons & Reasons

People come into your life for a reason, a season or a lifetime. When you know which one it is, you will better understand how to benefit from the experience.

When someone is in your life for a reason, it is usually to meet a need you have expressed. They have come to help you through a difficult time, to provide you with guidance, to support you physically, emotionally or spiritually. They are there for the reason you need them to be. Then, the relationship comes to an end.

Sometimes they die. Sometimes they move. Sometimes they force you to take a stand. Regardless of the reason, their work is done.

Some people come into your life for a season to help you grow or learn. They bring you peace, make you laugh and usually give you joy. Believe it, it is real. But only for a season.

Lifetime relationships teach you life lessons, things you must build upon in order to have a solid emotional foundation. Your job is to accept the lesson and put what you have learned into practice and other relationships.

Friends made for seasons and reasons help guide us to good and Godly ends. When they knock at your door, answer the call. ☸

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Drop Dead

Six condo board members were playing poker in the clubhouse one night. Fred lost \$500 on a single hand, clutched his chest and dropped dead at the table. Out of respect for their fallen comrade, the other players completed the hand. At the conclusion of the game, the board president, looked around the table and asked, "Who is going to tell Fred's wife?"

They drew straws and Steve picked the short one. They told him to be discreet and not to make a bad situation any worse. Steve then went to Fred's condo and knocked on the door. His wife Norene answered and asked what he wanted. He politely told her that her husband had just lost \$500 in a poker game and was afraid to come home.

According to neighbors in the adjacent unit, she yelled, "TELL HIM TO DROP DEAD!"

Steve responded, "I'll tell him." ☸

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